

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

Section 401 Water Quality Certification No. DWQ-2021-05002

Project Proponent: SLC II Development LP
Mr. Brian Roach
9450 West Bryn Mawr, Suite 750
Rosemont, Illinois 60018

Project: The Project Proponent is proposing to construct two commercial buildings and support facilities (parking lots, water retention basins, and utilities) on a 32.57-acre site located in West Valley City, Utah. Building 1, located on the western portion of the site, is planned to be 208,740 square feet (4.79 acres) in size. Building 2, located on the eastern portion of the site, is planned to be 179,200 square feet (4.11 acres) in size. Planned parking lots would accommodate 434 automobiles and 48 semi-trucks and trailers. Three retention ponds would be constructed to retain stormwater run-off; the largest of which is located on the west side, measuring 1.50 acres. Two smaller ponds would be constructed on the northeast and southeast sides, each measuring 0.15 acres. According to the Project Proponent the purpose of the projects is to provide a needed hub for shipping and logistics located within the heart of Utah's shipping and industrial sector. The proposed activity would impact 0.60 acres of jurisdictional unvegetated wetland (0.34 acres) and saline wet meadow (0.26 acres). Approximately 15,200 cubic yards of native fill would be used to fill the wetland. Impacts to waters of the U.S. would be mitigated through the purchase of Machine Lake Wetland Mitigation Bank credits at an anticipated 2:1 ratio.

Location: 5993 West 2100 South in West Valley City, Salt Lake County, Utah. (Latitude: 40.724111, Longitude: -112.034234)

Watercourse(s): Saline Wet Meadow and Unvegetated Wetlands

USACE Section 404: SPK-2021-00083

Request Date: May 25, 2021

Effective Date: Month, Day, Year

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I. Definitions

- 1.) **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.
- 2.) **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.*
- 3.) **Project Proponent** *"means the applicant for license or permit or entity seeking certification." 40 CFR §121.1*
- 4.) **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.

II. Acronyms

BMPs- Best Management Practices
CWA- Clean Water Act
DEQ- Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
UAC- Utah Administrative Code
USACE - U.S. Army Corps of Engineers
TMDL – Total Maximum Daily Load
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., DWQ grants water quality certification to SLC II Development LP for the proposed 5993 West 2100 South Warehouse Project in West Valley City, Salt Lake County, Utah. Certification is subject to the conditions outlined in this document and adherence to any 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 R317-15-6.1A.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 February 18, 2021, and received a formal 401 Certification request on May 25, 2021, from SLC II Development LP for the 5993 West 2100 South Warehouse Project. Utah DWQ was notified by Nicole Fresard with the USACE that the reasonable period of time to make a certification decision is 90 days. This requires the *Director* to act by August 23, 2021.

IV. Background

The Project Proponent is proposing to construct two commercial buildings and support facilities (parking lots, water retention basins, and utilities) on a 32.57-acre site located in West Valley City, Utah. Building 1, located on the western portion of the site, is planned to be 208,740 square feet (4.79 acres) in size. Building 2, located on the eastern portion of the site, is planned to be 179,200 square feet (4.11 acres) in size. Planned parking lots would accommodate 434 automobiles and 48 semi-trucks and trailers. Three retention ponds would be constructed to retain stormwater run-off; the largest of which is located on the west side, measuring 1.50 acres. Two smaller ponds would be constructed on the northeast and southeast sides, each measuring 0.15 acres. According to the Project Proponent the purpose of the projects is to provide a needed hub for shipping and logistics located within the heart of Utah's shipping and industrial sector. The proposed activity would impact 0.60 acres of jurisdictional unvegetated wetland (0.34 acres) and saline wet meadow (0.26 acres). Approximately 15,200 cubic yards of native fill would be used to fill

the wetland. Impacts to waters of the U.S. would be mitigated through the purchase of Machine Lake Wetland Mitigation Bank credits at an anticipated 2:1 ratio.

V. Antidegradation Review, Beneficial Uses, and Impairment(s)

1.) Saline Wet Meadow/ Unvegetated Wetlands:

(a) Antidegradation: Category 3

(b) Beneficial Uses: As per UAC R317-2-13.13, all waters not specifically classified are presumptively classified 2B, 3D.

- 3B: Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.
- 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

(c) Impairment(s): N/A

^[1]Link: <https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf>

^[2]Link: <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf>

VI. Certification Conditions

1.) Project Specific Conditions and Best Management Practices (BMPs)

- (a) All activities with a potential discharge to WOTUS must implement and maintain best management practices (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.**

2.) Discharge Permit Requirements (UPDES)

- (a) 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^[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 be limited to, final site maps and legible plans, location of storm water outfalls/discharges, and information pertaining to any storm water retention requirements.
- (b) Dewatering activities, if necessary during construction, may require coverage under the **UPDES General Permit for Construction Dewatering (Permit No. UTG070000^[2])**. 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 discharges in the State of Utah that have no discharge of process wastewater. The permit requires submission of an 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.

^[1]Link: <https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf>

^[2]Link: <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf>

VII. Condition Justification and Citations

1.) Project Specific Conditions and Best Management Practices (BMPs):

- (a) **Implementation of Best Management Practices.** Project approval is conditioned on implementation of BMPs, which are required to be implemented by the Antidegradation Policy in UAC R317-2-3, WQS could be violated unless appropriate best management practices (BMPs) are incorporated to minimize the erosion-sediment and nutrient load. Violations of WQS 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 certification decision. If appropriate BMPs are incorporated, there is assurance that the project will not violate WQS 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 §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.

- 2.) **Discharge Permit Requirements (UPDES):** Utah Administrative Code 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.

(a) Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities (Permit No. UTRC00000). 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)

(b) UPDES General Permit for Construction Dewatering (Permit No. UTG070000). 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

- 1.) This Section 401 Certification does not preclude the applicant's responsibility to comply with all applicable Federal, State or local laws, regulations or ordinances, including WQS. 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.
- 2.) Applicants must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the project. This Section 401 Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.
- 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 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.

IX. Public Notice and Comments:

UAC R317-15-5.1 allows for the 30 public notice period to be lengthened or shortened for a good cause, which includes those projects that are routinely granted and any proposed activity is considered minor. The project proponent is seeking a Letter of Permission (LOP) through the USACE. The Division typically views these impacts as minor compared to USACE Standard Permits and has routinely granted these types of certifications. Therefore, the division has reduced the public notice permit to 14 days (2 weeks).

- 1.) **Public Notice Dates:**
- 2.) **Public Notice Comments, Response, and Actions:**
- 3.) 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 Division of Water Quality Certifies that if SLC II Development LP 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 Clean Water Act 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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