



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

REPLY TO
ATTENTION OF:

March 4, 2004

Regulatory Branch
(200101697)

Mr. James Brewer, P.E., Engineering Manager
Kansas Department of Transportation
Bureau of Design, Road Section
915 SW Harrison, 9th Floor
Topeka, Kansas 66612-1568

Dear Mr. Brewer:

Permit No. 200101697 has been executed. One copy is enclosed for your records and one copy has been retained for our files. When you are ready to begin work, it is necessary you contact Robert Smith, Special Projects Manager by writing to Mr. Smith at the U.S. Army Corps of Engineers, Kansas City District, 601 East 12th Street, Room 706, Kansas City, Missouri 64106, or by e-mail at robert.j.smith@nwk02.usace.army.mil, or by calling (816) 983-3656.

Special condition "a" of your permit requires you to sign and return the enclosed "Compliance Certification" upon completion of the authorized work and any required mitigation.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Curtis, Jr.", written over a horizontal line.

Donald R. Curtis, Jr.
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

Environmental Protection Agency,
Water Resources Protection Branch w/enclosures
U.S. Fish and Wildlife Service,
Manhattan, Kansas w/enclosures
Kansas Department of Health and
Environment w/enclosures
Kansas Department of Wildlife and Parks
w/enclosures
Kansas Department of Agriculture
w/enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee Kansas Department of Transportation

Permit No. 200101697

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: Relocation of an approximately seven-mile-long section of Kansas Highway 10 from its current alignment through the city of Lawrence, Kansas to a location south of the city on an alignment identified as 32nd Street Alignment B.

Permit Drawings: Plan views, cross sections, Sheets 1 and 2 of 2, dated January 2004

Project Location: In wetlands, drainages and other waters of the U.S. in Sections 7, 8, 10, 11, 15, 16, 17 and 18, in Township 13 south, Range 20 east; and in Sections 12, 13 and 24, in Township 13 south, Range 19 east, in and near the city of Lawrence, in Douglas County, Kansas.

(Latitude: 38.92635365 - Longitude: 95.23291272)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2013. 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 sheets, pages 4 through 8, 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).

(X) 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.

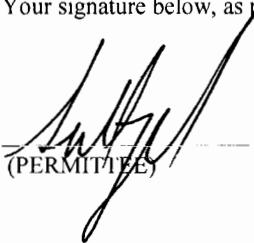
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- 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.



(PERMITEE)

2-27-04

(DATE)

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



(DISTRICT ENGINEER)
DONALD R. CURTIS, JR.
COLONEL, CORPS OF ENGINEERS
DISTRICT ENGINEER

3-4-04

(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)

(DATE)

Special Conditions:

- a. You must sign and return a "Compliance Certification" after you complete the authorized work and any required mitigation. Your signature will certify that you completed the work in accordance with this permit, including the general and specific conditions, and that any required mitigation was completed in accordance with permit conditions.
- 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 waters of the United States by runoff or by leaching.
- d. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area landward of the ordinary high water mark and at a location where the concrete and wash water cannot enter a water body or an adjacent wetland.
- e. You must excavate and/or fill in waters of the U.S. 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 a 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 a water body or a wetland as a result of runoff, flooding, wind, or other natural forces.
- h. You must store all construction materials, equipment, and petroleum products, when not in use, above anticipated high water levels.
- i. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. Clearing, grading and replanting should be planned and timed so that only the smallest area necessary is in a disturbed, unstable, or unvegetated condition.
- j. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water or on shore, and any other areas on shore disturbed during construction. If seeding does not successfully vegetate the disturbed areas by the end of the first growing season, you must implement alternative measures to protect the disturbed areas from further erosion. You must contact the Kansas City District, Regulatory Branch prior to beginning work on any additional erosion control measures so that a determination can be made whether further authorization is required.

Special Conditions (continued):

k. You must ensure that the placement of culverts and other work affecting drainages does not cause an increase in flooding to adjacent property owners and that such work does not significantly impact sheet flows in the Wakarusa River floodplain, except where work is intended to create wetter conditions to develop or enhance wetlands.

l. You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property. You must furnish a copy of the recorded instrument, with the recorder's stamp, to the Kansas City District within two months from the date of this permit.

m. You must comply with the conditions stipulated in the attached documents:

1. Kansas Department of Health and Environment Water Quality Certification, dated December 10, 2003.

2. "Memorandum Of Agreement Among The U.S. Army Corps Of Engineers, Kansas City District; Kansas State Historic Preservation Officer; Kansas Department Of Transportation; Baker University; Douglas County, Kansas; Advisory Council On Historic Preservation Regarding The Kansas Highway 10 Bypass (South Lawrence Trafficway) In Douglas County, Kansas."

3. "Special Procedures for Construction Activities Within the Haskell Agricultural Farm Property," dated January 30, 2004.

n. **PROJECT STATUS REPORTING.** Due to the 10-year duration of this permit, you must submit a project status report to the Kansas City District's Regulatory Branch in the 4th quarter (October 1 through December 31) of the year 2008. Additional supplemental "event driven" status reports must be submitted when major segments or phases of the project are completed or when significant changes in the project design or construction schedule occur. The content of these supplemental status reports will be limited to a discussion of the event that has triggered the need for an update. The project status report due in the year 2008, must include:

1. A signed document certifying that all work completed prior to submittal of the report was completed in accordance with the terms and conditions of this permit, including the general and project specific conditions, and that any required mitigation was completed in accordance with permit requirements.

2. The status of project construction and mitigation development (by phase if appropriate).

3. Proposed changes in project design such as centerline location and the anticipated environmental impacts that are expected to result from the authorized work due to changes in laws or listings (threatened or endangered species, National Register eligible or listed properties, etc.), physical conditions, or other factors affecting the public interest.

Special Conditions (continued):

4. Since site conditions are subject to change, wetland jurisdiction determinations are valid for a period of 5 years or less. A reevaluation of the original delineation provided to and approved by the Kansas City District must be submitted to the Kansas City District's Regulatory Branch with the project status report in the year 2008, to determine if wetland conditions within the permit area have changed.

The December 31, 2013, expiration date shown in General Condition 1 of this permit will become null and void, and the permit will expire on December 31, 2008, if the required project status report is not received on or before December 31, 2008, in accordance with the criteria stipulated in this Special Condition.

Note: You must apply for a separate permit or request a modification to this permit before you perform any work in waters of the United States that is not authorized by this permit. This requirement applies to new work (work not previously considered/evaluated by the Kansas City District) including changes to existing plans.

o. MITIGATION REQUIREMENTS:

1. You must construct/develop/implement all of the mitigation features described in the Final Environmental Impact Statement (Final EIS) prepared for this project, unless specified otherwise on the drawings or in the Special Conditions of this permit. Wetland mitigation includes the creation of 304 acres of wetlands on agricultural lands located west of the existing Louisiana Street and east of the existing Haskell Avenue, as shown on Sheets 1 and 2 of the drawings attached to this permit. The existing 17-acre "Santa Fe Wetland Mitigation Site," created by Douglas County to provide mitigation credits for relocation of K-10 Highway will be applied as a 17-acre mitigation credit for this project.

2. You must relocate the existing section of 31st Street located on the Haskell Indian Nations University (HINU) campus to an alignment immediately north of the new section of K-10 Highway on Baker University property, as shown on Sheets 1 and 2 of the drawings attached to this permit. You must also remove the abandoned section of 31st Street located on the HINU campus, including bedding material, and grade the vacated right-of-way to approximate the contours/elevations of the existing undisturbed adjacent ground. You must confer with HINU/Bureau of Indian Affairs representatives to develop and implement a vegetative planting scheme for the vacated right-of-way.

3. You must complete construction of all wetland mitigation features described in the Final EIS and this permit, except for the "Wetland And Cultural Educational Center," no later than 2 years after initiation of project-related fill activities in wetlands. Such mitigation features include but are not limited to relocation of Haskell Avenue and Louisiana Street, construction of wetlands, construction of parking and camping areas, and construction of hike and bike trails.

4. You must complete construction of the "Wetland And Cultural Educational Center," no later than 5 years after initiation of project-related fill activities in wetlands.

Special Conditions (continued):

5. You must complete the work described in Paragraph (2) of this Special Condition within 1 year after opening the relocated section of 31st Street to public use.

6. You must complete construction of all mitigation features described in the Final EIS and this permit, that are not intended to compensate for wetland losses and are not addressed in Paragraphs (1) and (5) of this Special Condition, prior to opening the section of relocated highway passing through Baker Wetlands to public use. Such mitigation features include but are not limited to noise walls, landscaping, and roadway runoff control features within Baker Wetlands.

7. The 304-acre wetland mitigation areas described in Paragraph (1) of this Special Condition must be protected from man-induced disturbances that would affect their ability to function as wetlands and must be preserved as wetlands in perpetuity. The vacated 31st Street right-of-way discussed in Paragraph (2) of this Special Condition is not subject to this requirement since the permittee does not control the property.

p. WETLAND MITIGATION SUCCESS CRITERIA:

1. Mitigation wetlands must meet wetland criteria, as defined in the Corps of Engineers 1987 delineation manual, titled "Corps of Engineers Wetlands Delineation Manual," by the end of the third growing season occurring after construction/development of mitigation areas. If mitigation wetlands do not meet wetland criteria at the end of the third growing season, and if the Kansas City District determines that corrective action is necessary, you must evaluate the cause of the failure and initiate remedial work to correct the problem. Such remedial work must be approved in writing by the Kansas City District prior to initiation of the corrective action.

2. You must monitor wetland mitigation areas for 3 growing seasons in order to evaluate the success of mitigation efforts. An annual monitoring report must be submitted to the Kansas City District beginning with the year of construction of mitigation areas and extending through at least 3 growing seasons. The monitoring report is due by December 31, of each reporting year and must contain sufficient information for the Kansas City District to evaluate the status of mitigation efforts. The report shall contain site photographs, plant survey transects, species composition, percent of vegetative cover, and other information, as necessary, to evaluate the success of mitigation efforts. If mitigation areas meet the wetland criteria stipulated in Paragraph (1) of this Special Condition at the end of the third growing season no additional monitoring will be required. If mitigation areas do not meet wetland criteria at the end of the third growing season, additional annual monitoring reports will be required until the Kansas City District determines that mitigation efforts are successful.

3. Construction and success of mitigation areas will not be considered complete until approved in writing by the Kansas City District.

Special Conditions (continued):

4. Paragraphs (1) and (2) of this Special Condition do not apply to the vacated 31st Street right-of-way discussed in Paragraph (2) of Special Condition o.

q. You must perform the work authorized by this permit in a manner that will minimize wetland losses and degradation of wetlands remaining after completion of construction activities.

r. You must mark the boundary of the project's right-of-way within Baker Wetlands to ensure that the operation of construction equipment and other project-related activities do not encroach on wetlands located outside the right-of-way. Such markings must be clearly visible to equipment operators and other construction personnel and must provide a suitable buffer to ensure that wetlands located outside the right-of-way are not inadvertently impacted by construction activities.

s. The work authorized by this permit must conform to the project plans and details presented in the Final EIS prepared for this project, titled "Final Environmental Impact Statement – Section 404 Permit Application – by – Kansas Department of Transportation – K-10 Highway (South Lawrence Trafficway)," dated December 2002, unless specified otherwise on the drawings or in the Special Conditions of this permit.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

December 10, 2003

Mr. Joseph S. Hughes, Chief
Regulatory Branch
U.S. Dept. Army Corps of Engineers
Regulatory Branch
700 Federal Building
Kansas City, MO 64106-2896

RE: Section 401 Water Quality Certification for Public Notice 200101697; Project by Kansas Department of Transportation (commonly known as the South Lawrence Traffic Way) to relocate approximately 7 miles of Kansas Highway 10 to bypass city of Lawrence. The project will consist of grading, construction of bridges and culverts, placement of paving and other related work to complete construction of a 4-lane road. The work will result in the loss of an estimated 55.4 acres of wetlands, impacts to 2,800 linear feet of stream channel and loss of 100 linear feet of stream channel.

Dear Mr. Hughes:

The Kansas Department of Health and Environment has received a 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. Loss of wetlands.
3. Loss of riparian vegetation along stream channels.
4. Precipitation runoff from road surfaces
5. Abandoned 31st Street right-of-way
6. Use and operation of the completed roadway

Discharges from these sources if not minimized or otherwise controlled may cause surface waters of the state [KAR 28-16-28b(eee)] and specifically the Lower Wakarusa River and Baker Wetlands to violate of the provisions of Kansas Water Quality Standards found at KAR 28-16-28b et seq. Baker Wetlands is designated "special aquatic life use water" [KAR 28-16-28d(a)(2)(A)]. The Lower Wakarusa River is designated for expected aquatic life support, primary contact recreation B, domestic water supply, food procurement, groundwater recharge, industrial water supply, irrigation and livestock watering. The Lower Wakarusa has a medium priority fecal coliform bacteria total maximum daily load (TMDL) established January 26, 2000. Baker Wetlands has a low dissolved oxygen TMDL established January 26, 2000.

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

1. The Kansas Department of Transportation shall avoid or control the discharge of suspended solids from the project 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 the Lower Wakarusa River and Baker Wetlands to be lower than 5.0 mg/L [KAR 28-16-28e(c)(2)(A)].
 - f. Addition of suspended solids to the Lower Wakarusa River or Baker Wetlands in amounts and concentrations that will interfere with the behavior, reproduction, physical habitat, or other factors related to the survival and propagation of aquatic or semiaquatic life or terrestrial wildlife [KAR 28-16-28e(c)(2)(D)].
2. The Kansas Department of Transportation shall avoid or control the discharge of toxic substances, oil and grease and other fluids from the project so that the project does not cause:

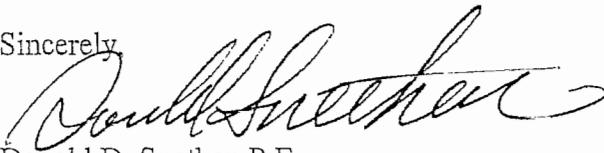
- a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].
 - b. Any surface waters of the state within and below the project area to have toxic substances, radioactive isotopes, and 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 semiaquatic 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 semiaquatic 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 the Lower Wakarusa River or Baker Wetlands to be lower than 5.0 mg/L [KAR 28-16-28e(c)(2)(A)].
 - f. The pH of the Lower Wakarusa River or Baker Wetlands to be below 6.5 or above 8.5 [KAR 28-16-28e(c)(2)(C)].
 - g. Concentrations of toxic substances listed in Tables 1a, 1b, and 1c [KAR 28-16-28e(d)] in the Lower Wakarusa River or Baker Wetlands to exceed the criteria set out in these tables [KAR 28-16-28e(c)(2)(F) & KAR 28-16-28e(c)(4)(A)].
 - h. In the Lower Wakarusa River or Baker Wetlands, harmful concentrations of any substance alone or in combination with other substances causing toxic, carcinogenic, teratogenic, or mutagenic effects in humans [KAR 28-16-28e(c)(3)(C)].
 - i. Concentrations of substances that bioaccumulate in the tissues of edible organisms to exceed a cancer risk level of (10^{-6}) in persons consuming organisms taken from the Lower Wakarusa River or Baker Wetlands [KAR 28-16-28e(c)(4)(B)].
3. The Kansas Department of Transportation shall avoid or control the discharge of plant nutrients from the project so that the project does not cause:
- a. Accelerated succession or replacement of aquatic biota or the production of undesirable quantities or kinds of aquatic life in the Lower Wakarusa River or Baker Wetlands [KAR 28-16-28e(c)(2)(B)].

- b. Cause the development of objectionable concentrations of algae or algal by-products or nuisance growths of submersed, floating, emergent aquatic vegetation in the Lower Wakarusa River or Baker Wetlands [KAR 28-16-28e(c)(7)(A)].
4. The Kansas Department of Transportation shall avoid or control the discharge of *Escherichia-coli* bacteria from the project so that the project does not cause the *Escherichia-coli* bacteria concentration of the Lower Wakarusa River exceed a geometric mean of 262 organisms per 100 milliliters during the period of April through October 31 and geometric mean of 2,358 organisms per 100 milliliters during the period of November 1 through March 31. [KAR 28-16-28e(e)(c)(7)(D)].
5. The Kansas Department of Transportation shall prepare a written project water quality protection plan describing the actions that will be taken to comply with Certification Conditions 1, 2, 3 and 4. This plan shall be submitted to the Kansas Department of Health and Environment - Bureau of Water, Watershed Management Section, Curtis State Office Building, 1000 SW Jackson Street, Suite 420, Topeka, Kansas 66612. This condition may be waived depending on the content of the "stormwater pollution prevention plan" prepared pursuant to condition 6 below. The project water quality protection plan shall specifically address the following items:
 - a. **Riparian Areas** Minimize removal or disturbance of riparian areas (areas adjacent to water bodies). KDHE encourages the use of vegetation 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. **Stormwater Conveyance** Runoff from the roadway shall not be discharged to Baker Wetlands but discharged to the Lower Wakarusa River. Stormwater conveyance structures and measures shall be designed to serve as water quality protection measures for the Lower Wakarusa River. Mechanisms such as grass-lined channels, velocity reducers, detention and retention structures and filtration/infiltration areas, including stabilized outfall structures shall be considered.
6. This project is subject to the National Pollutant Discharge Elimination System (NPDES) stormwater permit requirements of 40 C.F.R. 122.26. This certification does not relieve the obligation of the Kansas Department of Transportation to secure such permit. Information on construction site NPDES permits is available from Bureau of Water - Industrial Programs website: www.kdhe.ks.us/stormwater or Mr. Alan Brooks at 785/296-5549.
7. This certification does not relieve the Kansas Department of Transportation of the responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking this certification any time an inappropriate discharge may occur. As provided by KSA 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.
8. If the applicant believes the conditions of this certification will result in impairment of important social and economic development, the applicant is advised of the variance provisions of KAR 28-16-28b(jjj) and KAR 28-16-28f(e).

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

Sincerely,



Donald D. Snethen P.E.
Chief, Watershed Management Section
Bureau of Water

pc: Julie Coleman, KDHE DEA Northeast District Office

**MEMORANDUM OF AGREEMENT
AMONG THE
U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT; KANSAS STATE
HISTORIC PRESERVATION OFFICER; KANSAS DEPARTMENT OF
TRANSPORTATION; BAKER UNIVERSITY; DOUGLAS COUNTY, KANSAS; AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
KANSAS HIGHWAY 10 BYPASS (SOUTH LAWRENCE TRAFFICWAY)
IN
DOUGLAS COUNTY, KANSAS**

WHEREAS, the Kansas Department of Transportation (KDOT) proposes to construct a 4-lane Kansas Highway 10 bypass and a 4-lane local road (the undertaking) identified respectively as 32nd Street Alignment B and relocated 31st Street in the city of Lawrence, Douglas County, Kansas; and

WHEREAS, the U.S. Army Corps of Engineers, Kansas City District (KCD) has assumed responsibility as the lead Federal agency for processing KDOT's proposal in accordance with the provisions of the National Environmental Policy Act and is responsible for ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the National Park Service's Keeper of the National Register of Historic Places has determined that the Haskell Agricultural Farm Property (HAFP) is a historic site eligible for listing on the National Register of Historic Places (NRHP) (See Attachment A); and

WHEREAS, KCD has determined that issuance of a permit under authority of Section 404 of the Clean Water Act (Section 404) to authorize the undertaking will have an adverse effect on the HAFP, and has consulted with the signatories to this Memorandum of Agreement (MOA) which include the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the Council's implementing regulations for Section 106 of the NHPA (36 CFR Part 800); and

WHEREAS, KCD has consulted with KDOT, Douglas County, and Baker University regarding the effects of the undertaking on the HAFP and has included them as invited signatories to this MOA; and

WHEREAS, KCD has consulted with Haskell Indian Nations University (HINU) and the U.S. Bureau of Indian Affairs (BIA) regarding the effects of the undertaking on the HAFP and has invited them to become concurring parties to this MOA, and has been informed by both entities that they do not wish to be concurring parties; and

WHEREAS, KCD has consulted with all Federally-recognized Indian tribes regarding the proposed undertaking and has further consulted with all tribes that have indicated that the HAFP may have cultural significance to them; and

WHEREAS, KCD has consulted with various organizations and individuals that expressed an interest in Section 106 issues relating to the undertaking; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), KCD has notified the Council of its adverse effect determination and has provided the Council with required documentation, and the Council has chosen to participate in consultation pursuant to 36 CFR 800.6(a)(1)(iii);

NOW, THEREFORE, KCD, SHPO, Council, KDOT, Douglas County, and Baker University agree that the undertaking shall be implemented in accordance with the following stipulations in order to resolve the adverse effect of the undertaking on the HAFP.

STIPULATIONS

1. The Kansas City District shall condition Section 404 authorization for the undertaking, where appropriate, to ensure that the stipulations of this MOA are implemented.
2. The Kansas Department of Transportation shall relocate the existing section of 31st Street (located on the HINU campus) to an alignment immediately north of the Kansas Highway 10 bypass (32nd Street Alignment B) on Baker University property in Baker Wetlands (See Attachment A). The Kansas Department of Transportation shall remove the abandoned section of 31st Street, including bedding material, located on the HINU campus and shall grade the vacated right-of-way to approximate the contours/elevations of existing adjacent ground. The Kansas Department of Transportation shall confer with HINU/BIA representatives to develop and implement a vegetative planting scheme for the vacated 31st Street right-of-way.
3. Douglas County, Kansas shall vacate the section of 31st Street located on the HINU campus and shall relinquish its easement for the right-of-way to the United States of America.
4. The Kansas Department of Transportation shall relocate Haskell Avenue approximately 1,000 feet east of its present location and Louisiana Street approximately 2,500 feet west of its present location for those sections of the roads located adjacent to that portion of the HAFP located in Baker Wetlands (See Attachment A). The Kansas Department of Transportation shall remove the abandoned sections of Haskell Avenue and Louisiana Street and grade the right-of-ways to approximate the contours/elevations of the existing adjacent ground. The Kansas Department of Transportation shall ensure that approximately 304 acres of mitigation wetlands will be developed in the areas created between the relocated and vacated roads (See Attachment A). The Kansas Department of Transportation shall convey a conservation easement in accordance with K.S.A. 58-3810, et. Seq., on the approximately 304 acre wetland mitigation area, to limit its future use to that consistent with this agreement, prior to a transfer of the property to a second party.
5. The Kansas Department of Transportation shall ensure that the width of the roadway corridor within the HAFP is the minimum necessary to accommodate the eventual construction of a four-lane Kansas Highway 10 bypass and relocation of 31st Street with four lanes. The Kansas

Department of Transportation shall ensure that the roadways, medians between opposing lanes, and the roadway shoulders are the minimum width necessary to satisfy highway transportation safety standards in order to minimize the adverse impact of the roadway corridor on the HAFP.

6. The Kansas Department of Transportation shall construct a 12-foot-high wall (as measured from the roadway surface) along the north side of the highway bypass and a 6-foot-high wall located on a 6-foot-high berm (the top of the wall will be located 12 feet above the roadway surface) on the south side of the bypass along that portion of the bypass located within the HAFP to minimize traffic noise and visual disturbance in areas outside the bypass corridor (See Attachment B). The walls shall be painted/tinted to blend with the background and shall be screened with vegetative plantings to obscure their presence from areas outside the roadway corridor.

7. The Kansas Department of Transportation shall develop and implement a plan to minimize construction-related impacts to the HAFP. The plan must be approved by KCD and shall be incorporated into the special conditions of KCD's Section 404 authorization for the undertaking. All construction equipment shall be either low ground pressure types or be required to operate on log mats. No grubbing will be allowed within the HAFP (cutting woody vegetation will be allowed). No staging areas or lay down yards will be located in the HAFP. Construction of the roadway embankment within the HAFP will be limited to 300-meter-long sections at any one time.

8. The Kansas Department of Transportation shall ensure that the final roadway design will minimize adverse impacts to the HAFP, to the maximum extent practicable. The Kansas Department of Transportation shall also ensure that the final roadway design will avoid the historic east-west dike and drainage canal located immediately south of the existing 31st Street between Haskell Avenue and Louisiana Street, all historic water control gate structures, and all historic bridges within the HAFP.

9. The Kansas Department of Transportation shall document the HAFP features impacted by the undertaking by preparing a permanent record of the features through use of photographs, detailed drawings, and narrative, as appropriate. The Kansas Department of Transportation shall consult with and take direction from the SHPO to ensure preparation of a complete record.

10. If the Kansas Department of Transportation determines that lighting is required for traveler safety within that portion of the undertaking located within the HAFP, it shall limit such lighting to the minimum necessary to ensure traveler safety and shall install such lighting in a manner that will minimize impacts to areas outside the roadway corridor.

11. The Kansas Department of Transportation shall monitor construction activities and shall inform all contractors to be alert to the potential for the discovery of cultural resources. If artifacts or previously unidentified archaeological sites are encountered, or if the undertaking will result in unanticipated effects to an existing historic property, KDOT shall stop construction activities that have a potential to impact such properties and shall immediately notify KCD and the SHPO that such action has taken place. In the event of such notification, KCD will consult

with the SHPO and other interested parties, as necessary, to determine an appropriate course of action.

12. If human remains are discovered, all work within the area of discovery shall stop immediately, the area shall be protected from further disturbance, and local law enforcement and the State Archaeologist shall be contacted immediately, in accordance with the Kansas Unmarked Burial Sites Preservation Act (K.S.A. 75-2741 through 75-2754). In the event of a discovery of human remains KDOT shall comply with all provisions of the Unmarked Burial Sites Preservation Act.

13. The Kansas Department of Transportation shall invite all Kansas reservation tribes to provide a representative to monitor all project-related excavation activities within the HAFP for the inadvertent discovery of unmarked burials. The Kansas Department of Transportation shall also accommodate any Federally-recognized tribe that wishes to monitor excavation activities within the HAFP. The Kansas Department of Transportation shall have the right to limit the number of tribal monitors on the construction site to a total of five, at any given time, and to impose such additional safety restrictions on monitors as it deems appropriate. Nothing in this stipulation shall require construction activities to be delayed due to the inability of monitors to be present on site during excavation activities.

14. This MOA will be null and void if Section 404 authorization is not granted for the undertaking.

15. This MOA will be terminated after construction of the undertaking has been completed for that portion of the project located in the HAFP, and when all mitigation stipulated in this agreement and any related mitigation stipulated in a Section 404 permit issued for the undertaking have been completed.

16. Should any signatory or invited signatory to this MOA object, in writing, to the manner in which the terms of this MOA are being implemented, KCD shall consult with the objecting party to resolve the issue. If KCD determines, within 30 days of the objection, that such objection cannot be resolved, KCD shall:

A. Forward all documentation relevant to the dispute to the Council. Within 30 days of receipt of adequate documentation, the Council shall review and advise KCD on the resolution of the objection. Any comments provided by the Council and all comments from the signatories and invited signatories to the MOA will be taken into account by KCD in reaching a final decision regarding the dispute.

B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, KCD may render a decision regarding the dispute. In reaching its decision, KCD shall take into account all comments from the signatories and invited signatories to the MOA.

C. The Kansas City District's responsibility to carry out all other actions subject to the

terms of this MOA, that are not the subject of the dispute, will remain unchanged. The Kansas City District shall notify all signatories and invited signatories, in writing, of its decision relating to that portion of the agreement in dispute prior to implementation of its decision. The Kansas City District's decision will be final.

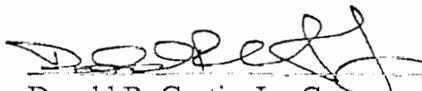
17. If any signatory or invited signatory to this MOA determines that the terms of this agreement cannot be or are not being carried out, that party shall immediately consult with the other signatories and invited signatories to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories and invited signatories is filed with the Council. If the signatories and invited signatories cannot agree to appropriate terms to amend the MOA, any signatory or invited signatory may terminate the agreement in accordance with Stipulation 18, below.

18. If this MOA is not amended following the consultation procedures set out in Stipulation 17, above, it may be terminated by any signatory or invited signatory. If this agreement is terminated KCD shall either execute a memorandum of agreement with signatories and invited signatories under 36 CFR 800.6(c)(1) or request comments from the Council under 36 CFR 800.7(a) and proceed accordingly.

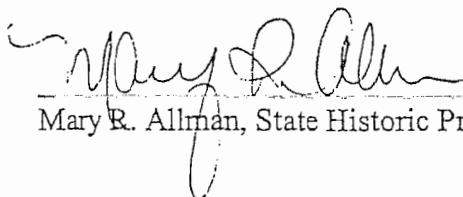
19. Execution of this MOA by KCD, SHPO, Council, KDOT, Douglas County, and Baker University, and the submission of documentation and filing of this MOA with the Council pursuant to 36 CFR 800.6(b)(1)(iv) prior to KCD's issuance of Section 404 authorization for the undertaking, and implementation of its terms evidence that KCD has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES:

U.S. Army, Corps of Engineers, Kansas City District

 Date 5-1-03
Donald R. Curtis, Jr., Commander

Kansas State Historical Society

 Date 05-01-03
Mary R. Allman, State Historic Preservation Officer

Advisory Council on Historic Preservation

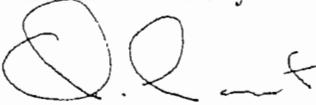
 Date 6/20/03
John M. Fowler, Executive Director

INVITED SIGNATORIES:

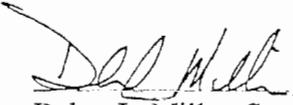
Douglas County, Kansas

 Date 05-01-03
Bob Johnson, County Commission Chairman

Baker University

 Date 5-1-03
Dr. Daniel M. Lambert, President

Kansas Department of Transportation

 Date 5-12-03
Debra L. Miller, Secretary of Transportation

Special Procedures
for
Construction Activities Within the Haskell Agricultural Farm Property

1. Construction Sequencing

Special roadway embankment construction procedures are required through the National Register eligible Haskell Agricultural Farm Property (HAFP) located in Baker Wetlands between Louisiana Street and Haskell Avenue. The embankment will be constructed in sections with a maximum length of 300 m. No more than two sections of embankment will be under construction at any given time. Appropriate erosion control measures will be in place prior to initiation of construction activities to minimize impacts to adjacent wetlands. No staging, lay-down yards, or storage areas will be allowed in the HAFP.

A temporary continuous slope barrier will be put in place along the toe of each section of roadway embankment prior to initiating embankment construction within that section. The barrier will consist of a silt fence for locations other than standing water and a geotextile barrier in standing water areas. The barriers will remain in place throughout the entire contract period and breaks or breaches in the protection will be repaired in a timely manner to ensure a properly functioning silt control system. All erosion control measures will conform to standards developed by the Kansas Department of Health and Environment (KDHE) and the conditions of the NPDES permit issued by KDHE.

All equipment used for construction operations within the roadway right-of-way prior to the placement of embankment bedding materials will be low ground pressure equipment (exerts less than 30 kPa) or standard equipment operating on timber mats to minimize disturbance (rutting) of the natural ground surface. Such disturbances will be immediately reported to the area engineer. No grubbing of vegetation will be allowed at any location within the HAFP.

Access to the roadway embankment will be restricted to Louisiana Street and Haskell Avenue (equipment must move directly from these roads to the roadway right-of-way). No construction activities will be allowed on the existing levee running parallel to and immediately north of the 32nd Street right-of-way.

2. Roadway Embankment Foundation Preparation

All vegetation removed from the roadway right-of-way, other than plants selected for relocation, will be cut off at ground level. Grass and similar herbaceous vegetation will not be cleared from the right-of-way. Disturbance to the subgrade will be minimal and all debris generated by construction activities will be disposed off site.

3. Geosynthetic Foundation Reinforcement

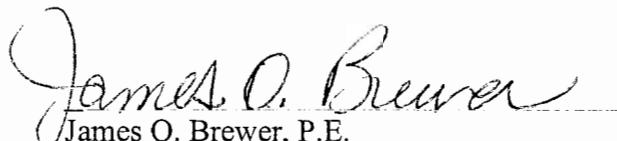
Geosynthetic foundation reinforcement material will be placed on the roadway embankment footprint over the existing ground surface to provide a reinforced foundation over soft soils. No construction traffic will be allowed directly on the geosynthetic material.

4. Granular Embankment

The embankment immediately above the geosynthetic foundation reinforcement material will be constructed of granular materials with a minimum thickness of 450 mm and will cover the limits of the geosynthetic foundation reinforcement material.

5. General Embankment Discussion

Roadway embankment material placed over the granular bedding material will be soils approved by the area engineer. No material will be borrowed from any area within the HAFP. Construction equipment used to place and compact the lower 600 mm of the roadway embankment will be low ground pressure rated.


James O. Brewer, P.E.
Engineering Manager – State Road Office
Bureau of Design

1-30-04
Date

COMPLIANCE CERTIFICATION

Special condition "a" of this permit document requires that you submit a signed certification regarding the completed work and any required mitigation. This certification page satisfies this condition if it is provided to the Kansas City District at the address shown at the bottom of this page upon completion of the project.

APPLICATION NUMBER: 200101697

APPLICANT: Mr. James Brewer, P.E., Engineering Manager
Kansas Department of Transportation
Bureau of Design, Road Section
915 SW Harrison, 9th Floor
Topeka, Kansas 66612-1568

PROJECT LOCATION: In wetlands, drainages and other waters of the U.S. in Sections 7, 8, 10, 11, 15, 16, 17 and 18, in Township 13 south, Range 20 east; and in Sections 12, 13 and 24, in Township 13 south, Range 19 east, in and near the city of Lawrence, in Douglas County, Kansas.

- a. I certify that the authorized work was completed in accordance with the Corps authorization, including any general or specific conditions.
- b. I certify that any required mitigation was completed in accordance with the permit conditions.
- c. Your signature below, as permittee, indicates that you have completed the authorized project as certified in paragraphs (a) and (b) above.

(PERMITTEE)

(DATE)

Return this certification to:

U.S. Army Corps of Engineers
ATTN: CENWK-OD-R (200101697)
700 Federal Building
Kansas City, MO 64106-2896