

DEPARTMENT OF THE ARMY PERMIT

Permittee BNSF Railway Company

Permit No. 2006-1014

Issuing Office U.S. Army Engineer District, Kansas City

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, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: The project includes development an intermodal facility (IMF), associated lead tracks, and relocation of approximately 5.5 miles of the existing mainline track that travels through Mildale Park. The project is located southwest of Gardner, Kansas and will encompass approximately 492 acres, inclusive of a 418-acre site for the IMF. An unnamed tributary of Big Bull Creek traverses the site from northeast to southwest. Development of the IMF will relocate approximately 9,100 feet of this stream. The project will impact a total of 17,302 linear feet of streams, 16.65 acres of open water, and 4.61 acres of wetlands. In addition, construction of the IMF will result in local road closures and elimination of seven public at-grade crossings. Not all of the facility features will be initially constructed; however, all impacts to waters of the U.S. will be completed in the initial phase. Development of the entire IMF will occur as market conditions warrant.

Permit Drawings: Location map and plan views: Sheets 1 of 10 through 10 of 10 dated December 2009

Project Location: The project is located between the cities of Gardner and Edgerton, in Johnson County, Kansas, on approximately 492-acres approximately one mile north of Interstate 35 (I-35). The proposed site is bounded on the west by Four Corners Road, on the south by 191st Street, and on the east by Waverly Road. The site is in Sections 26, 27, 33, and 34, Township 14 South, Range 22 East; Sections 5, 6, and 7, Township 15 South, Range 22 East, Johnson County, Kansas.

(Lat: 38°47'37.62"N Long: 94°57'3.00"W)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2014. 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 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 continuation sheet, page 4, of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- Section 10 of the Rivers 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 authorization 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.

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 the 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.

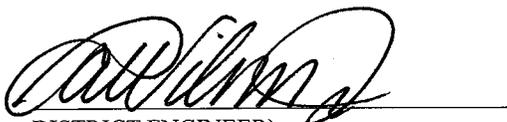


(PERMITTEE)

12/18/2009

(DATE)

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



DISTRICT ENGINEER
ROGER A. WILSON, JR., COLONEL
DISTRICT ENGINEER

12/18/2009

(DATE)

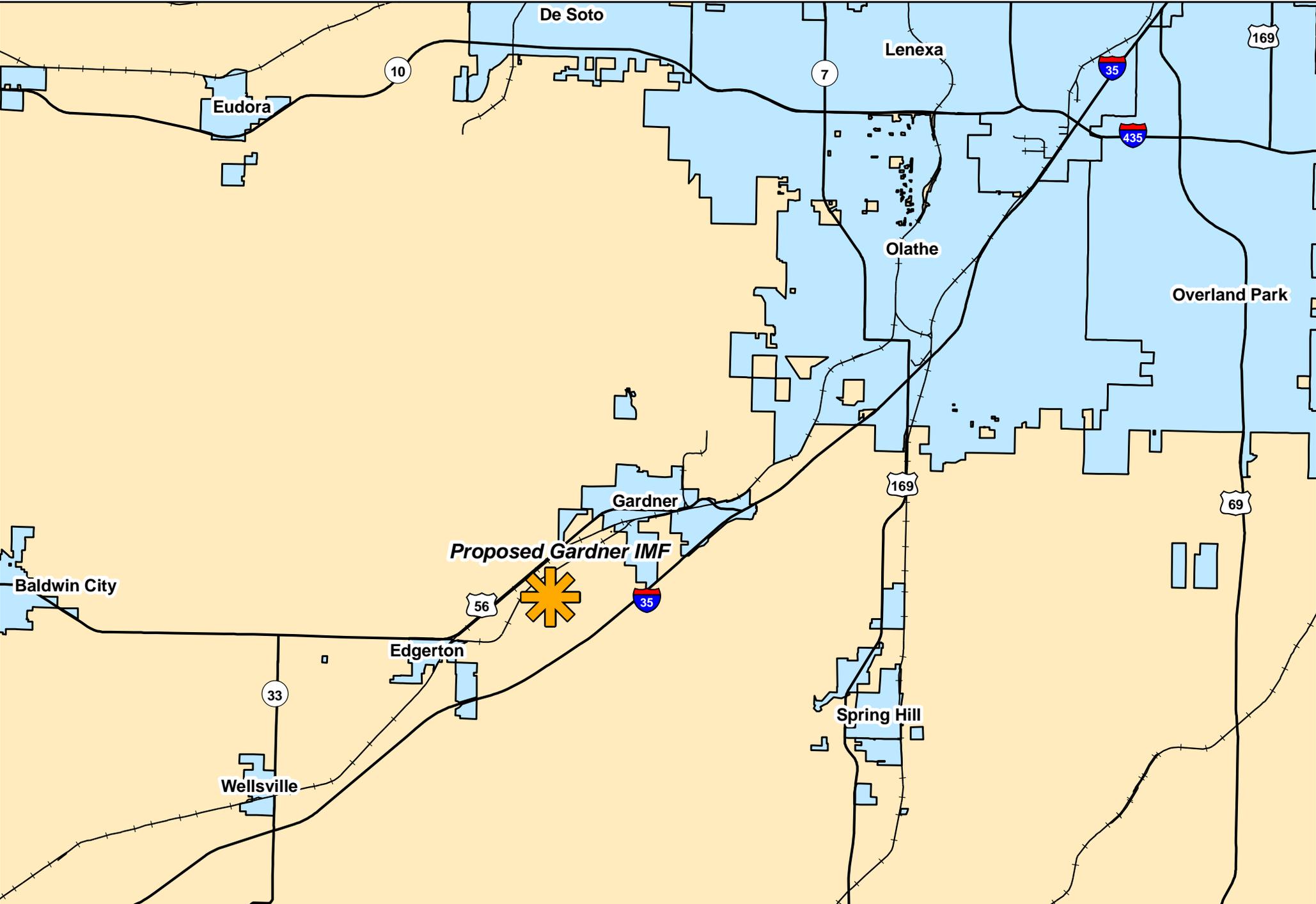
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated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

(TRANSFEREE)

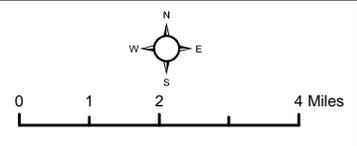
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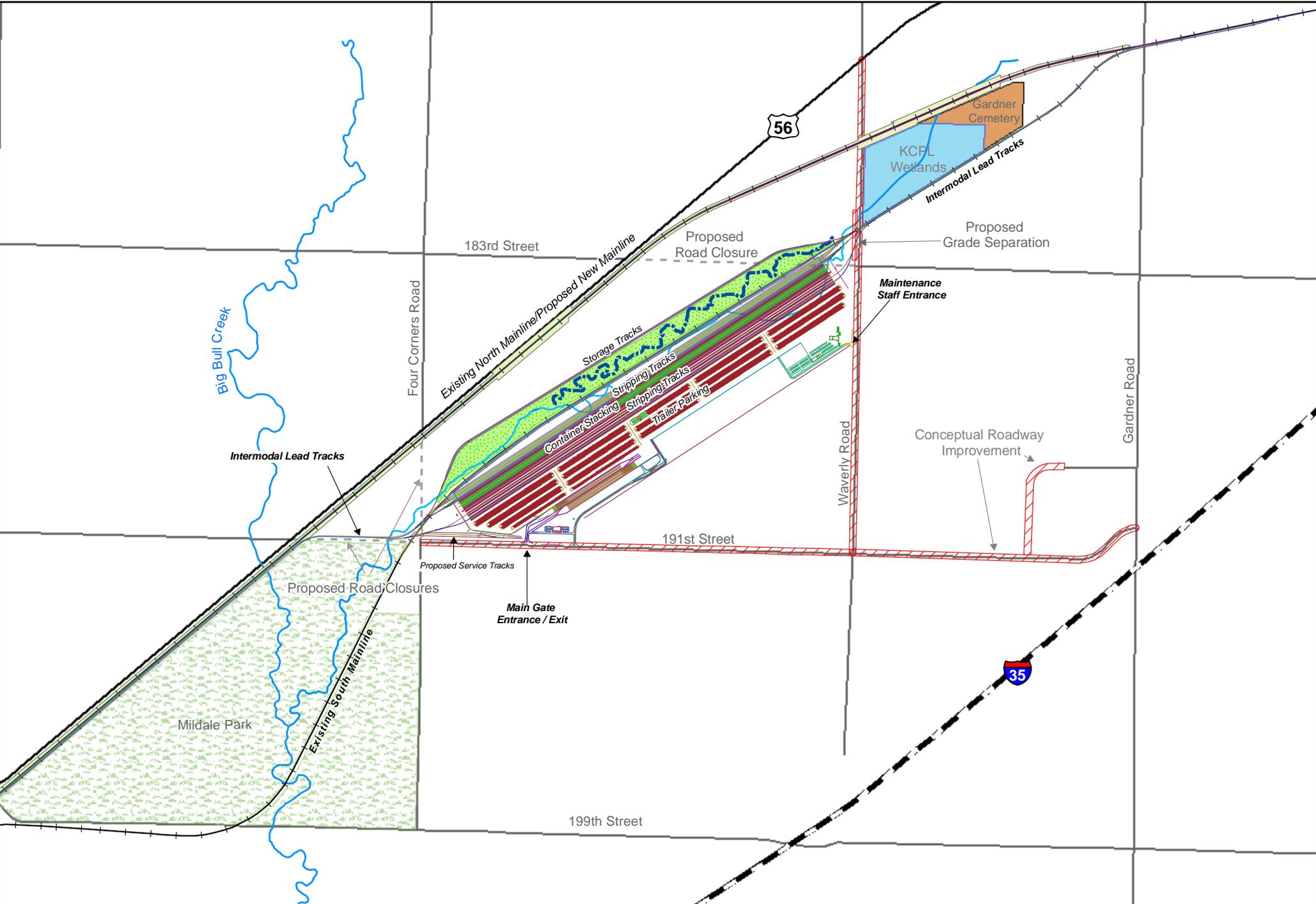
Special Conditions:

- a.** You must mitigate for impacts to Waters of the U.S. according to Appendix H of the *Environmental Assessment*. In addition, the commitments made in the 10 August 2009 memo from Lewis A. Heaven, Jr. to Joshua A. Marx must be met (See Exhibit A). All initial mitigation construction grading and plantings must be completed no later than 18 months after work begins in Waters of the U.S. You must notify the Kansas City District Regulatory Branch prior to beginning work in Waters of the U.S.
- b.** If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.
- c.** You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching.
- d.** You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a non-wetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- e.** You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
- f.** You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.
- g.** You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- h.** You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.



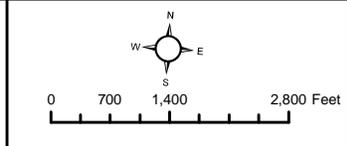
USACE Project No. 200601014
Sheet 1
General Location
Proposed Gardner IMF
December 2009

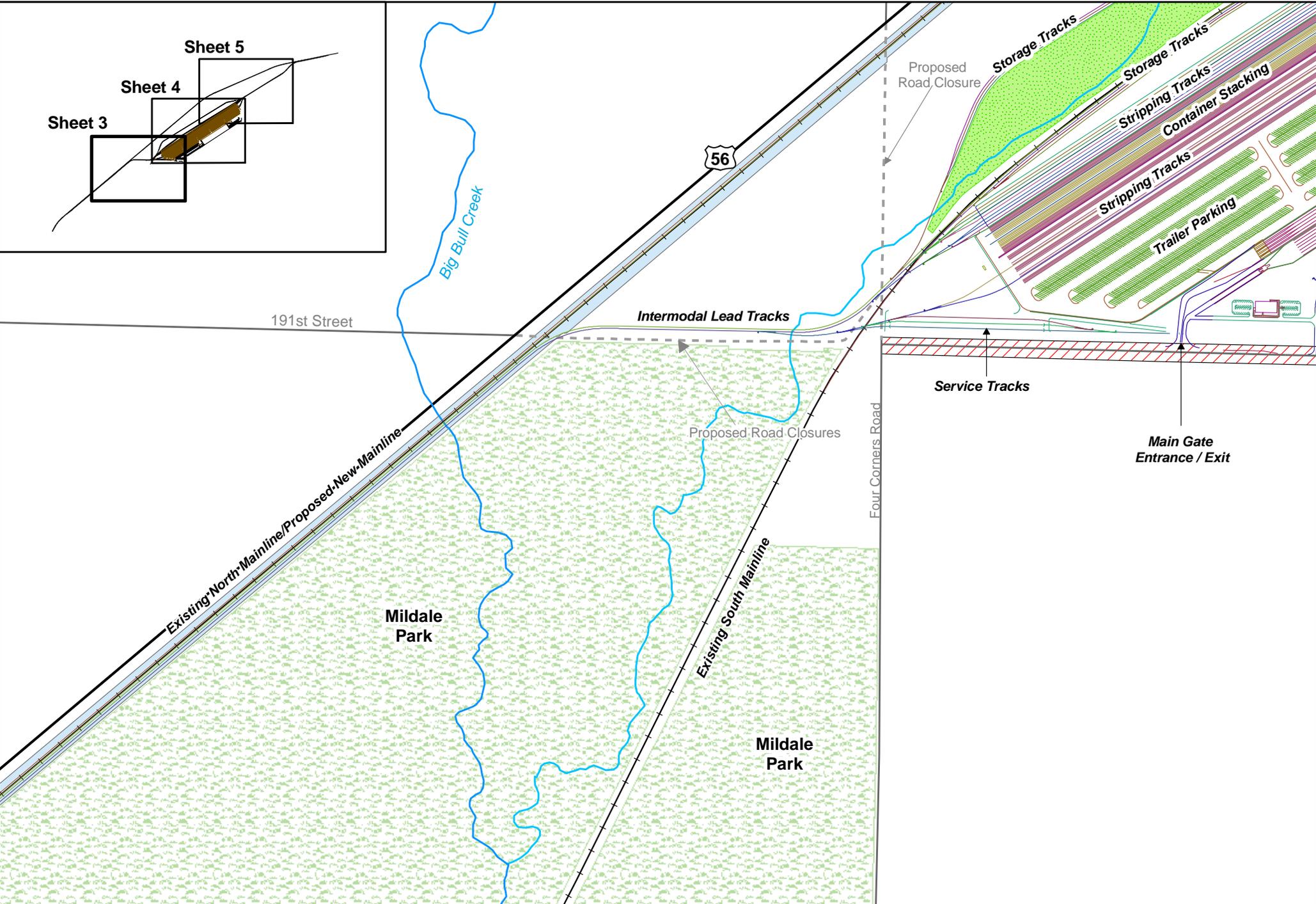
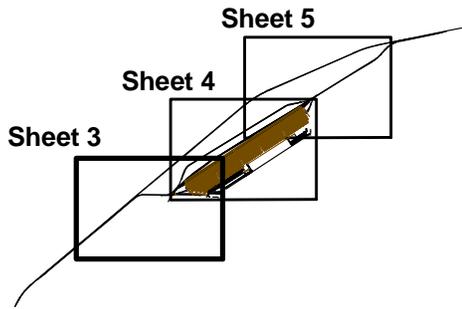




Legend			
Existing Railroad	Off-site Roadway Improvements	Existing Stream	Mildale Park
South Mainline Relocation Right of Way	Proposed Stream Realignment	Conservation Corridor	

USACE Project No. 200601014
 Sheet 2
 Overview
 Proposed Gardner IMF
 December 2009

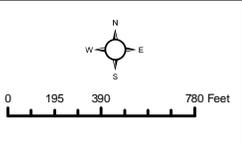


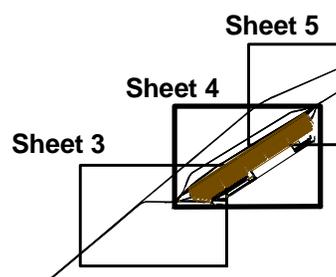
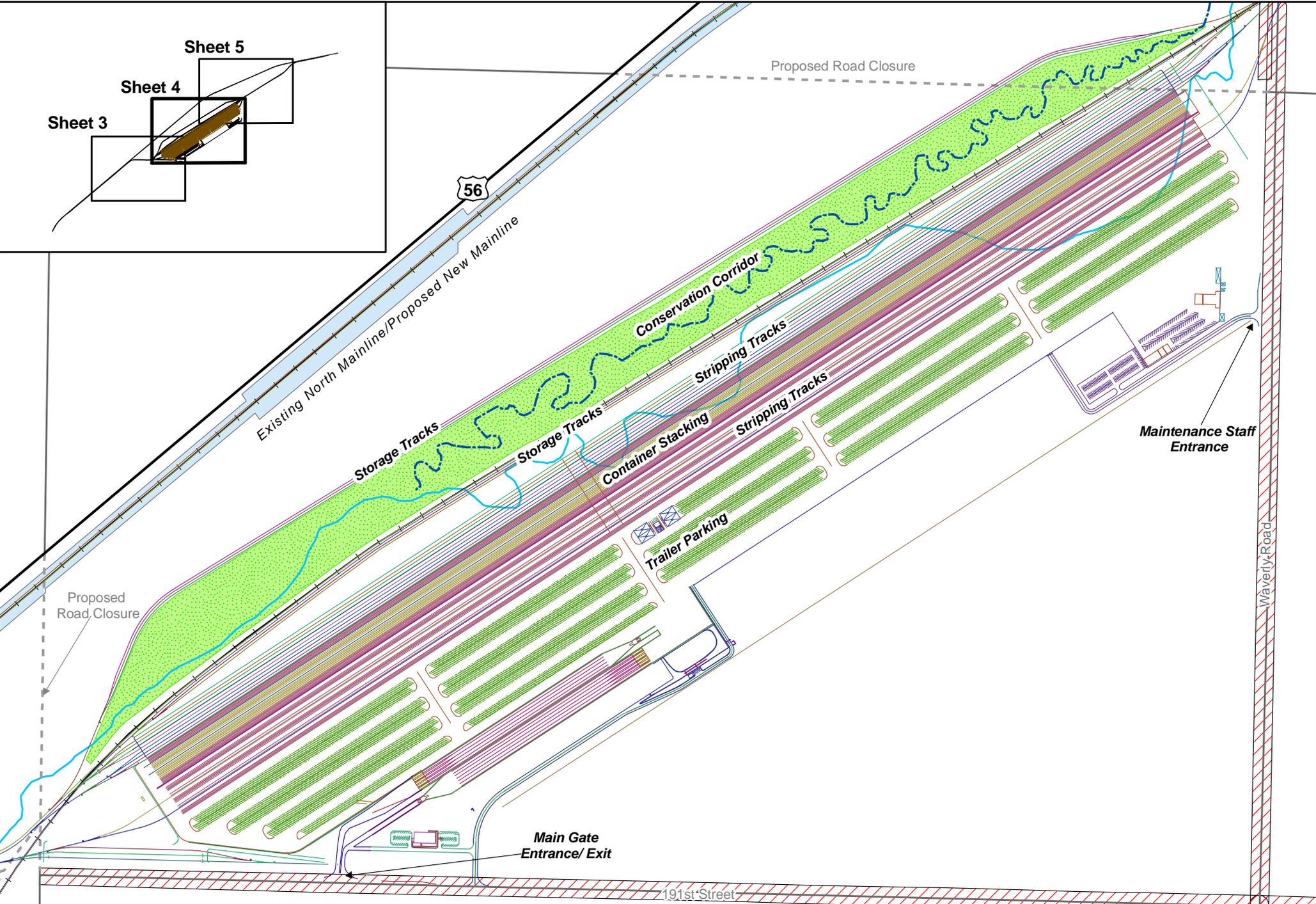


Legend

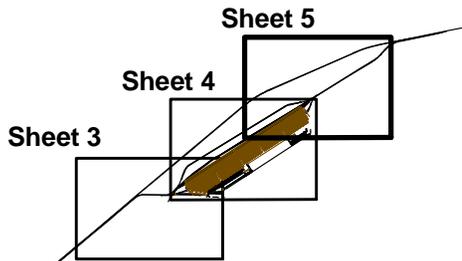
Proposed Stream Realignment	South Mainline Relocation Right of Way	Existing Stream	Mildale Park
Existing Railroad	Off-site Roadway Improvements	Conservation Corridor	

USACE Project No. 20061014
 Sheet 3
 Detailed View
 Proposed Gardner IMF
 December 2009





<p>Legend</p> <ul style="list-style-type: none"> Proposed Stream Realignment Existing Railroad 		<ul style="list-style-type: none"> South Mainline Relocation Right of Way Off-site Roadway Improvements 		<ul style="list-style-type: none"> Existing Stream Conservation Corridor 		<ul style="list-style-type: none"> Mildale Park 	
<p>USACE Project No. 20061014</p> <p>Sheet 4 Detailed View Proposed Gardner IMF December 2009</p>							



56

Existing North Mainline/Proposed New Mainline

Gardner Cemetery

KCPL Wetlands

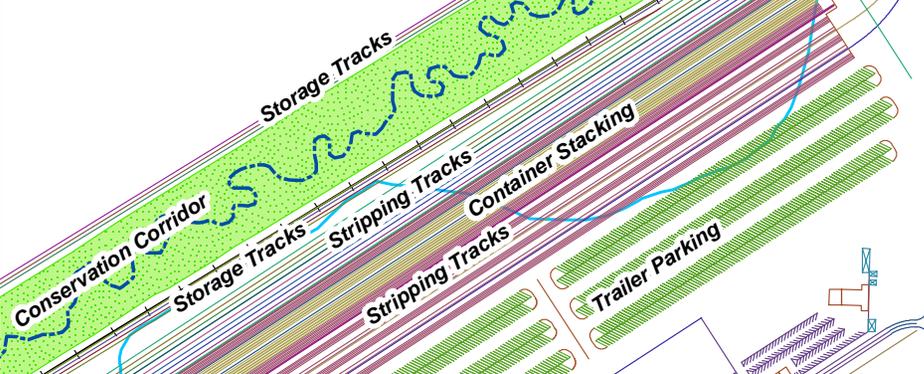
Intermodal Lead Tracks

Waverly Road

Proposed Grade Separation

183rd Street

Proposed Road Closure



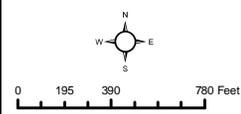
Maintenance Staff Entrance

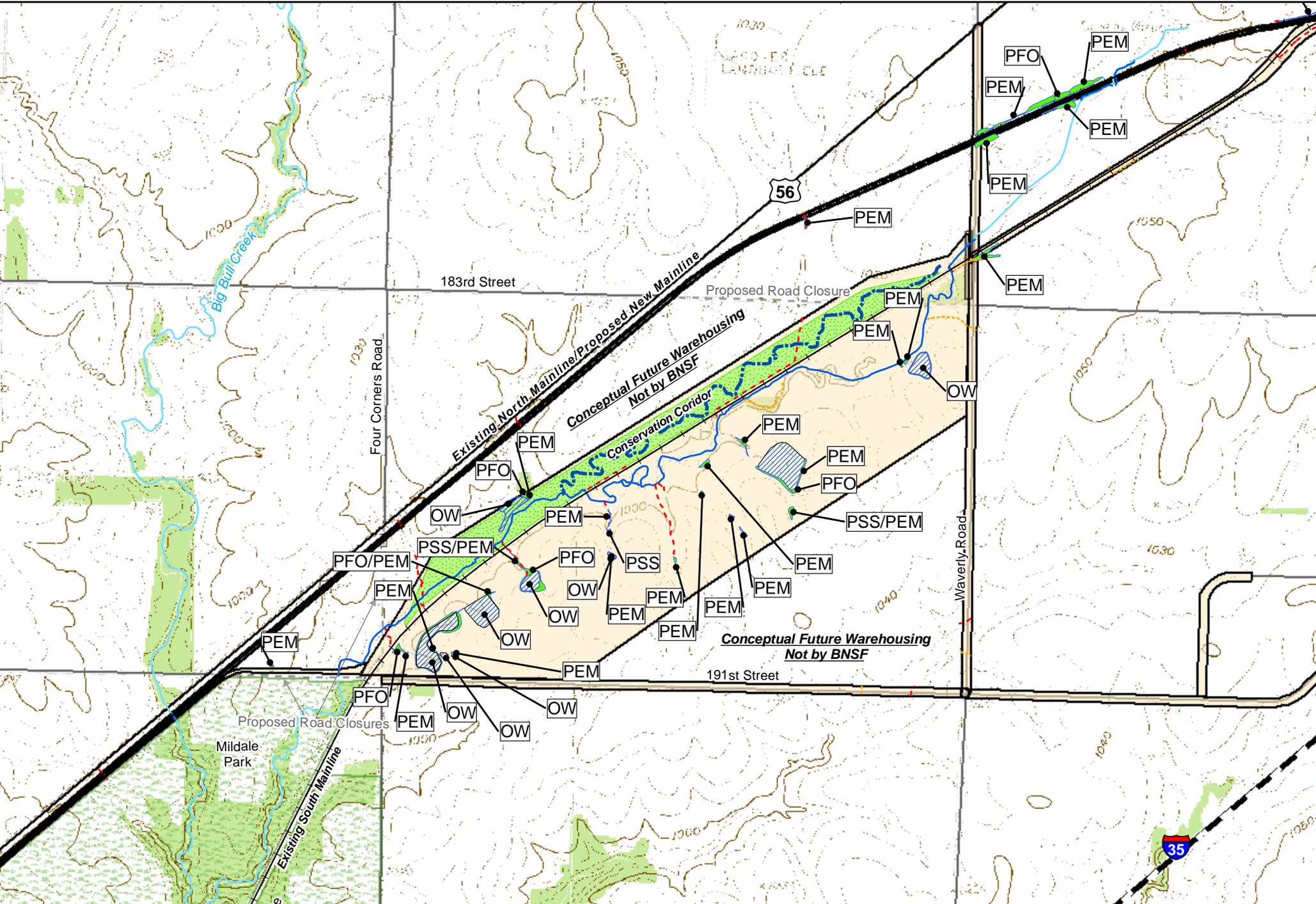
Legend

- Proposed Stream Realignment
- Existing Railroad
- South Mainline Relocation Right of Way
- Off-site Roadway Improvements
- Existing Stream
- Conservation Corridor
- Mildale Park

USACE Project No. 20061014

Sheet 5
Detailed View
Proposed Gardner IMF
December 2009

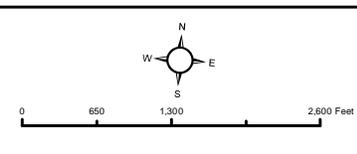


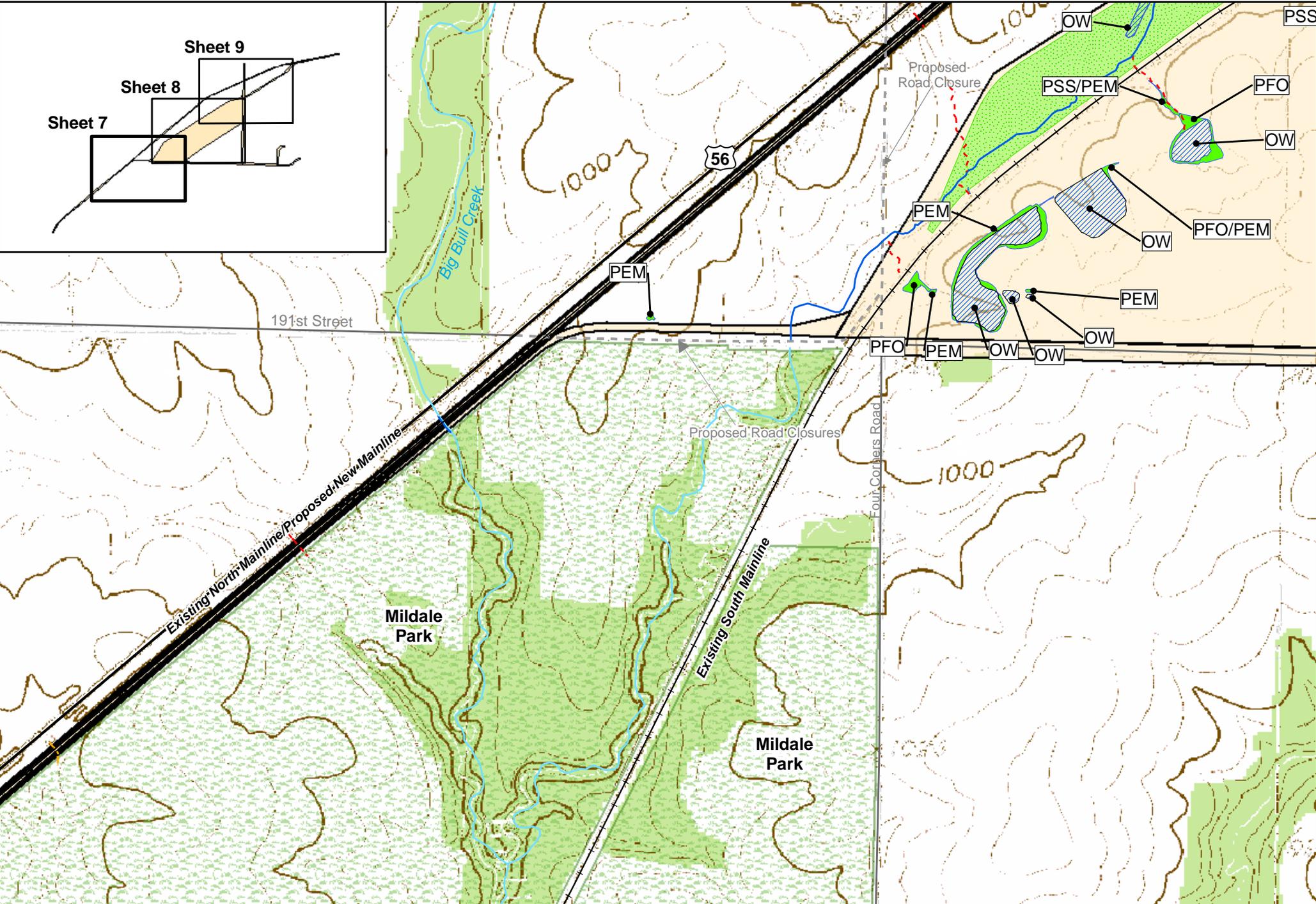
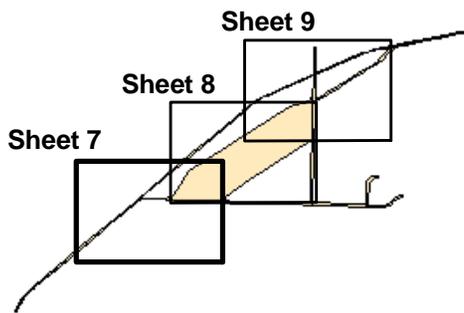


Legend			
Existing Railroad	Ephemeral Stream	Open Water	Conservation Corridor
Proposed Stream Realignment	Intermittent Stream	Wetland	Grading Limits
USGS Streams	Perennial Stream	Mildale Park	

PEM = Emergent Wetland
 PFO = Forested Wetland
 PSS = Scrub-shrub Wetland
 PSS/PEM = Scrub-shrub/Emergent Wetland
 PFO/PEM = Forested/Emergent Wetland
 OW = Open Water

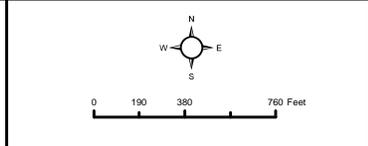
USACE Project No. 200601014
 Sheet 6
 Aquatic Resources
 Proposed Gardner IMF
 December 2009

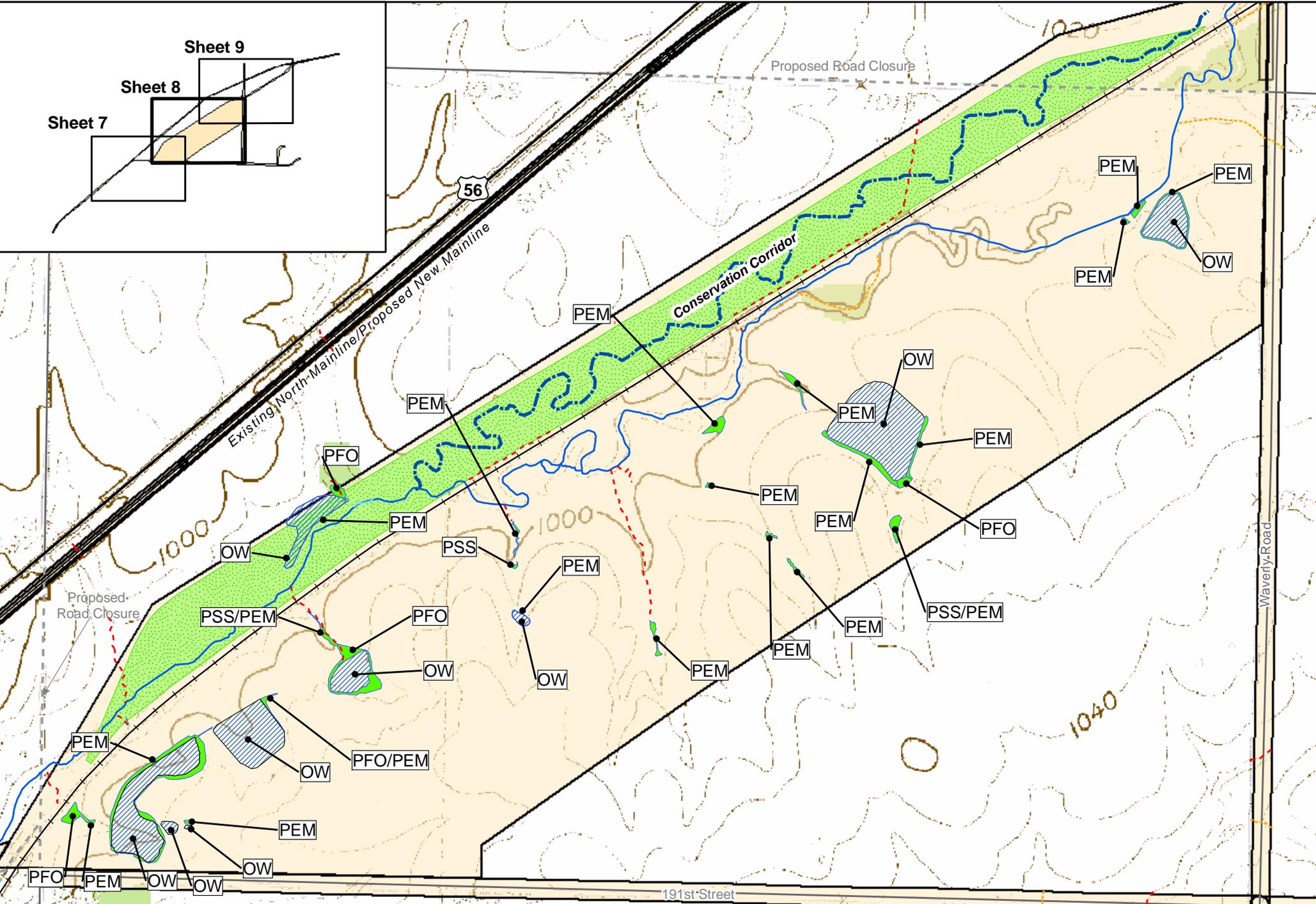
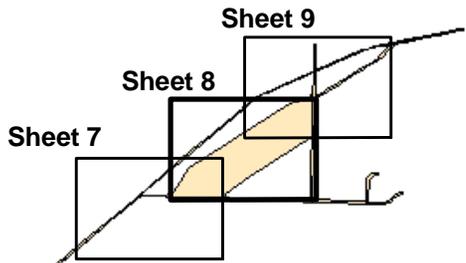




PEM = Emergent Wetland
 PFO = Forested Wetland
 PSS = Scrub-shrub Wetland
 PSS/PEM = Scrub-shrub/Emergent Wetland
 PFO/PEM = Forested/Emergent Wetland
 OW = Open Water

USACE Project No. 200601014
 Sheet 7
 Aquatic Resources Detailed View
 Proposed Gardner IMF
 December 2009



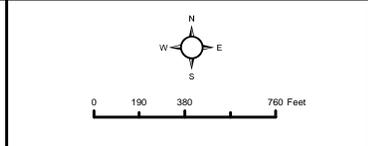


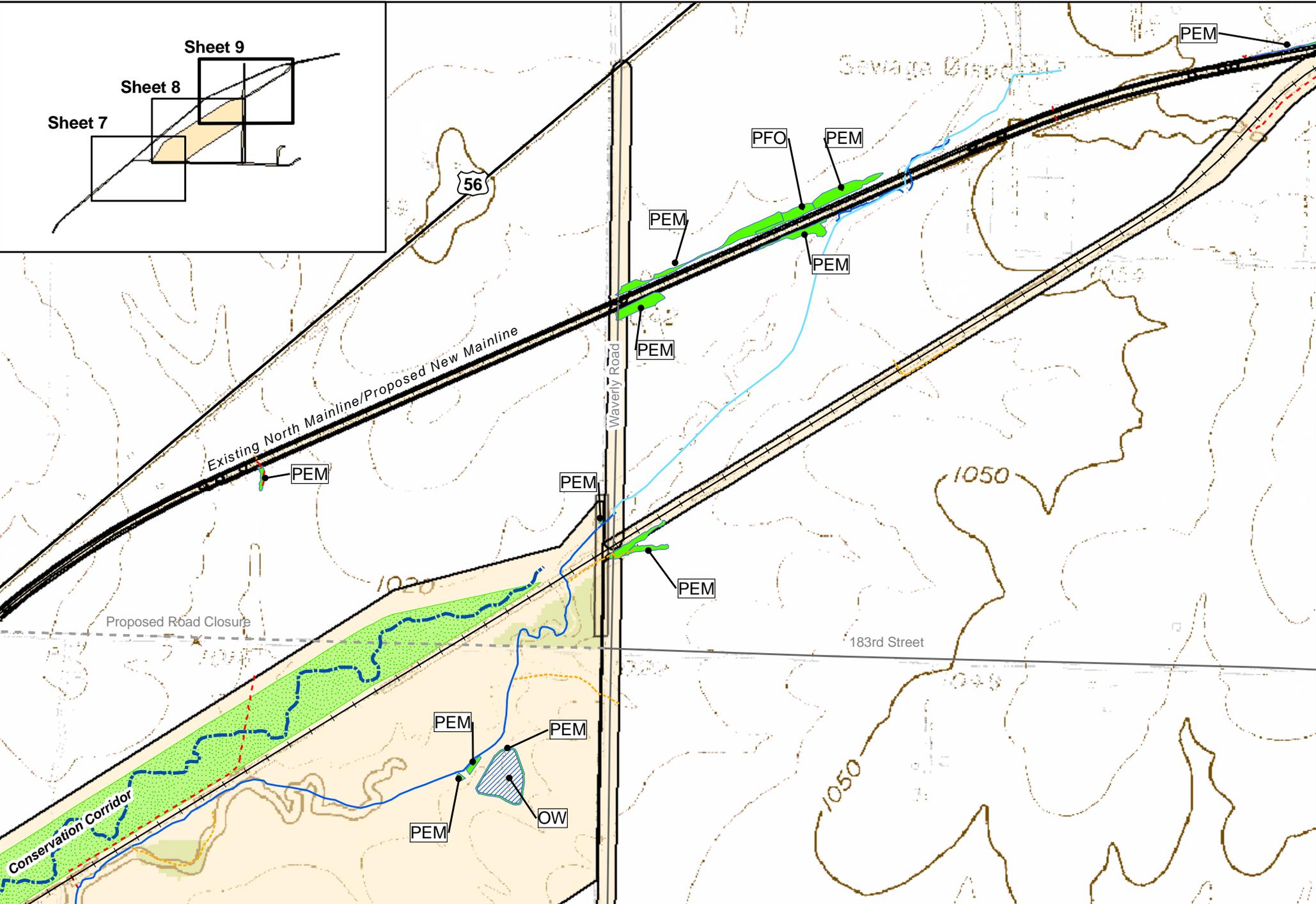
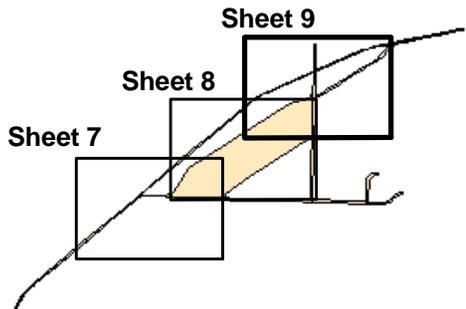
Legend

— Existing Railroad	--- Ephemeral Stream	▨ Open Water	▨ Conservation Corridor
--- Proposed Stream Realignment	- - - Intermittent Stream	■ Wetland	▨ Grading Limits
— USGS Streams	— Perennial Stream	■ Mildale Park	

PEM = Emergent Wetland
 PFO = Forested Wetland
 PSS = Scrub-shrub Wetland
 PSS/PEM = Scrub-shrub/Emergent Wetland
 PFO/PEM = Forested/Emergent Wetland
 OW = Open Water

USACE Project No. 200601014
 Sheet 8
 Aquatic Resources Detailed View
 Proposed Gardner IMF
 December 2009



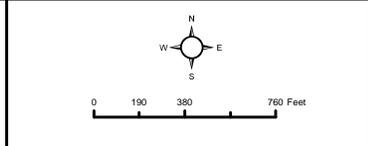


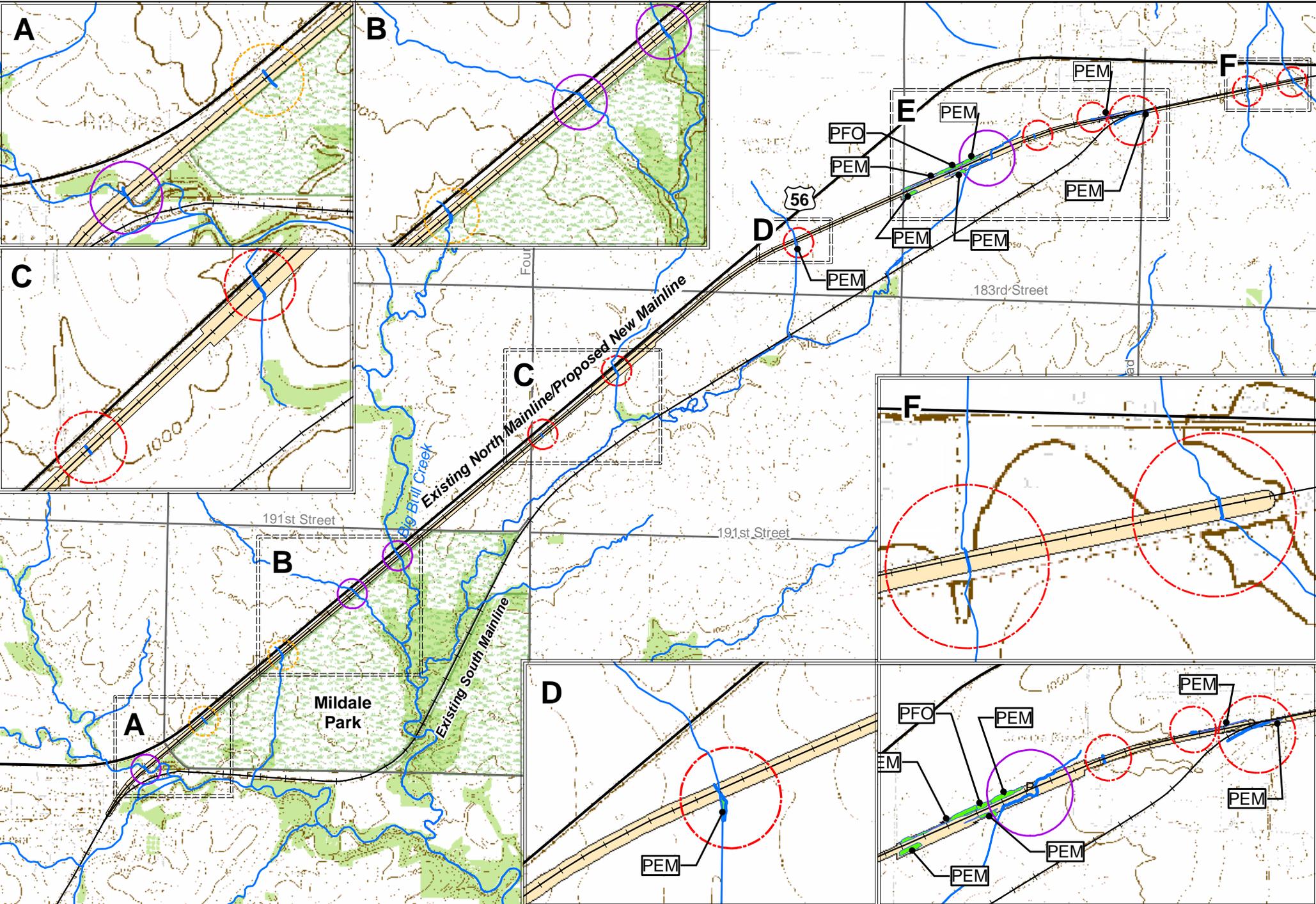
Legend

— Existing Railroad	--- Ephemeral Stream	▨ Open Water	▨ Conservation Corridor
--- Proposed Stream Realignment	- - - Intermittent Stream	■ Wetland	▨ Grading Limits
— USGS Streams	— Perennial Stream	■ Mildale Park	

PEM = Emergent Wetland
 PFO = Forested Wetland
 PSS = Scrub-shrub Wetland
 PSS/PEM = Scrub-shrub/Emergent Wetland
 PFO/PEM = Forested/Emergent Wetland
 OW = Open Water

USACE Project No. 200601014
 Sheet 9
 Aquatic Resources Detailed View
 Proposed Gardner IMF
 December 2009



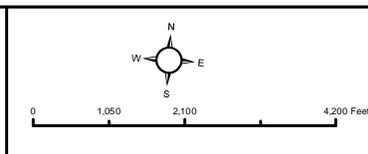


Legend

—+— Existing Railroad	⊞ Ephemeral Stream Crossing	■ Wetlands
— USGS Streams	⊞ Intermittent Stream Crossing	■ South Mainline Relocation Right of Way
○ Perennial Stream Crossing	■ Mildale Park	

PEM = Emergent Wetland
PFO = Forested Wetland

USACE Project No. 200601014
 Sheet 10
 Mainline Relocation Aquatic Resources
 Proposed Gardner IMF
 December 2009



LATHROP & GAGE^{LLP}

Memo

To: Joshua A. Marx, NWK
From: Lewis A. Heaven, Jr.
Date: August 3, 2009
Subject: BNSF/Financial Assurances/Conservation Corridor
Logistics Park KC

RECEIVED
REGULATORY BRANCH
09 AUG - 6 PM 1:18

Our office represents the BNSF Railway Company.

After reviewing the applicable regulations, our client proposes the following framework for required financial assurances in connection with the BNSF Intermodal Conservation Corridor in Johnson County, Kansas.

Construction. A contractor's payment and performance bond applicable to the conservation corridor will be posted by the contractor, with BNSF as the obligee. The bond will be in the full amount of the construction contract and will ensure that the corridor improvements are completed in a timely manner. BNSF will permit the Corps, through mutually agreeable document, to reasonably direct the expenditure of funds generated by a bond claim and received by the BNSF; alternatively, in the event of failure of the contractor to complete the work, the surety will hire a substitute contractor to do so, reasonably acceptable to the Corps.

Establishment and Monitoring Period. The contract with the environmental contractor/consultant provides for a two-year warranty period following construction to ensure that all plants have taken root and the facilities, as designed and constructed, are properly functioning. For the five years after construction, monitoring activities as set forth in the plan will be undertaken. The environmental contractor/consultant will deliver a \$25,000 letter of credit to BNSF to be drawn upon in the event warranty items are not addressed. The environmental contractor/consultant estimates that in the event of a catastrophic failure of the plantings due to a non-warranty event, the replacement cost would be \$251,474.36; the BNSF, which is self-insured, will reserve for such cost.

Long-Term Maintenance.

After the first five growing seasons, long-term maintenance and monitoring will be reduced from monthly to semi-annual inspections and interventions. Activities will include visual confirmation of the conservation corridor boundaries and visual inspection to detect dead-fall snags in any stream, floatable solid waste pollution and other irregularities. Biologists will develop site specific habitat improvement plans in conjunction with local, state and federal conservation agencies to ensure continued health of the corridor.

The regulations contemplate that a contractual obligation will qualify as financial assurance. The contract amount with our contractor/consultant includes \$400,000 for maintenance in perpetuity; we would suggest that that contractual obligation be used to satisfy the long-term maintenance obligation. Within the term of the 404 Permit, as may be extended, we will convey the Conservation Corridor to a qualified non-for-profit entity whose purpose is the protection and maintenance of wetlands areas, and which will assume the perpetual maintenance obligation.

We believe the foregoing will satisfy both the regulations and the requirements of the Corps, and, coupled with the longevity and fiscal strength of the BNSF, adequate financial provision has been made for the construction, maintenance and ongoing viability of the proposed conservation corridor. Thank you for your attention to this matter.



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

March 23, 2009

Mr. Joshua Marx
Regulatory Section
U.S. Army Corps of Engineers
Kansas City Field Office; 700 Federal Building
601 East 12th Street
Kansas City, Missouri 64106-2896

Section 401 Water Quality Certification

RE: PN- NWK2006-1014: The applicant is proposing to construct the Gardner Intermodal Facility (Gardner IMF) including associated track improvements near Gardner, Kansas on an approximate 490-acre site. The proposed Gardner IMF would be composed of lead tracks off the mainline tracks to access the facility, unloading or stripping tracks, rail-mounted electric cranes, rubber-tired gantry cranes, container storage, trailer parking and chassis storage, and support facilities. Support facilities would include the following: administration and operations center, hostler employee building, gantry crane fueling and maintenance center, hostler maintenance and fueling center, mechanics shop and parts storage, air compressor buildings and air compressors, spill containment areas, oil/water separator, gate building, and truck portals. The proposed Gardner IMF would also include transload capabilities where rail lines are located adjacent to truck lanes so that trailers or containers can be transferred directly from trucks to trains and from trains to trucks. The proposed project also includes the relocation of approximately 5.5 miles of eastbound mainline track that would parallel the existing westbound track at 15-foot track center spacing. A portion of the existing eastbound mainline track would be transformed into the lead tracks for the Gardner IMF. The proposed project would result in the relocation of approximately 9,509 linear feet of a relatively permanent unnamed tributary to Big Bull Creek (perennial stream). General grading would also impact and fill approximately 6,606 linear feet of non-relatively permanent unnamed tributaries to Big Bull Creek (ephemeral and intermittent streams). The general grading associated with the Gardner IMF would also impact and fill approximately 4.61 acres of wetlands and approximately 16.65 acres of open water (agricultural ponds). The proposed 5.5 mile track relocation would result in minor impacts associated with track crossings of 13 linear waters of the United States. The track relocation would also impact approximately 0.282 acres of wetlands. The proposed project would result in closure of 183rd Street between Waverly Road and US 56 Highway, closure of 191st Street between Four Corners Road and US 56 Highway, and closure of Four Corners Road between US 56 and 191st Street.

DIVISION OF ENVIRONMENT
Bureau of Water

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 420, TOPEKA, KS 66612-1367

Voice 785-296-4195 Fax 78-296.5509 <http://www.kdhe.state.ks.us/>

Mr. Marx (PN 20061014)

12/14/2009

Page 2 of 6

The proposed project would also include certain off-site utility and roadway improvements such as upgrading Waverly Road between U.S. 56 Highway and 191st Street; adding a grade-separation over the existing southern mainline tracks (future east lead tracks); and an upgrading 191st Street between Four Corners Road and Gardner Road. The applicant is proposing to **mitigate** impacts to waters of the U.S. onsite in a conservation corridor that would consist of the rerouted relatively permanent stream within an approximate 300 foot riparian buffer consisting of native plantings. (Plan is on file with KDHE). **WETLANDS:** The proposed project would impact approximately 3.12 acres of emergent wetlands, 1.18 acres of forested wetlands, and 0.31 acres of scrub shrub wetlands. The proposed project is located in an unnamed relatively permanent tributary to Big Bull Creek, in Sections 26, 27, 33, and 34, Township 14 South, Range 22 East, and in Sections 5, 6, and 7, Township 15 South, Range 22 East, near the City of Gardner, in Johnson County, Kansas. (Lat: 38.79257657 Long: -94.955055, GARDNER QUAD) **APPLICANT:** BNSF Railway Company, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Dear Mr. Marx:

The Kansas Department of Health and Environment has received your request for Section 401 Water Quality Certification. We have reviewed the project and have determined the project has the following water pollutant discharge sources:

1. Construction activities including grading and filling, equipment and materials storage, equipment fueling and maintenance, etc.
2. Operations and maintenance of the constructed structures

Discharges from these sources to the unnamed tributary to Big Bull Creek, if not minimized or otherwise controlled, may cause violations of the provisions of Kansas Water Quality Standards found at KAR 28-16-28 et seq. The unnamed tributary to Big Bull Creek is not described in the Kansas Surface Water Register [KAR 28-16-28(g)], however, the proximity and impacts of the project subjects it to being considered an impact to Bull Creek. Its designated uses are expected aquatic life use and secondary contact recreation stream segment is by law or written permission of the landowner not open to and accessible by the public.

Pursuant to Section 401 and KAR 28-16-28(c) the Kansas Department of Health and Environment finds this project (including mitigation activities) will not result in a violation of Kansas Water Quality Standards and herewith issues a Water Quality Certification for execution and subsequent operation of the project subject to the following conditions:

This certification shall be posted on site through the duration of the project.

- 1) BNSF Railway shall avoid or control the discharge of suspended solids from construction activities, removal of riparian vegetation and road surface runoff **so that the project does not cause:**

- a. Any surface waters of the state within and below the project area to contain discarded solid material, including trash, garbage rubbish, offal, grass clippings, discarded building or construction materials, car bodies, tires, wire and other unwanted or discarded materials [KAR 28-16-28e(b)(3)].
 - b. Any surface waters of the state within and below the project to have floating debris, scum, foam, froth and other floating materials directly or indirectly attributable to the project [KAR 28-16-28e(b)(4)].
 - c. Any surface waters of the state within or below the project to have of deposits of sludge or fine solids [KAR 28-16-28e(b)(6)].
 - d. Alteration of the natural appearance of surface waters of the state within or below the project by the addition of color-producing or turbidity-producing substances of artificial origin [KAR 28-16-28e(b)(8)].
 - e. The concentration of dissolved oxygen in Big Bull Creek to be lower than 5.0 mg/L, Kansas Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, found in a separate document found at:
http://www.kdhe.state.ks.us/water/download/swqs_numeric_criteria.pdf
- 2) BNSF Railway shall avoid or control the discharge of plant nutrients from construction activities, removal of permanent riparian vegetation, **so that the project does not cause:**
- a. Any surface waters of the state within and below the project to have floating debris, scum, foam, froth and other floating materials directly or indirectly attributable to the project [KAR 28-16-28e(b)(4)].
 - b. Any surface waters of the state within or below the project to have of deposits of sludge or fine solids [KAR 28-16-28e(b)(6)].
 - c. Alteration of the natural appearance of surface waters of the state within or below the project by the addition of color-producing or turbidity-producing substances of artificial origin [KAR 28-16-28e(b)(8)].
 - d. The concentration of dissolved oxygen in Big Bull Creek to be lower than 5.0 mg/L, Kansas Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, found in a separate document found at:
http://www.kdhe.state.ks.us/water/download/swqs_numeric_criteria.pdf
- 3) BNSF Railway shall avoid or control the discharge of toxic substances, oil and grease and other fluids from construction activities, **so that the project does not cause:**
- a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].

- b. Any surface waters of the state within and below the project area to have toxic substances, radioactive isotopes, and infectious microorganisms in concentrations or in combinations that jeopardize the public health or the survival or well-being of livestock, domestic animals, terrestrial wildlife or aquatic or semi-aquatic life [KAR 28-16-28e(b)(2)].
 - c. Any surface waters of the state within and below the project area to have a visible oil and grease film or sheen on the water surface or on submerged substrate or adjoining shore lines, nor have a sludge or emulsion deposit below the water surface of adjoining shorelines [KAR 28-16-28e(b)(5)].
 - d. Any surface waters of the state within and below the project to contain taste and odor producing substances at concentrations which interfere with the production of potable water by conventional water treatment processes, impart an unpalatable flavor to edible aquatic or semi-aquatic life or terrestrial wildlife or that result in noticeable odors in the vicinity [KAR 28-16-28e(b)(7)].
 - e. The concentration of dissolved oxygen in Big Bull Creek to be lower than 5.0 mg/L, Kansas Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, found in a separate document found at:
http://www.kdhe.state.ks.us/water/download/swqs_numeric_criteria.pdf
 - f. In Big Bull Creek to be below 6.5 or above 8.5 including effects by concentrations of toxic substances. Refer to Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, a separate document found at:
http://www.kdhe.state.ks.us/water/download/swqs_numeric_criteria.pdf
- 4) BNSF Railway shall avoid or control the discharge of plant nutrients from construction activities, removal of permanent riparian vegetation, **so that the project does not cause:**
- a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].
 - b. The concentration of dissolved oxygen in Big Bull Creek to be lower than 5.0 mg/L, Kansas Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, found in a separate document found at:
http://www.kdhe.state.ks.us/water/download/swqs_numeric_criteria.pdf
- 5) BNSF Railway shall avoid or control the discharge of *Escherichia-coli* bacteria from the project site, especially construction activities, to avoid exceeding a geometric mean of 3,843 organisms per 100 milliliters during the period of November 1 through March 31 in Big Bull Creek [KAR 28-16-28e(d) in table 1j].

- 6) Construction activities disturbing 1 acre or more, are subject to the National Pollutant Discharge Elimination System (N.P.D.E.S.) storm water permit requirements of 40 C.F.R. 122.26. This certification does not relieve the BNSF Railway of its obligation to secure such permit. Information on construction site NPDES permits is available from Bureau of Water - Industrial Programs website: www.kdheks.gov/stormwater or Mr. Larry Hook at 785/296-5549. A stormwater pollution prevention plan is required.
- 7) BNSF Railway is strongly encouraged to include items a-f below in the Stormwater Pollution Prevention Plan (SWPP) required by the Construction Stormwater NPDES Permit described in item 6 above.
 - a. **Riparian Areas:** Minimize removal or disturbance of riparian areas (areas adjacent to water bodies). KDHE encourages the use of native vegetation or at least being consistent with adjoining vegetation materials to minimize impacts from improper handling of fertilizers and pesticides.
 - b. **Solid Waste:** All waste materials produced by the construction project shall be disposed of in accordance with the provisions of the Kansas solid waste management statutes and regulations (K.S.A. 65-3401 and K.A.R. 28-29-1 et. seq.) or applicable local rules. Good house keeping including personal refuse such as food containers, sacks etc. shall be addressed.
 - c. **Fuels, Chemicals and Maintenance Areas:** All fuels and chemicals necessary to complete the project shall be stored in such a manner that accidental spillage is minimized or can be temporarily contained before reaching the water body. Equipment maintenance areas shall also be located in this manner.
 - d. **Spills:** Should a spill of fuel or discharge of pollutants occur, the local emergency staff should be contacted **first** by dialing 911. The Kansas Department of Health and Environment shall then be notified immediately: **(785)- 296-1679 (24 hours a day.)** These incidences should also be reported to the National Spill Response Center (1-800-424-8802). *Hazardous materials spills and air releases that meet federal reportable quantities must also be reported to Kansas Division of Emergency Management (800-275-0297).* **These reporting numbers shall be posted in several locations around the site. A Spill Prevention and Response Plan should be prepared.**
 - e. **Floating Debris:** The applicant shall take appropriate measures to capture any floating debris released to surface waters as a result of this project.
 - f. **Bank Protection:** Any materials used for protecting newly constructed stream banks or other stabilization practices shall not result in polluted surface runoff or leaching to the groundwater.
- 8) The applicant should be aware of the on-going process of implementing a watershed restoration protection strategy (WRAPS) for the Hillsdale Watershed which includes the Bull Creek watershed. A watershed plan has been established for several years.

The WRAPS planning process has enhanced activities and the understanding of protecting or restoring water bodies in the watershed as identified by local stakeholders and the State of Kansas. For more information please contact Ms. Gale Salzman, 913/829-9414 or gsalzman@hwqp.org.

- 9) This certification does not relieve BNSF Railway of the responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking or revising this certification any time an inappropriate discharge may occur. As provided by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines up to \$10,000 per violation with each day the violation occurs constituting a separate violation.
- 10) If the applicant believes the conditions of this certification will result in impairment of important widespread social and economic development, the applicant is advised of the variance provisions of KAR 28-16-28b(III) and KAR 28-16-28f(e).

Questions concerning this certification may be directed to Mr. Scott Satterthwaite, 785-296-5573.

Sincerely,



Scott L. Satterthwaite, M.S.
Non-point Source Pollution Control Specialist
Bureau of Water-Watershed Management Section

EC: KDHE- Hook, Rowlands
KDA-Matt Scherer,
Hillsdale WRAPS- Gale Salzman