

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

§401 Water Quality Certification No. DWQ-2019-10001

Pursuant to §401 of the Federal Clean Water Act (CWA), the Utah Department of Environmental Quality (DEQ), Division of Water Quality (DWQ) certifies that the applicant has provided reasonable assurance that any discharges associated with the proposed project will not violate surface water quality standards, or cause additional degradation in surface water not presently meeting water quality standards. In accordance with Section 401(a)(1) of the CWA [33 U.S.C. Sec. 1341(a)(1)], DWQ hereby issues this §401 Water Quality Certification provided any listed conditions are met and included in the corresponding U.S. Army Corps of Engineers (USACE) Section 404 Permit, Rivers and Harbors Act §9 and §10, or Federal Energy Regulatory Commission (FERC) License.

Applicant: Monterey Properties, LLC
Alan Prince
2155 West Aspen Wood Loop
Lehi, UT 84043

Project: The applicant is proposing to develop approximately 12.75-acres of undeveloped, non-irrigated pastureland into a residential community consisting of 51 single-family lots for 55+ residents. The community will support amenities including a pickleball court and a community gathering area (pavilion) with up to four vehicle parking spaces. An access road and utilities will also be constructed. The project would require the filling of 1.99-acres of emergent wet meadow. In addition, approximately 430 linear feet (0.08-acres) of an intermittent ditch would be impacted for water conveyance into a stormwater collection system. Basements are not being considered for the residential buildings. All dwellings are scheduled to be constructed utilizing slab on grade practices. Based on the available information, the overall project purpose is to provide a viable residential housing community for those 55 and older. The applicant believes there is a need to develop residential communities targeting the older population.

Location: The approximately 12.75-acre project site is located at 2980 Bluff Road, Latitude 41.068750°, Longitude -112.056845°, Syracuse, Davis County, Utah.

Watercourse(s): 1.99 acres of emergent wet meadow and 0.08 acres of irrigation ditch.

Effective Date: **December X, 2019**

Erica Brown Gaddis, PhD
Director, Division Water Quality

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I. Background

A. Other Applicable Permits

1. USACE 404 Permit : SPK-2018-00408

B. Project Description/Purpose

The applicant is proposing to develop approximately 12.75-acres of undeveloped, non-irrigated pastureland into a residential community consisting of 51 single-family lots for 55 + residents. The community will support amenities including a pickleball court and a community gathering area (pavilion) with up to four vehicle parking spaces. An access road and utilities will also be constructed. The project would require the filling of 1.99-acres of emergent wet meadow. In addition, approximately 430 linear feet (0.08-acres) of an intermittent ditch would be impacted for water conveyance into a stormwater collection system. Basements are not being considered for the residential buildings. All dwellings are scheduled to be constructed utilizing slab on grade practices. Based on the available information, the overall project purpose is to provide a viable residential housing community for those 55 and older. The applicant believes there is a need to develop residential communities targeting the older population.

C. Existing Site Conditions

There are approximately 1.99 acres of palustrine emergent wet meadow wetlands within the project area and 430 linear feet (0.08-acres) of intermittent drainage. The site is located on the south side of South Bluff Road and west of the Jensen Nature Preserve. The property is undeveloped and is used for pasturing livestock, primarily horses. There is a small, abandoned irrigation ditch on the west side of the property that extends in a southerly direction from the north property line approximately 430 feet. This ditch terminates on the property. Based on appearance, the ditch has not been used in a long time, as it is completely vegetated. This ditch appears to have water in it during the spring when groundwater is elevated, but remains dry the remainder of the year.

D. Proposed Mitigation

The applicant has proposed to preserve higher quality wetlands existing within the project site and compensate all unavoidable impacts through the purchase of mitigation credits from the Machine Lake Mitigation Bank. They plan to mitigate at a 1:1 ratio and by recording a preservation easement on the unfilled wetland areas, which is approximately 1.26-acres.

II. Certification Conditions

A. General Conditions

1. Good Housekeeping

- a. Applicant and their subcontractors shall ensure that all workers involved are continuously aware of the water quality protection measures before the start and during the construction period.
- b. Retain a copy of this §401 Certification and its affiliated USACE 404 Permit onsite.

2. Stormwater and BMPs

- a. Water quality standards in associated water resources could be violated unless appropriate Best Management Practices (BMPs) are incorporated to minimize the erosion-sediment and nutrient load to any adjacent waters during project construction. The applicant shall not use any fill material which may leach organic chemicals (e.g. discarded asphalt), noxious weeds/seeds or nutrients (e.g., phosphate rock) into waters of the State.
- b. Construction activities that disturb one acre or more, or are part of a common plan of development, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Stormwater General Permit for Construction Activities, Permit No. UTR300000^[1]. 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 limited to, final site maps and legible plans, location of stormwater outfalls/discharges, as well as information pertaining to any stormwater retention requirements.
- c. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering, Permit No. UTG070000^[2]. The permit requires water quality monitoring every two weeks to ensure that the pumped water is meeting permit effluent limitations, unless water is contained onsite.

¹Link: <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2017-003485.pdf>

² Link: <https://deq.utah.gov/legacy/permits/water-quality/utah-pollutant-discharge-elimination-system/docs/utg070000.pdf>

- d. 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 401 Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.
- e. Utah Administrative Code R317-2 requires that the Applicant cannot increase water turbidity by 10 NTUs. If violated shall immediately notify the DWQ. A fact sheet describing the Utah Department of Environmental Quality's (DEQ) recommended environmental BMPs for construction sites are located on our web site [³].

3. Spills

- a. Refueling equipment and storage of lubricants and fuels will occur at designated staging areas and in state approved containers. The storage and refueling areas will be at least 500 feet from the edge of the nearest waterbody (including wetlands), at least 200 feet from the nearest private water supply well, and at least 100 feet from the nearest municipal water supply well.
- b. Utah Annotated Code 19-5-114 requires that any spill or discharge of oil or other substances which may cause pollution to waters of the State, including wetlands, must be immediately reported to the Utah DEQ Spill Hotline at (801) 536-4123, a 24-hour phone number.

³Link: <https://deq.utah.gov/legacy/businesses/business-assistance/construction/index.htm>

III. Aquatic Resource Impacts

All Waters of the State of Utah (defined in Administrative Code (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 of 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):

A. Linear Water Features

1. Unnamed Irrigation Ditch

- 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 3E: Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.
- c. Class 4: Protected for agricultural uses including irrigation of crops and stock watering.

Classifications are based on R317-2-13.9, where it states “*All irrigation canals and ditches statewide, except as otherwise designated: 2B, 3E, 4*”

B. Wetlands

1. Emergent Wet Meadow

- a. Class 2B: as described above;
- 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.

Classifications are based on R317-2-13.13, where it states that “*all waters not specifically classified are presumptively classified: 2B, 3D.*”

IV. Modifications

A. Without limiting DWQ's discretion to take other actions in accordance with UAC R317-15, and, as applicable, 33 USC 1341, DWQ may modify the Certification to add, delete, or modify the conditions in this Certification as necessary and feasible to address:

1. Adverse or potential adverse project effects on water quality of designated beneficial uses that did not exist or were not reasonably apparent when this certification was issued;
2. TMDLs;
3. Changes in Water quality standards;
4. Any failure of Certification conditions to protect water quality or designated uses when the Certification was issued; or
5. Any change in the Project or its operations that will adversely affect water quality of designated beneficial uses when this Certification was issued.

V. Other Information

A. Fees

1. The legislatively-mandated fee for the 2020 fiscal year is \$100.00/hour, for review and issuance of the §401 Water Quality Certification [⁴]. A quarterly invoice will be sent once plans have been approved. Your payment is due within 30 days.

B. Liabilities

1. Applicant must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the project. This §401 Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.
2. This §401 Certification does not preclude the applicant'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 applicant from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.

⁴Link: <https://documents.deq.utah.gov/admin/2020-fee-schedule.pdf>

VI. Public Notice and Comments

A. Public Notice Dates

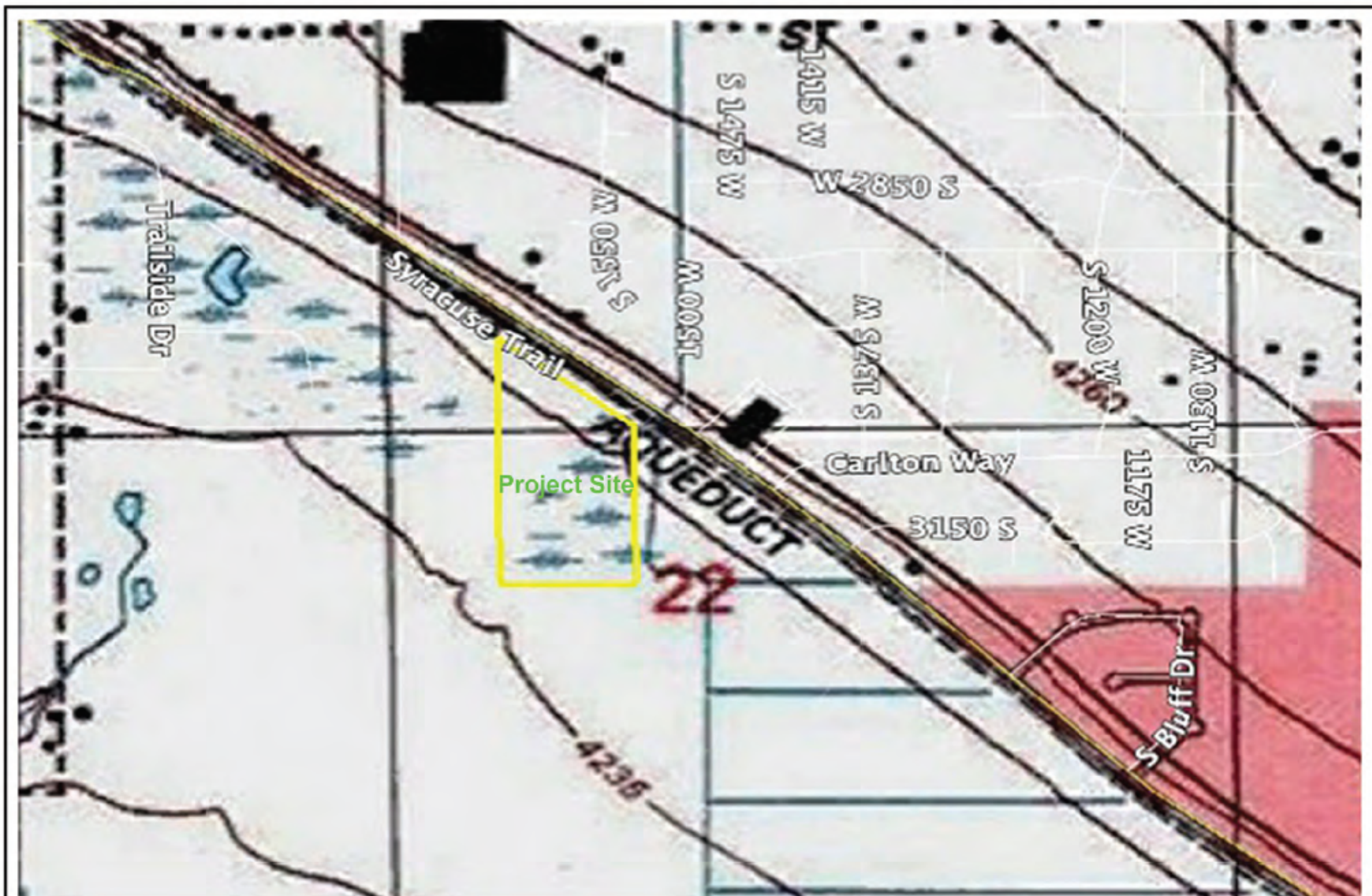
1. USACE 404 Permit No. SPK-2018-00408: 10/31/2019 – 11/30/2019
2. Utah DEQ Certification No.: DWQ-2019-10001

B. Public Notice Comments/Response

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Appendix A: Site Location Maps

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Topographic Map

Figure 6

Project: Edgewater Park

Drawn By: T. Hopkins

Date: 02/14/2019



Image Date: 9/10/2018

Project Site Aerial

Figure 2

Project: Edgewater Park

Drawn By: T. Hopkins

Date: 02/14/2019

Appendix B: Project Layout and Impacts to Waters of the State

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