

**STATE OF UTAH
DIVISION OF WATER QUALITY
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALT LAKE CITY, UTAH**

Section 401 Water Quality Certification No. DWQ-2021-06004

Project Proponent: John Brown
Godfrey West Investors, LLC
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Project: Godfrey West Investors, LLC (Project Proponent) proposes to construct the 6000 West 2540 South Project (Project), which would include a commercial building and support facilities including parking lots, water retention basin, and utilities, on a 27.2-acre site located at 6000 West 2540 South in West Valley City, Salt Lake County, Utah. The commercial building would be 289,100 square feet (6.37 acres). Planned parking lots would accommodate 200 automobiles, 60 truck docks, and 78 trailer spaces. The Project would impact 1.58 acres of palustrine emergent saline wet meadow wetland immediately adjacent to State Route (SR) 201/Mountain View Corridor Frontage Road. Approximately 2,095 cubic yards of native fill would be used to fill this wetland. Waters of the U.S. (WOTUS) lost as a result of the Project would be compensated by the purchase of mitigation bank credits from the Machine Lake Wetland Mitigation Bank at a 2:1 ratio. According to the Project Proponent, the purpose of this project is to provide a hub for shipping and logistics located within Utah's shipping and industrial sector. The Project Proponent anticipates construction beginning in October 2021 and ending in August 2022.

Location: 6000 West 2540 South West Valley City, Salt Lake County, Utah. Latitude 40.716604°, Longitude -112.034616°

Watercourse(s): Palustrine emergent saline wet meadow wetlands

USACE Section 404: SPK-2020-00944

Effective Date: Month, Day, Year

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I. Definitions

- A. **Designated Beneficial Uses** means a water's present most reasonable uses, grouped by use classes to protect the uses against controllable pollution. Beneficial uses designated within each class are described in Utah Administrative Code (UAC) R317-2-6 and waterbodies beneficial uses can be found in UAC R317-2-13. For the purposes of this document, the term "designated beneficial uses" will be used to describe all uses required to be protected by Utah Water Quality Standards and Antidegradation Policy.
- B. **Existing Uses** *"means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards."* UAC R317-1-1. *"If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Director will apply the water quality standards and anti-degradation policy to protect the existing use"* UAC R317-2-3.
- C. **Total Maximum Daily Load (TMDL)** *"means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources."* UAC R317-1-1
- D. **303(d) list** is a state's list of impaired and threatened waters, including but not limited to; streams, lakes, and reservoirs adopted to implement the Clean Water Act Section 303(d).
- E. **Project Proponent** *"means the applicant for license or permit or entity seeking certification."* 40 CFR §121.1
- F. **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.

II. Acronyms

BMPs – Best Management Practices
CFR – Code of Federal Regulations
CWA – Clean Water Act
DEQ – Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
EPA – Environmental Protection Agency
MS4 – Municipal Separate Storm Sewer System
NOI – Notice of Intent
NTU – Nephelometric Turbidity Units
SR – state route
SWPPP – stormwater pollution prevention plan
TMDL – Total Maximum Daily Load
TSS – total suspended solids
UAC – Utah Administrative Code
UPDES – Utah Pollutant Discharge Elimination System
USACE – U.S. Army Corps of Engineers
WQS – Utah Water Quality Standards
WOTUS – Waters of the United States

III. Executive Summary

Pursuant to Section 401 of the Clean Water Act (CWA) 33 U.S.C. Section 1251 et seq., the Utah Division of Water Quality (DWQ) grants Water Quality Certification (Certification) to Godfrey West Investors, LLC for the proposed 6000 West 2540 South Project (Project) in West Valley City, Salt Lake County, Utah. Certification is subject to the conditions outlined in this document and adherence to any U.S. Army Corps of Engineers (USACE) Section 404 Permit Conditions. The conditions outlined in this Certification are necessary to assure compliance with effluent limitations, monitoring requirements, and/or other applicable laws and regulations adopted for state primacy of the

CWA. Condition justification and appropriate citations of Federal and State laws that authorize the condition, as required by 30 CFR Part 121.7, can be found in the section immediately following the conditions.

DWQ's conditions are based on and are necessary to comply with applicable state rules. Specifically, the following Utah rules represent overarching considerations that require the conditions outlined by this document to apply to the USACE Section 404 Permit: Utah's rules promulgating standards of quality for waters of the State affirm "*it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated*" UAC R317-2-7.1.a. Additionally, "*all actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses*" UAC R317-2-8. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*" UAC R317-15-6.1.A.1., "*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*" UAC R317-15-6.1.A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3.

The Utah DWQ participated in a pre-filing meeting with the Project Proponent on December 15, 2020, and received a formal Section 401 Certification Request from Lochner, on behalf of Godfrey West Investors, LLC, on June 21, 2021. Per correspondence Nicole Fresard at the USACE Sacramento District, the reasonable period of time to make a Certification decision is 90 days. This requires the Director to act by September 19, 2021.

IV. Background

Godfrey West Investors, LLC (Project Proponent) proposes to construct the 6000 West 2540 South Project (Project), which would include a commercial building and support facilities including parking lots, water retention basin, and utilities, on a 27.2-acre site located at 6000 West 2540 South in West Valley City, Salt Lake County, Utah. The commercial building would be 289,100 square feet (6.37 acres). Planned parking lots would accommodate 200 automobiles, 60 truck docks, and 78 trailer spaces. The Project would impact 1.58 acres of palustrine emergent saline wet meadow wetland immediately adjacent to SR 201/Mountain View Corridor Frontage Road. Approximately 2,095 cubic yards of native fill would be used to fill this wetland. WOTUS lost as a result of the Project would be compensated by the purchase of mitigation bank credits from the Machine Lake Wetland Mitigation Bank at a 2:1 ratio. According to the Project Proponent, the purpose of this project is to provide a hub for shipping and logistics located within Utah's shipping and industrial sector. The Project Proponent anticipates construction beginning in October 2021 and ending in August 2022.

V. Aquatic Resource Impacts

All Waters of the State of Utah (defined in UAC R317-1-1) are protected from pollutant discharges that affect water quality by narrative standards (see UAC R317-2-7.2); broadly, discharges should not become offensive or cause undesirable conditions in human health effects or aquatic life. In addition, some particularly sensitive classes of water are further protected from deleterious effects of specific pollutants by application of numeric criteria to designated (beneficial) uses of that water body. Listed below are the water features within the Project area and their associated designated beneficial uses (see UAC R317-2-6 and UAC R317-2-13):

A. Palustrine emergent saline wet meadow wetlands^[1]

1. Use Designations

¹ Per UAC R317-2-13, all waters not specifically classified are presumptively classified 2B and 3D.

- a. Class 2B: Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.
 - b. Class 3D: Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C including the necessary aquatic organisms in their food chain.
2. Impairments and Total Maximum Daily Loads (TMDLs): N/A
 3. Antidegradation Review
The palustrine emergent saline wet meadow wetlands are considered Category 3 waters for antidegradation purposes. Category 3 waters in Utah are waters where “*point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5*”, as described in UAC R317-2-3.4. The antidegradation policy allows for discharges where the water quality effects of the proposed Project are determined to be temporary and limited after consideration of the factors identified in UAC R317-2-3.5.b.4., and where best management practices (BMPs) will be employed to minimize pollution effects.

VI. Certification Conditions

- A. All activities with a potential discharge to WOTUS must implement and maintain BMPs to fully protect the waterbodies assigned beneficial use(s).
- B. Hazardous and otherwise deleterious materials (e.g. oil, gasoline, chemicals, trash, sawdust, etc.) shall not be stored, disposed of, or accumulated or conveyed through adjacent to or in immediate vicinity WOTUS unless adequate measures and controls are provided to ensure those materials will not enter WOTUS in the State of Utah. **Any spill or discharge of oil or other substance which may cause pollution to WOTUS in the State of Utah, including wetlands, must be immediately reported to the Utah DEQ Hotline at (801) 536-4123, a 24-hour phone number.**
- C. Waterbodies classified as beneficial use class 2B for recreation and 3A for cold water aquatic life cannot increase water turbidity by more than 10 Nephelometric Turbidity Units (NTUs).
- D. Construction activities that either greater than an acre of land, or less than an acre of land and is part of a larger common plan of development that will disturb greater than acre, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities (Permit No. UTRC00000^[2]). The permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) to be implemented and updated from the commencement of any soil disturbing activities at the site, until final stabilization of the project. The SWPPP should include, but not be limited to, final site maps and legible plans, location of storm water outfalls/discharges, and information pertaining to any storm water retention requirements.
- E. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering (Permit No. UTG070000^[3]) applies to the construction dewatering of uncontaminated groundwater or surface water sources due to construction activities; hydrostatic testing of pipelines or other fluids vessels; water used in disinfection of drinking water vessels; and other similar

² <https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf>

³ <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf>

discharges in the State of Utah that have no discharge of process wastewater. The permit requires submission of a Notice of Intent (NOI); maintenance of a discharge log; development and implementation of a dewatering control plan; and monitoring for Flow, Oil & Grease, pH, Total Suspended Solids (TSS), and Chlorine (required when chlorinated water is used and discharged to a stream with a chlorine standard). Discharge Monitoring Reports (DMRs) are required to be submitted monthly, regardless of whether a site discharges in a particular month

VII. Condition Justification and Citation

- A. Implementation of BMPs. Project approval is conditioned on implementation of BMPs, which are required to be implemented by the antidegradation policy in UAC R317-2-3, water quality standards may be violated unless appropriate BMPs are incorporated to minimize the erosion-sediment and nutrient load. Violations of water quality standards could cause a waterbody to fail to meet its designated beneficial uses. As required by Utah's antidegradation policy UAC R317-2-3.1 "*Existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.*" As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*" UAC R317-15-6.1.A.1., "*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*" UAC R317-15-6.1.A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3 when making a Certification decision. If appropriate BMPs are incorporated, there is assurance that the Project will not violate water quality standards or impair a waterbody's beneficial use.

Citation(s): UAC R317-2-3.1, UAC R317-15-6.1, UAC R317-15-6.1.A.1., UAC R317-15-6.1.A.2., UAC R317-15-6.1.A.3.

- B. Proper Storage of Hazardous and Otherwise Deleterious Materials. Project approval is conditioned on proper storage of hazardous and otherwise deleterious materials, and notification of any discharge of those materials, to assure that water quality and narrative standards are not violated. When projects are occurring in or around waterbodies, there is a chance for pollutants to inadvertently be spilled/discharged into waterbodies due to increased risk from project related activities (e.g. presence of machinery, onsite chemical and gas storage, improper waste storage, and failure to use proper BMPs). To prevent or reduce the possibility that hazardous and otherwise deleterious materials are inadvertently discharged into a waterbody, Project Proponents must not store, dispose of, or accumulated such materials adjacent to or in immediate vicinity of WOTUS unless adequate measures and controls are provided to ensure those materials will not enter waters of the State. If there is a discharge to WOTUS in the State of Utah, it must be immediately reported to the DEQ, as stated in Utah Code Section 19-5-114. An inadvertent discharge of pollutants can cause violations with Utah's Narrative Standards, which states "*It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3*" UAC R317-3-7.2. Utah's rules promulgating standards of quality for waters of the State affirm "*it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by*

assigned classes or to cause any of the applicable standards to be violated” UAC R317-2-7.1.a. Discharges of pollutants, even inadvertently, could cause both a violation of applicable water quality standards and possibly interfere with a waterbodies designated uses.

Citation(s): Utah Code § 19-5-114, UAC R317-3-7.2, UAC R317-2-7.1.a, UAC R317-15-6.1., UAC R317-15-6.1.A.1., UAC R317-15-6.1A.2.

- C. Turbidity Increases. Beneficial uses associated with recreation and aquatic life have been assigned numeric criteria for turbidity. An increase of more than 10 NTUs above the reference turbidity of a waterbody would be a violation of instream criteria for waterbodies that have recreation or aquatic life uses. UAC R317-2-14.1 and UAC R317-2-14.2. This could cause the waterbody to not meet beneficial use classes 2B or 3A. Utah’s antidegradation policy states “*existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses*” UAC R317-2-3.1. Failure to minimize turbidity increases that result in the failure to maintain beneficial use class 2B or 3A would be considered a violation of Utah’s rules and promulgated standards of quality for waters of the State, specifically Utah’s antidegradation policy found at UAC R317-2-3. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge “*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*” UAC R317-15-6.1.A.1., “*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*” UAC R317-15-6.1A.2. or “*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*” UAC R317-15-6.1.A.3 when making a certification decision.

Citations: UAC R317-2-3.1, UAC R317-2-3, UAC R317-2-14.1, UAC R317-2-14.2 R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

- D. UPDES Storm Water General Permit for Construction Activities (Permit No. UTRC00000). UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. According to UAC R317-8-3.9 (6)(d), construction activities that result in a land disturbance of equal to or greater than one acre, including clearing, grading, and excavation are “*industrial activities*” under UAC R317-8-3.9(1)(a) and are therefore required to obtain and comply with a UPDES Permit for storm water discharges. This only applies to projects that meet or exceed 1-acre of disturbance.

Citation(s): UAC R317-8-3.9(6)(d) and UAC R317-8-3.9(1)(a)

- E. UPDES General Permit for Construction Dewatering (Permit No. UTG070000). UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. Under the authority granted by UAC R317-8-2.5, the Director issued the General Permit for Construction Dewatering and Hydrostatic Testing, UPDES Permit No. UTG070000 renewed and effective as of February 1, 2020. UPDES Permit No. UTG070000 applies to construction dewatering of uncontaminated ground water or surface water sources due to construction activities, hydrostatic testing of pipelines or other fluids vessels, water used in disinfection of drinking water vessels and other similar discharges in the State of Utah that have no discharge of process wastewater. This only applies to projects that require dewatering and discharge to surface water.

Citation(s): UAC R317-8-2.5

VIII. Disclaimers

A. Fees - The legislatively-mandated fee for the 2021 fiscal year is \$100.00/hour for review and issuance of the Section 401 Water Quality Certification. A quarterly invoice will be sent and your payment is due within 30 days.

B. Disclaimers

1. The Project Proponent must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the project. This Section 401 Water Quality Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.
2. This Section 401 Water Quality Certification does not preclude the Project Proponent's responsibility of complying with all applicable Federal, State or local laws, regulations or ordinances, including water quality standards. Permit coverage does not release the project proponent from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.
3. A project within a Municipal Separate Storm Sewer System (MS4) jurisdiction, must comply with all the conditions required in that UPDES MS4 Permit and associated ordinances. No condition of this Section 401 Water Quality Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.

IX. Public Notice and Comments

As per UAC R317-15-5., this Certification decision is subject to a 30 public notice period. After considering public comment, the Director may execute the Certification issuance, revise it, or abandon it.

A. Public Notice Dates

B. Public Notice Comments/Response

C. During finalization of the Certification certain dates, spelling edits, and minor language or formatting corrections may have been completed. Due to the nature of these changes they were not considered major and the Certification will not be Public Noticed again.

X. Water Quality Certification

The Utah DWQ certifies that if the Project Proponent adheres to the conditions outlined in this Certification and adheres to any USACE Section 404 Permit Conditions, then the project will comply with water quality requirements and applicable provisions of the CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

Erica Brown Gaddis PhD, Director

Date

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