

**DEPARTMENT OF THE ARMY PERMIT**Permittee City of Rapid CityPermit No. 200430258Issuing Office Corps of Engineers, Omaha District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:**

The project consists of conducting site grading activities in an unnamed tributary (linear wetland) that flows to Rapid Creek in association with the planned expansion of the City's infrastructure and economic base. The site will be graded to desired elevations and contours for the construction of roads/streets, utilities, storm water management facilities, wetland mitigation sites and a residential/commercial development project (Lazy P-6). A total of 1.54 acres of linear wetland/tributary will be filled by the project construction. The work will be completed in accordance with the plans and drawings, Sheets 1 through 3 of 3, attached hereto, which are incorporated in and made part of this permit.

**Project Location:**

The project is located in the Northwest Quarter of Section 19, Township 1 North, Range 8 East, Pennington County, South Dakota.

**Permit Conditions:****General Conditions:**

1. The time limit for completing the work authorized ends on April 30, 2008. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

See pages 4 and 5 of 5 for a list of special conditions.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403).
  - Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit

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4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)

\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

JEFFREY A. BEDEY  
(DISTRICT ENGINEER)  
Colonel, Corps of Engineers

\_\_\_\_\_  
(DATE)

By: \_\_\_\_\_  
STEVEN E. NAYLOR, REGULATORY PROJECT  
MANAGER, SOUTH DAKOTA

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)

**DRAFT**

DA Permit  
No. 200430258  
City of Rapid City  
Site Grading  
unnamed tributary/wetlands

**Special Conditions**

- a. After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.
- b. That all construction debris will be disposed of on land in such a manner that it cannot enter a waterway or wetland.
- c. That during construction, no petroleum products, chemicals, or other deleterious materials shall be allowed to enter or be disposed of in such a manner that they could enter a waterway.
- d. That the clearing of vegetation will be limited to that which is absolutely necessary for construction of the project.
- e. That (except as approved herein) all dredged or excavated materials and material stockpiles will be placed for either temporary or permanent disposal on an upland site, above the ordinary high water line, in a confined area, not classified as a wetland, and measures taken to insure that the material cannot enter the watercourse through any other means.
- f. That all fill material shall be free of substances in quantities, concentrations, or combinations which are toxic to aquatic life.
- g. That at a minimum, construction techniques for sediment and erosion control must be utilized, such as those presented in either "Best Management Practices" by the South Dakota Department of Water and Natural Resources (1981), "Best Management Practices" by the Federal Department of Transportation, or the "Erosion Control Manual" by the Colorado Department of Transportation.
- h. That if/when the District Engineer has been notified that the construction activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Engineer subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

**Special Conditions (cont'd):**

i. That compensatory mitigation will be carried out concurrently with the project adverse wetland impacts in accordance with the permittee's Wetland Mitigation Plan for The City of Rapid City, received by the South Dakota Regulatory Office on March 30, 2005. Annual monitoring reports will be provided in accordance with the procedures outlined in the mitigation plan. The annual monitoring reports will be provided to the South Dakota Regulatory Office following the end of the growing season, no later than November 1. The permittee must demonstrate that the wetlands and vegetative buffer areas have developed successfully. The Corps of Engineers will verify that the created acreage conforms to the permit requirements as part of the final success criteria.

j. That perpetual restrictions (i.e., deed restrictions, restrictive covenants, and/or conservation easements) shall be placed on the mitigation sites to guarantee preservation for wetland and wildlife resources. The legal description shall be determined by a registered land surveyor. A draft copy of the document(s) shall be submitted to the Corps of Engineers, South Dakota Regulatory Office, for written approval, no later than 60 days following the date of the permit issuance. A certified copy of the document(s) recorded by the Registrar of Deeds for Pennington County shall be provided to the South Dakota Regulatory Office no later than 60 days following the date of the Corps of Engineers written approval.