

Memorandum #08-144

To: Doug Russell, City Manager
From: Dave Mingo, Community Development Director
Date: July 23, 2008
Subject: Brownfields Environmental Covenant (Block 47, Lower Yankton)

As previously mentioned in the CIM, we are very close to administrative closeout of the Brownfields Cleanup Project on Block 47. One of the remaining requirements includes the adoption of institutional controls in the form of an environmental covenant. The covenant will be recorded against the property and provide guidance for future occupancies that may occur at the site. The covenant will be in the form of a contract and adopted by both the City of Yankton and South Dakota Department of Environment and Natural Resources (DENR). This is required for DENR to "sign off" on the cleanup project and South Dakota Codified Law specifically addresses the required contents of the covenant. City staff has written a couple of versions of the document for DENR review. There is a delicate balance between meeting the state and federal requirements and allowing us as much flexibility as possible for future uses of the site.

The attached document represents the results of the process that has taken place to date. The contents of the covenant represent the minimum responsible level of regulation for the site recognizing the level of cleanup activity performed to date.

Respectfully submitted,

Dave Mingo, AICP
Community Development Director

Recommendation: It is recommended that the City Commission authorize the Mayor to sign the attached Environmental Covenant in preparation for having them recorded.

_____ I concur with this recommendation.

_____ I do not concur with this recommendation.

Doug Russell, City Manager

Prepared By:
City of Yankton
416 Walnut Street
Yankton, SD 57078

Environmental Covenant Created Pursuant to SDCL §34A-17

**Lots 6 – 13, Block 47, Lower Yankton Addition to the
City of Yankton, South Dakota.**

This Agreement creating an Environmental Covenant is made and entered into this ___ day of _____, 2008, by and between the City of Yankton, a municipal corporation in the State of South Dakota, hereinafter referred to as “City” and the Department of Environment and Natural Resources, an administrative agency of the State of South Dakota, hereinafter referred to as “Agency”.

WHEREAS, City is the sole fee simple owner of certain Brownfield property as hereinafter described; and

WHEREAS, the City with the assistance and review of the State Department of Environment and Natural Resources (Agency) and the Environmental Protection Agency have completed a Brownfields Cleanup Project on the described site and by adopting this document are notifying all future property owners of the requirements associated with activity on the site.

NOW THEREFORE, and based upon the covenants hereinafter described, the parties do hereby agree as follows:

Section One - Environmental Covenant

This Agreement shall be deemed an Environmental Covenant created pursuant to the provisions of SDCL 34A-17 which shall run with the land and be binding upon heirs, assigns, and subsequent owners of the subject property.

Section Two – Real Property

The real property which is subject to this Environmental Covenant (the subject property) is:

Lots 6 – 13, Block 47, Lower Yankton Addition to the City of Yankton, South Dakota.

Section Three – Activity and Use Limitations

The subject property was previously used as a scrap metal / metal recycling facility. The site was environmentally assessed and remediated as part of the East Cornerstone Redevelopment Project between 2006 and 2008. The environmental covenant must be imposed to mitigate the risk to the public health, safety and/or the environment from the following contaminants left in place on the property:

- a. poly chlorinated bifenials (“PCBs”) which may exceed residential risk-based concentrations;
- b. semi-volatile organic compounds; and
- c. total petroleum hydrocarbons (TPH).

A copy of the Final Characterization Report is available at the City of Yankton, Office of Community Development. The previous remediation action does not allow for unlimited use and unrestricted exposure at the site. Therefore, activity and use limitation constituting an environmental covenant for the subject property in accordance with SDCL 34A-17 are hereby established as follows:

1. Future use of the property shall be limited to commercial or industrial occupancies, unless additional assessment or cleanup work is performed and approved by the City and the Agency.
2. Ground water usage on the site is restricted - No private drinking water wells shall be allowed on the site.

3. Health and Safety Plan (HASP) – A HASP should be developed and implemented prior to any construction or utility work on the property.

The following construction management procedures shall be implemented for all approved subsurface activities upon the subject property:

- (a) Prepare and implement a written Health and Safety Plan (HASP) covering subsurface work activities as follows:
 - (1) Development of HASP will be governed by Subpart E of the Occupational Safety and Health Administration (OSHA) regulations contained in Title 29 Code of Federal Regulations Part 1926.
 - (2) Development of HASP must include a review of all pertinent environmental assessment and remediation reports for the site.
 - (3) The HASP shall establish soil and groundwater mitigation and control specifications for grading and construction activities.
 - (4) The HASP shall include a provision that will require exposed workers to wear appropriate personal protective equipment.
 - (5) The HASP shall identify who is responsible for monitoring exposure of construction workers and shall further identify emergency procedures and the responsible personnel for implementing those procedures.
 - (b) Any contaminated construction materials shall be properly cleaned or disposed.
 - (c) Any soil that is excavated or removed from the site must be tested and disposed of in accordance with state requirements.
4. Any ground water collection or dewatering systems on the subject property must be approved and permitted by the City and the Agency prior to construction.
 5. Parties having any right, title or interest in and to the subject property, whether now or in the future, and their heirs, assigns, and successors shall be bound by and must comply with the specific use and activity restrictions set forth in this Environmental Covenant.

Section Four – Grantees and Holders

The grantees or holders of the Environmental Covenant shall be the City and Agency as identified herein.

Section Five – Source Documents

The source documents for the environmental response project are the Final Characterization and Remedial Implementation Yankton Brownfields Project Eastern Cornerstone Redevelopment Project; Former Jensen Scrap Yard. 204 Mulberry Street, Yankton, South Dakota. The administrative record for this property can be viewed or obtained from the City of Yankton, Office of Community Development and from the Agency at Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, South Dakota. A copy of this environmental covenant must also be filed with the South Dakota Secretary of State's Office. The Office of the Secretary of State maintains a public registry of all environmental convent, amendments and termination of convents.

Section Six – Compliance, Enforcement and Access

Compliance of this environmental covenant may enforced by the Owner, the City, the Agency or any entity entitled to enforce compliance under South Dakota Code§34A-17-11. The City or subsequent Transferee hereby grants to the Agency, its agents, and contractors right of access at all reasonable times to the property for enforcement of all provisions of the environmental covenant.

Section Seven – Amendment or Termination

This environmental Covenant may only be amended or terminated by consent of the City, a Transferee, and the Agency. The covenant may be amended or terminated only by a written instrument duly executed by the Department Secretary of the SD DENR (Agency), a Transferee and the City.

