

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 MAY 14 AM 11:31

IN THE MATTER OF: )

Foxtail Creek, L.L.C. )  
1125 Chalkstone Drive )  
Mitchell, South Dakota 57301 )

Respondent. )  
\_\_\_\_\_ )

FILED  
EPA REGION VIII  
HEARING CLERK

ADMINISTRATIVE ORDER  
ON CONSENT

Docket No. CWA-08-2015-0015

**I. INTRODUCTION**

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Foxtail Creek, L.L.C. (Respondent). This Consent Order concerns the implementation of restoration and mitigation activities to address environmental damage caused by unauthorized discharges of dredged or fill material to 3.7 acres of wetlands by a previous owner of property referred to as Candlelight Acres Second Addition (the Site) and located in Section 12, Township 100 North, Range 51 West, Lincoln County, South Dakota.

**II. STATUTORY AUTHORITY**

2. This Consent Order is issued under section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). As indicated in the FINDINGS OF FACT AND OF VIOLATION, below, this Consent Order is based on findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

**III. PARTIES BOUND**

3. This Consent Order shall apply to and be binding upon the EPA and upon Respondent and Respondent's agents, successors and assigns. Each signatory to this Consent Order certifies that he or she is authorized to execute and legally bind the party he or she represents to this Consent Order.

No change in the ownership or legal status of Respondent or ownership of the property that is the subject of this Consent Order shall alter Respondent's responsibilities under this Consent Order unless the EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than thirty (30) calendar days prior to such transfer, Respondent shall notify the EPA at the address specified in paragraph 43, below.

#### **IV. STATEMENT OF THE PARTIES**

4. The following FINDINGS OF FACT AND OF VIOLATION are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION. Notwithstanding the foregoing, in order to provide for resolution of the alleged CWA violations at the Site and without acknowledging any liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

5. The parties desire to enter into this Consent Order for a restoration and mitigation plan pursuant to which Respondent would implement restoration and mitigation activities, as described below, for previous impacts to 3.7 acres of wetlands at the Site in exchange for which the EPA agrees not to pursue any other civil enforcement action outside of this Consent Order against Respondent as successor to Candle Development, LLC (see section V, below) for these previous CWA violations.

## **V. FINDINGS OF FACT AND OF VIOLATION**

6. Candle Development, LLC (Candle), was a South Dakota limited liability corporation whose address was 27160 470<sup>th</sup> Ave., Tea, South Dakota 57064. It was incorporated on January 7, 1997. Its registered agent was James P. Daniels. Candle filed its last annual report in February 2011 and, as of 2012, was no longer in good standing with the South Dakota Secretary of State's (SDSOS's) office. According to the SDSOS's office, Candle's existence was terminated upon the filing of articles of termination on February 5, 2015.
7. Respondent is a South Dakota limited liability company whose address is 1125 Chalkstone Drive, Mitchell, South Dakota 57301. It is currently in good standing with the SDSOS's office and its registered agent is Richard VanOverschelde.
8. On March 20, 2015, Respondent purchased an undeveloped portion of the Site, formerly owned and/or operated by Candle and most recently owned by Great Western Bank. The portion Respondent purchased is approximately bordered by Tea-Ellis Road to the west, West 69<sup>th</sup> Street to the south, Kerry Avenue to the east, and Waterford Street to the north. The portion of property purchased by Respondent is shown on the drawing in Attachment 1.
9. From some time in the spring of 2002 through some time prior to March 1, 2005, and at times better known to Candle, it and/or persons acting on its behalf, discharged dredged or fill material into waters of the United States without a permit under CWA section 404 while constructing a residential subdivision at the Site. During that time, Candle owned, controlled and/or operated the property, known as Candlelight Acres Second Addition.
10. James P. Daniels, referenced in paragraph 6, above, also has been a principal of Daniels Construction, Inc., and Sunset Development, LLC, both South Dakota corporations that are no longer in good standing with the SDSOS's office. The EPA issued administrative enforcement actions to both

companies in 2004 and 2005 for alleged discharges of dredged or fill material into waters of the United States without a permit under CWA section 404.

11. Due to the repeat and flagrant nature of Candle's alleged violations at the Site, the EPA referred the alleged violations that are the subject of this Consent Order to the United States Department of Justice.

12. On June 17, 2008, a complaint was filed with the United States District Court for the District of South Dakota, on behalf of the EPA, under section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d). The complaint sought to obtain injunctive relief and penalties from Candle for the discharge of pollutants into waters of the United States in Lincoln County, South Dakota, without authorization by the United States Department of the Army, in violation of CWA section 301(a), 33 U.S.C § 1311(a).

13. On July 22, 2011, a consent decree (CD) that would resolve Candle's alleged violations of section 301(a) of the CWA was entered by the United States District Court for the District of South Dakota. Under the terms of the CD, Candle was to submit a final proposed wetlands restoration and mitigation plan, perform wetland restoration and mitigation activities to address the unauthorized impacts to wetlands that occurred during Candle's development of the Site, and pay a civil penalty of \$100,000; each to be completed in accordance with time frames specified by the CD. Candle never complied with any of the terms of the CD and was in violation of the CD at the time of Candle's termination.

14. In the first quarter of 2012, Candle underwent a voluntary foreclosure with its lender, Great Western Bank, referenced in paragraph 8, above, whereby Candle's assets were taken by the lender. Further investigation into Candle's financial standing led the EPA to conclude that Candle had no assets and there was little to no likelihood that Candle would ever have the ability to comply with the CD.

15. The Site includes wetlands adjacent to Nine Mile Creek, which is also a water of the United States. Wetlands at the Site have a continuous surface connection with Nine Mile Creek.

16. Nine Mile Creek is a tributary that flows at least seasonally and flows into Lake Alvin. Nine Mile Creek is relatively permanent. Lake Alvin is navigable-in-fact and is a traditionally navigable water.
17. In addition, the wetlands on the Site, either alone or in combination with similarly situated waters in the region, have a significant nexus to and/or significantly affect the chemical, physical or biological integrity of downstream traditional navigable waters, including Lake Alvin.
18. The EPA alleges that the wetlands on the Site that were filled by Candle and/or persons acting on Candle's behalf provided various functions and values including aquatic and wildlife habitat, water quality enhancement, flood attenuation and aesthetics.
19. The activities described in paragraph 9, above, were performed using mechanized land-clearing and earth-moving equipment.
20. Candle was a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).
21. The material discharged at the Site described in paragraph 1, above, is and was at all relevant times "dredged material" or "fill material" as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
22. The equipment referenced in paragraph 19, above, is and was at all relevant times a "point source" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).
23. The wetlands referenced in paragraphs 1, 5, 13, 15, 17 and 18, above, are and were at all relevant times "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
24. The placement of dredged or fill material into wetlands adjacent to Nine Mile Creek constitutes the "discharge of pollutants" within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

25. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344(a).
26. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters, which are defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7), as waters of the United States.
27. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States, unless an exemption pursuant to 33 C.F.R. § 323.4 applies.
28. Candle was never authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 9, above.
29. The activities conducted by Candle and/or by persons acting on its behalf as described in paragraph 9, above, violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Candle into waters of the United States without the required permit(s) issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permit(s) constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).
30. The impact of the CWA violations described above will continue each day that the fill remains in the affected wetlands.
31. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). Restoration and mitigation are appropriate to address the actual and potential harm to water

quality and aquatic and wildlife habitat, as well as other functions and values caused by Candle's unpermitted activities.

32. In order to resolve the violations alleged herein by the EPA, Respondent has agreed to comply with this Consent Order and agrees to abide by all of its terms and conditions herein and agrees not to challenge the jurisdiction of the EPA or these FINDINGS OF FACT AND OF VIOLATION in any proceeding to enforce this Consent Order.

33. This Consent Order was issued after consultation and coordination with the Corps' Omaha District.

#### **VI. ORDER FOR COMPLIANCE**

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION, it is hereby ORDERED:

34. Respondent shall not discharge any pollutant into wetlands or other regulated waters of the United States unless such discharge complies with the provisions of the CWA and its implementing regulations. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction and any other activities that result in a discharge of dredged or fill material into waters of the United States.

35. Respondent shall conduct restoration and mitigation activities for impacts to waters of the United States resulting from the unauthorized discharges of dredged and fill material at the Site in accordance with the schedule and other requirements set forth in this Consent Order.

36. Within 14 calendar days after receipt of this Consent Order, Respondent shall submit to the EPA the name and qualifications, including professional resume and business references, of a consultant experienced in wetlands restoration and mitigation who will prepare a restoration and mitigation plan (Plan) and supervise all work performed pursuant to the Plan, once it is approved by the EPA.

37. Within 30 calendar days after receipt of this Consent Order, Respondent shall submit to the EPA for review, comment and approval a Plan, prepared by the consultant referenced in paragraph 36, above, providing for restoration and mitigation to address the unauthorized impacts to wetlands that occurred during development at the Site. Onsite restoration in the form of removal of dredged and fill material that was discharged into wetlands adjacent to Nine Mile Creek shall be undertaken to the maximum extent possible, with remaining unaddressed impacts to be addressed by onsite mitigation in the form of wetland creation. To the extent that unaddressed, unauthorized impacts remain, they may be addressed with offsite mitigation. The following ratios will apply: 1-to-1 for onsite restoration, 2-to-1 for onsite mitigation, 2-to-1 for mitigation banking, and 3-to-1 for offsite mitigation. The Plan shall be prepared in accordance with “U.S. Environmental Protection Agency - Region VIII Section 404 Enforcement: General Guidelines for Removal and Restoration Plans,” attached hereto as Attachment 2. In addition, the Plan shall include:

- a. A detailed work plan and schedule for all of the work and activities to be accomplished, as specified in the Plan, including the application for any required permits, providing for completion of all aspects of the restoration and mitigation work no later than 45 days after the EPA approves the Plan;
- b. Grading, planting and monitoring plans, measurable criteria for success of restoration and mitigation and provisions for proper disposal of any excess soils or other materials generated during construction and/or restoration and mitigation;
- c. Detailed professional drawings of the restoration and mitigation locations, including plan and profile drawings with control elevations for current conditions and proposed conditions; and
- d. A description of all costs to complete the restoration and mitigation work, including the costs of all consultations, permits, construction, monitoring, reporting, etc.



38. The EPA will review the Plan and approve it, approve it with modifications or reject it with comments. If the EPA rejects the Plan, Respondent shall, within 15 calendar days of receipt of the EPA's rejection letter, submit a revised Plan that corrects the deficiencies identified by the EPA.

39. Upon EPA approval of the Plan, Respondent shall conduct restoration and mitigation activities for impacts to waters of the United States resulting from the unauthorized discharges of dredged and fill material at the Site.

40. All restoration and mitigation activities conducted pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in wetland restoration and mitigation. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to the EPA within 14 calendar days of receiving the EPA's written approval of the Plan and at least 14 days prior to commencement of restoration and mitigation activities.

41. Respondent must make a timely application for each permit necessary to implement the EPA-approved Plan and for conducting restoration and mitigation activities in accordance with the approved Plan, including the schedule specified therein, with all granted permits and with all applicable laws. Respondent must demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to the EPA within seven calendar days of issuance of each permit

42. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps and the South Dakota Department of Environment and Natural Resources (SDDENR) at the addresses and telephone numbers below to determine if any work to be performed pursuant to this Consent Order requires a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344, or from the SDDENR under section 402 of the CWA, 33 U.S.C. § 1342. If any such permit is required, Respondent shall obtain such permit(s) and

provide a copy or copies to the EPA pursuant to paragraph 41, above, prior to initiating any work that is to be performed pursuant to this Consent Order.

U.S. Army Corps of Engineers  
South Dakota Regulatory Office  
28563 Powerhouse Road, Room 120  
Pierre, South Dakota 57501  
Telephone: (605) 224-8531

South Dakota Department of Environment  
and Natural Resources  
Division of Environmental Services  
Surface Water Quality Program  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, South Dakota 57501  
Telephone: (605) 773-3153

43. Respondent shall submit all notifications under this Consent Order and related correspondence to:

Monica Heimdal, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone: (303) 312-6359

44. In addition to the notification requirements set forth in paragraph 43, above, after issuance of any Corps authorization for the restoration and mitigation work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

45. The Plan and any other deliverables, reports, specifications, schedules and attachments required by this Consent Order are, upon approval by the EPA, incorporated into this Consent Order. Any non-compliance with the Plan, deliverables, reports, specifications, schedules, permits or attachments shall be deemed a failure to comply with this Consent Order and shall be subject to EPA enforcement.

46. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of the EPA, the Corps or any of the agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Consent Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Consent Order;
- b. To inspect and monitor compliance with this Consent Order; and
- c. To verify and evaluate data and other information submitted to the EPA.

This Consent Order shall in no way limit or otherwise affect the EPA's authority or the authority of any other governmental agency to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance or abatement purposes or monitor compliance pursuant to any statute, regulation, permit or court order.

47. This Consent Order, or the signature pages thereof, may be executed in counterparts, each of which shall have full force and effect as an original, including admission into evidence, and facsimile signatures shall constitute originals for all purposes.

48. This Consent Order shall be effective upon receipt by Respondent of a fully executed copy.

49. Issuance of this Consent Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines or other appropriate relief under the CWA for any violation(s) of this Consent Order or of the CWA from and after the date of this Consent Order.

50. The EPA agrees to submit all notifications and correspondence for Respondent to:

Nick VanOvershelde  
Foxtail Creek, L.L.C.  
1125 Chalkstone Drive  
Mitchell, South Dakota 57301

51. Any party hereto may, by notice, change the address to which future notices shall be sent or the identities of the persons designated to receive notices hereunder.

52. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify the EPA orally as soon as possible and in writing within 10 working days from the date Respondent first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondent to

minimize the delay and a timetable by which those measures will be or have been implemented.

Notification to the EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of Respondent to comply with the requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.

53. If Respondent demonstrates to the EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondent's control (or the control of any of Respondent's agents) that Respondent could not have foreseen and prevented despite due diligence, and that Respondent has taken all reasonable measures to prevent or minimize such delay, the EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. The EPA's determination on these matters shall be made as soon as possible, and in writing within 10 working days, after the receipt of Respondent's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondent.


54. Each party shall bear its own costs and attorneys fees in connection with this matter.

55. Respondent understands and acknowledges the following:

- a. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$37,500 per day for each violation of an order issued by the Administrator of the EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a).
- b. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligations to comply with any applicable federal, state or local law or regulation.

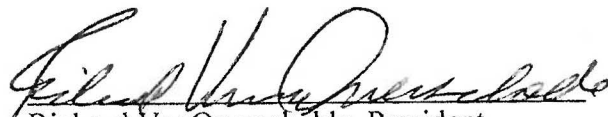
- c. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Consent Order.

**FOR UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**

BY:   
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

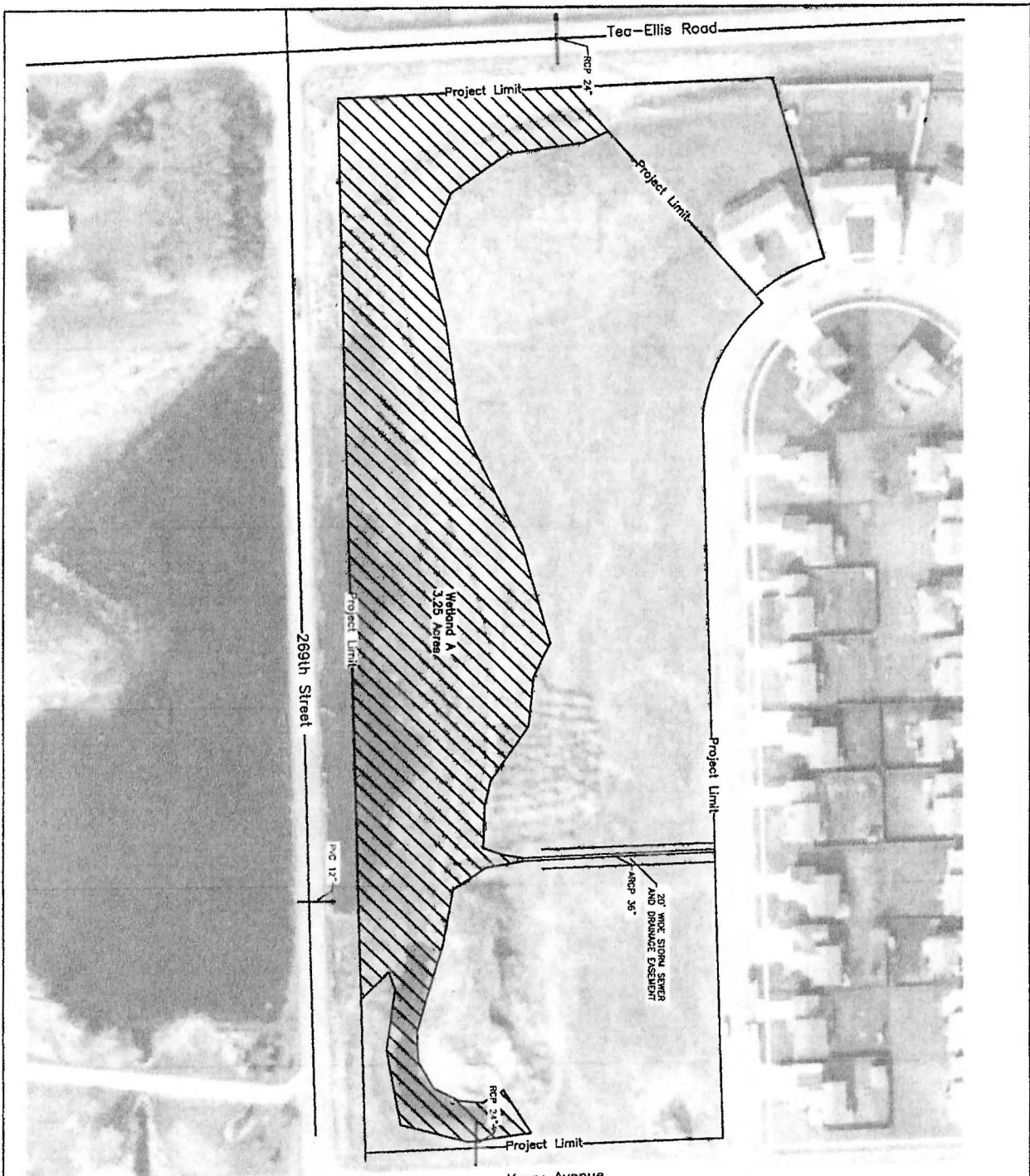
DATE: 5/11/15

**FOR FOXTAIL CREEK, L.L.C.**

BY:   
Richard VanOverschelde, President  
Foxtail Creek, L.L.C.

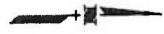
DATE: 4-19-15

## **Attachment 1**



EXISTING WETLANDS SUMMARY	
WETLAND ID	ACRES
WETLAND COMPLEX A	3.25
	TYPE
	LINEAR

Scale T = 100'



## **Attachment 2**



U. S. ENVIRONMENTAL PROTECTION AGENCY - REGION VIII

SECTION 404 ENFORCEMENT:

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications will depend upon the environmental conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan. When these guidelines are incorporated into an EPA Administrative Order, the recipient of the Order should obtain the approval of EPA's technical representative on the case before departing from the general specifications outlined below.

I. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with ordinary high water line indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1 inch = 40 feet. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.
- B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

## II. Proposed Physical Conditions

- A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected ordinary high water elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.
- B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how the equipment will gain access to the site to perform the work; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material (note: as a rule, transplanting of plant stock will not be permitted); the planting method(s) and scheme (i.e., physical layout of how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.
- C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that no work shall occur beyond these boundaries.

## III. Actual Restored Physical Conditions

- A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seedling activities.

#### IV. Monitoring/Measures of Success

- A. Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to five years, depending upon the scope and complexity of the remedial efforts required.
- B. A monitoring plan shall incorporate a simple statistical approach to assessing relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.
- C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.
- D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

#### V. Inspections

- A. The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

VI. Schedule

- A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER ON CONSENT** were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Thursday, May 14, 2015 as indicated below:

To

Nick VanOvershelde  
Foxtail Creek, L.L.C.  
1125 Chalkstone Drive  
Mitchell, SD 57301  
Cert # 7008 3230 0003 0726 1143

Date: Thursday, May 14, 2015

By: Dayle Aldinger  
Dayle Aldinger