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

001356

Section 401 Water Quality Certification No. DWQ-2020-12002

Project Proponent: Sandy City
Nick Duerksen
10000 Centennial Parkway
Sandy, UT 84070

Project: The Project Proponent (Sandy City) is proposing to fill approximately 0.74 acres of Waters of the United States (WOTUS), including wetlands for the construction of a commercial and residential development. The site was previously designated as mitigation for the Promenade Development, which was authorized in 2005. The Project Proponent has indicated that the filling of the wetlands is necessary to provide additional residential units adjacent to office and retail developments in the Cairns District. The Project proponent has proposed a 2:1 wetland creation ratio for the 0.74 acres of emergent marsh wetland proposed to be filled to accommodate the proposed residential units. As part of the mitigation there will be approx. 4.94 acres of temporary impacts to emergent wetlands, due to invasive species removal, and will be addressed through a 1:1 ratio of restoration.

Location: 10210 Centennial Parkway, Latitude 40.565291°, Longitude -111.895378°, Sandy, Salt Lake County, Utah.

Watercourse(s): Jordan River, Dry Creek, and Emergent Wetlands (PEM)

USACE Section 404: SPK-2020-00050

Request Date: December 31, 2020

Effective Date: Month XX, 2021

Table of Contents

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.) **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

5.) **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.

6.) **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).

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 Sandy City for the proposed Centennial Wetlands Mitigation Project in Sandy, 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 and the USACE on February 18, 2020, and received a formal 401 Certification request on December 31, 2020 from Sandy City for the Centennial Wetlands Mitigation Project. Utah DWQ was informed that the reasonable period of time to make a certification decision was 90 days, which requires the DWQ to act by March 31, 2020.

IV. Background

The Project Proponent (Sandy City) is proposing to fill approximately 0.74 acres of Waters of the United States (WOTUS), including wetlands for the construction of a commercial and residential development. The site was previously designated as mitigation for the Promenade Development, which was authorized in 2005. The Project Proponent has indicated that the filling of the wetlands is necessary to provide additional residential units adjacent to office and retail developments in the Cairns District. The Project proponent has proposed a 2:1 wetland creation ratio for the 0.74 acres of emergent marsh wetland proposed to be filled to accommodate the proposed residential units. As part of the mitigation there will be approx. 4.94 acres of temporary impacts to emergent wetlands, due to invasive species removal, and will be addressed through a 1:1 ratio of restoration. The project proponent believes the Urban Fishery mitigation site is ideal because it is better suited to support wetlands than the current one. The proposed mitigation site is adjacent to the Jordan River, the Urban Fishery pond, and existing emergent wetlands,

so it will enhance the existing wetland complex and once established, provide better habitat than the current isolated Centennial Wetlands.

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

1.) Jordan River (Jordan River-6): Jordan River from 7800 South to Bluffdale at 14600 South.

(a) Antidegradation: Category 3

(b) Beneficial Use Classes: 2B, 3A, 4

- 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.

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

- 4: Protected for agricultural uses including irrigation of crops and stock watering.

(c) Impairment(s): Results of the current water quality assessment, as documented in Utah's 2016 Integrated Report[1], indicated that the Jordan River is considered impaired (Assessment Category 5). A TMDL is required for each parameter and water body to define pollutant reduction requirements necessary for the water body to meet water quality standards. At present, no TMDLs have been finalized for this segment of the Jordan River.

- The Jordan River is impaired for OE Bioassessment, Dissolved Selenium, and Temperature, which impacts beneficial use class 3A (Cold Water Fisheries).

- The Jordan River is impaired for Total Dissolved Solids (TDS), which impacts beneficial use class 4 (Agriculture).

2.) Dry Creek (Dry Creek-2): Dry Creek and tributaries from Interstate 15 to headwaters.

(a) Antidegradation: Category 3

(b) Beneficial Uses: 2B, 3A, 4

- 2B: As described above.

[1]Link: https://deq.utah.gov/water-quality/utahs-integrated-report

- 3A: As described above.

- 4: As described above.

(c) Impairment(s): Results of the current water quality assessment, as documented in Utah's 2016 Integrated Report, indicated that the Dry Creek and its tributaries have insufficient data to assess (Assessment Category 3).

3.) Emergent Wetlands: As per UAC R317-2-13.13, all waters not specifically classified are presumptively classified 2B, 3D.

(a) Beneficial Uses: 3B, 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.

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) All activities shall not cause further degradation of impaired waterbodies- as defined in DWQ's most recent 303(d) list, regardless of whether a TMDL has been completed. The project proponent must review impairments on the waterbodies where the projects have potential to discharge and is responsible for ensuring that WQS are not exceeded and designated beneficial uses are not impaired.

(c) 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.**

(d) All activities conducted in or immediately adjacent to WOTUS in the State of Utah with assigned beneficial use class 3A (cold water fishery) must avoid removal of native riparian vegetation that provides stream shading to the maximum extent practicable. Any projects that approve removal of riparian vegetation that provides shade must require reestablishment of native vegetation that provides equal or greater shade. The project proponent shall provide successful reestablishment of native vegetation.

(e) Waterbodies classified as Beneficial Use Class 2B for Recreation and 3A for Cold Water Aquatic Life cannot increase water turbidity by more than 10 NTUs.

2.) Discharge Permit Requirements (UPDES)

(a) 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) Storm Water General Permit for Construction Activities (Permit No. UTR300000[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.

(b) Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering (Permit No. UTG070000[3]). 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.

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 R317-15-6.1A.2. or "fails to meet the antidegradation (ADR) requirements of Section R317-2-7" UAC R317-15-6.1.A.3

[2]Link: https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf
[3]Link: https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf

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. See Attachment 1 for resources on identifying beneficial uses for WOTUS in the State of Utah and Construction Site BMPs.

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) **Protection of Impaired Waterbodies.** Waters that are impaired and conjunctively on Utah's most up to date 303(d) list are not currently meeting their designated beneficial uses. According to Utah's Final 2016 Integrated Report[1] the waters identified as impaired are not meeting their designated beneficial uses because "the concentration of the pollutant- or several pollutants- exceeds numeric water quality criteria, or quantitative biological assessments indicate that the biological designated uses are not supported (Narrative water quality standards are violated)." 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. To ensure that proposed activities meet Utah's antidegradation and that discharges do not further degrade water quality, the project proponent needs to be aware of the waterbodies assessment, more specifically if the waterbody is impaired and listed on Utah's most current 303(d) list. If the potential discharge contains pollutants/ parameters that the waterbody is listed as impaired, the project proponent needs to take extra precautions to minimize and prevent discharges that could further degrade the waterbodies and prevent the waterbodies from meeting its beneficial and existing uses. Typical pollutants associated with USACE Section 404 permits (e.g., sediment), especially when a waterbody proposed for discharge is impaired, could cause applicable WQS to be violated if appropriate measures are not taken. 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.

Citation(s): UAC R317-2-3.1, UAC R317-2.1.a., 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.

(c) **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.

(d) **Vegetation Preservation and Reestablishment in fisheries.** Project approval is conditioned on avoiding vegetation removal to the maximum extent practicable in or immediately adjacent to WOTUS used as fisheries to maintain existing beneficial use. Waterbodies with beneficial use class 3A (cold water fishery) depend heavily on the available stream cover/shade to maintain designated beneficial uses. Riparian vegetation supplies necessary shade to stabilize water temperatures in streams. Removal of riparian vegetation, without reestablishment could cause a waterbody to not support its beneficial use 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 riparian vegetation removal and failure to reestablish riparian vegetation and that result in the failure to maintain beneficial use class 3A would be 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. Additionally, the loss of riparian vegetation could cause a violation of the instream numeric criteria for temperature, which is listed as 20°C with a max temperature change of 2°C for beneficial use class 3A.

UAC R317-2-14.2. If the temperature of the waterbody increases, there is a potential for instream water quality criteria for dissolved oxygen (DO) to be violated. Temperature and DO have an inverse relationship, where temperature increases then DO decreases, so in increase in temperature could cause a decrease in DO, and possibly a violation of the instream criteria for DO which for beneficial use class 3A is a minimum of 8.0 mg/L when early life stages are present and 4.0 mg/L when all other life stages are present. UAC R317-2-14.2. 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.

Citation(s): UAC R317-2-3.1., UAC R317-2-3., UAC R317-2-14.2., UAC R317-2-14.2., UAC R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

(e) **Turbidity Increases.** Beneficial use**s** 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.

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. UTR300000).** 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:**

(a) Comment 1:

- Comment 1:
- Comment 1 Response:
- Comment 1 Action:

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 Sandy City 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