

DEPARTMENT OF THE ARMY PERMIT

Permittee : City of Lawrence, Kansas  
606 East 6<sup>th</sup> Street  
Lawrence, Kansas 66044

Permit No.: NWK-2011-124

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: Extension of 31<sup>st</sup> Street east of Haskell Avenue to O'Connell Road. The project will involve the placement of fill materials within wetlands and tributaries adjacent to the Wakarusa River. The roadway will be constructed on top of an embankment constructed from excavated local soils and measuring approximately 290 feet wide at the base and approximately 50 feet wide at the roadway crest. Fill material for the elevated roadway will consist of grading mostly on-site soils and consist of approximately 82,000 cubic yards of material. An estimated 37,500 cubic yards of additional fill materials will also be imported to the project site for roadway fill and grading purposes. A total of 476 linear feet of stream channel impact and 3.46 acres of forested/scrub-shrub wetland impact for the construction of the roadway along the proposed alignment is authorized by this permit.

Permit Drawings: Location map, plan view, cross-section : Sheets 5 of 5, dated 17 June 2013

Project Location: In Sections 8 and 17, Township 13 south, Range 20 east, Douglas County, Kansas.

USGS QUAD: Lawrence, East (Latitude: 38.9267 / Longitude: -95.2125)

Mitigation Locations: Wetland : Latitude: 38.92030/ Longitude : -95.21770  
Stream: Latitude: 38.91320/ Longitude : -95.21720

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2017. 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 and 5, 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:

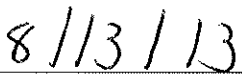
- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching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

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

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

\_\_\_\_\_  
(DISTRICT ENGINEER)  
ANTHONY J. HOFMANN, COLONEL  
BY: David R. Hibbs, Regulatory Program Manager

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

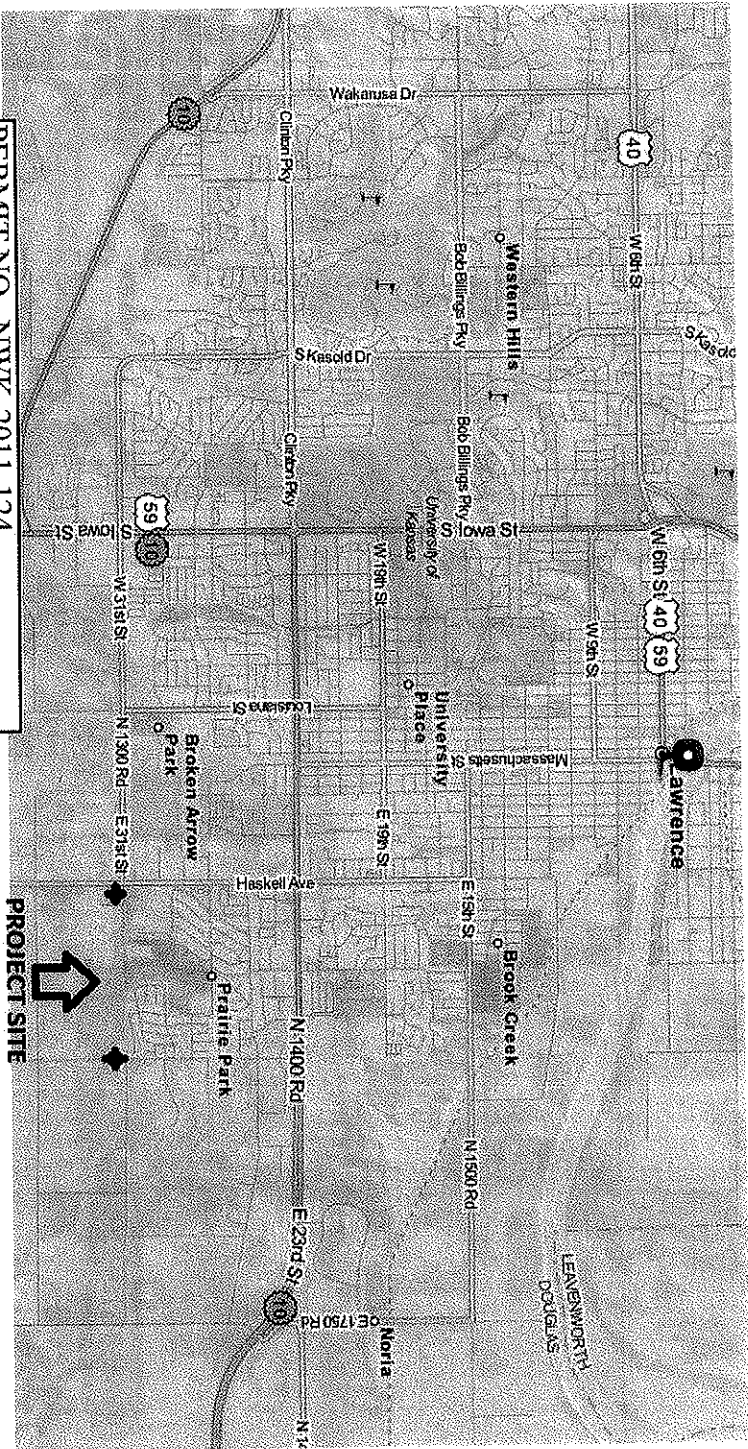
### **Special Conditions:**

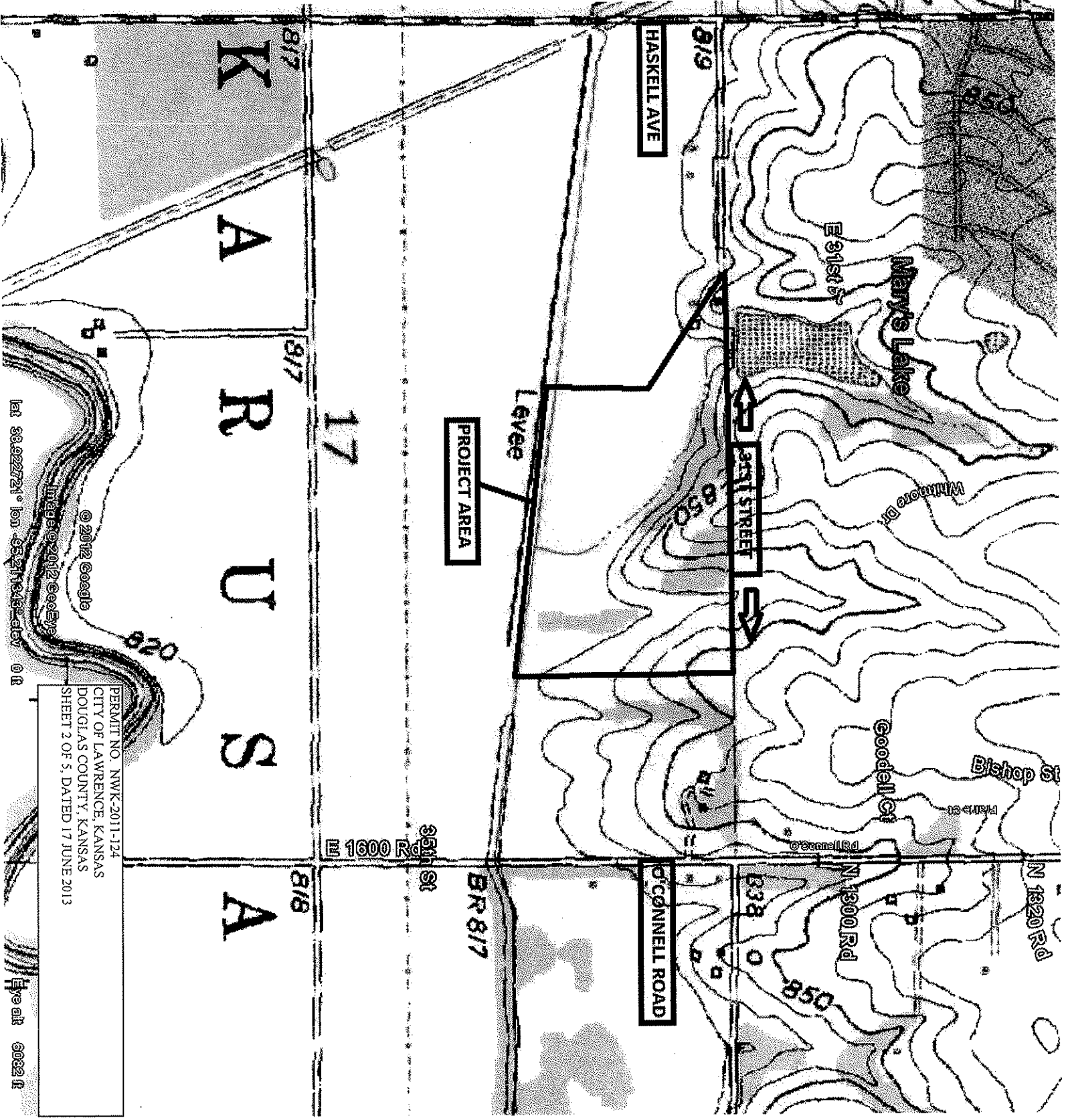
- (a) You must sign and return a "Compliance Certification" after you complete the authorized work and required mitigation. Your signature will certify that you completed the work in accordance with this permit, including general and specific conditions, and that the required mitigation was completed in accordance with the 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 carry out the work as described in the "31<sup>st</sup> Street Improvements" mitigation plan developed by Vireo Consulting and dated May 2013.
- (d) You must place a deed restriction in the format approved by the Corps of Engineers upon the approximate 4-acre parcel of land identified in the mitigation plan as "Tract 9A" and upon the stream mitigation parcel identified as Tract "10C". This deed restriction must be placed upon the land parcels prior to transfer or sale of the properties to another entity.
- (e) Mitigation and Preservation Site Protection Measures. You must take the actions required under special conditions "c" and "d" of this permit. Your responsibility to complete the required compensatory mitigation as set forth will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.

(l) 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.

(m) You must use only graded rock, quarry-run rock and/or clean concrete rubble for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. If you use concrete rubble, you must break all large slabs to conform to the well graded requirement, and remove all exposed reinforcement rods, trash, asphalt, and other extraneous materials before you place the rubble in the water of the United States

PERMIT NO. NWK-2011-124  
CITY OF LAWRENCE, KANSAS  
DOUGLAS COUNTY, KANSAS  
SHEET 1 OF 5, DATED 17 JUNE 2013

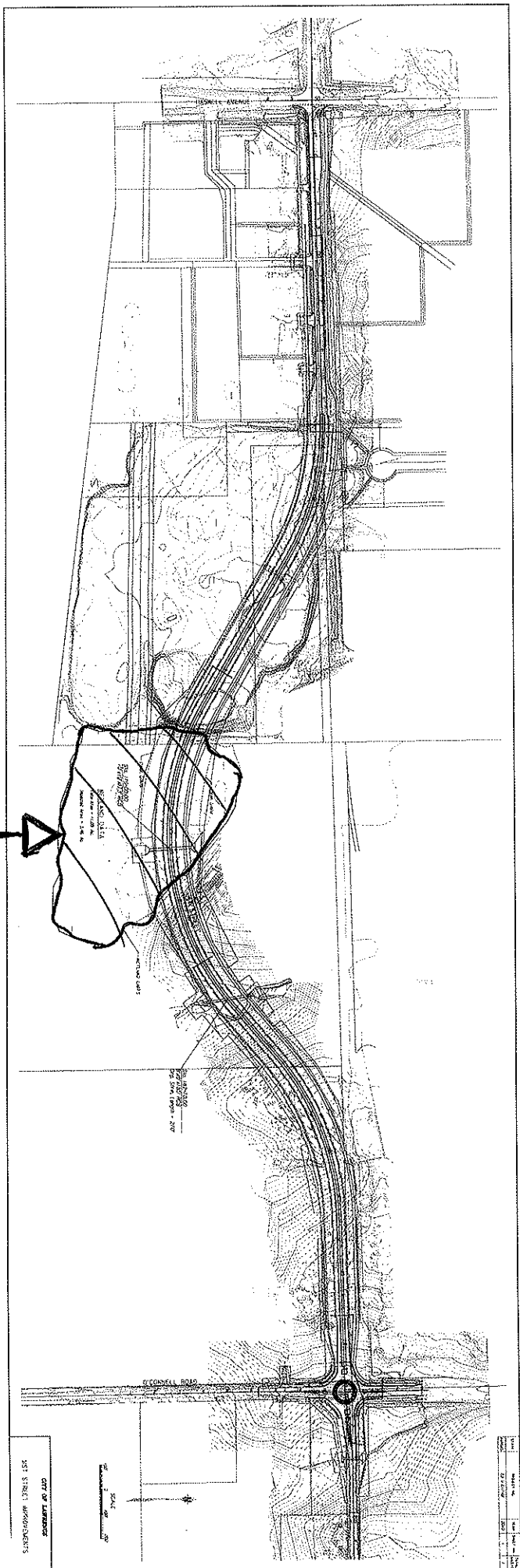




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 Images © 2012 GeoEye  
 lat 38.922721° lon -95.211438° elev 0 ft

PERMIT NO. NWK-2011-124  
 CITY OF LAWRENCE, KANSAS  
 DOUGLAS COUNTY, KANSAS  
 SHEET 2 OF 5, DATED 17 JUNE 2013

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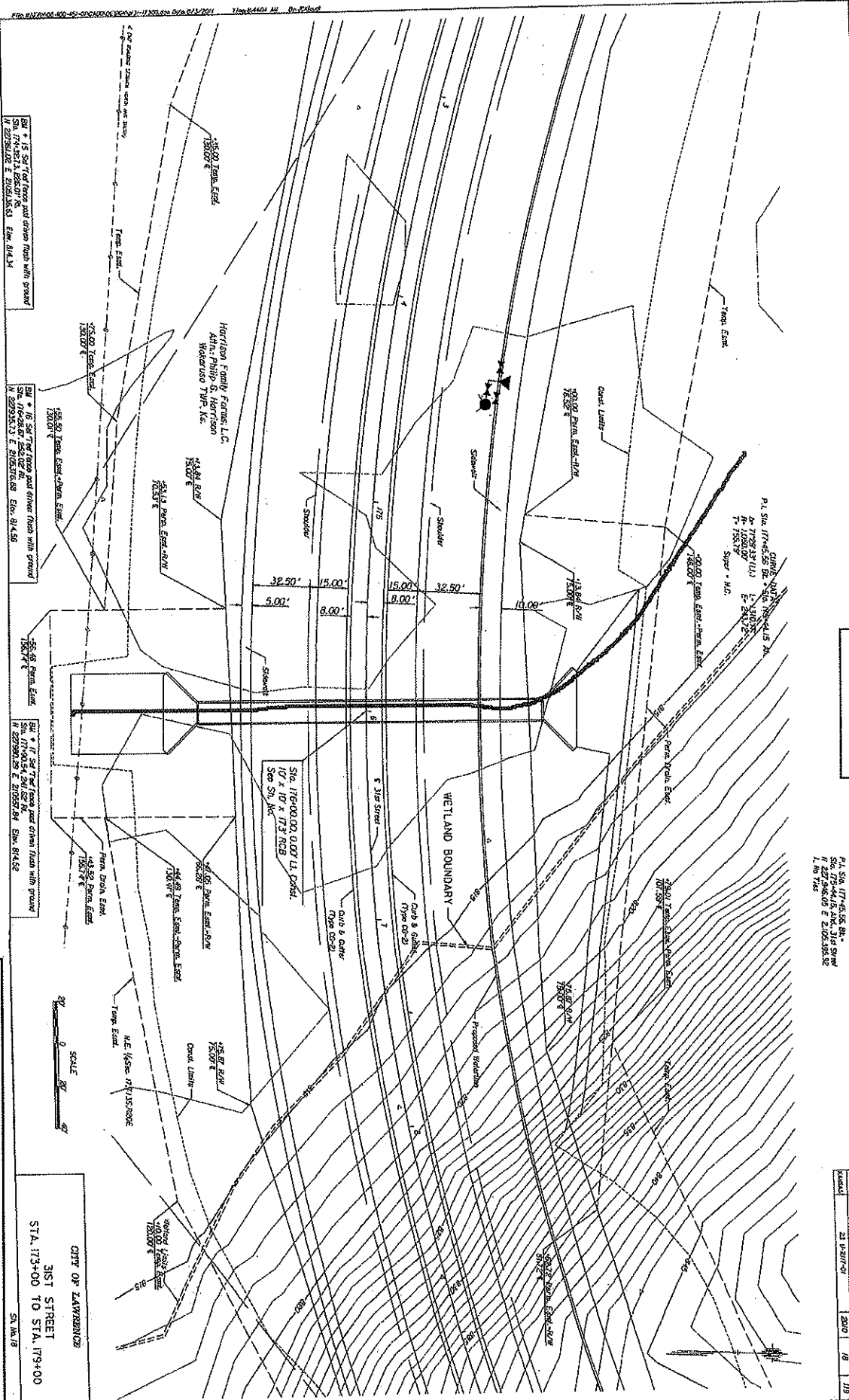
EXISTING  
WETLAND EXTENT  
11 ACRES

PERMIT NO. NWK-2011-124  
CITY OF LAWRENCE, KANSAS  
DOUGLAS COUNTY, KANSAS  
SHEET 3 OF 5, DATED 17 JUNE 2013

CITY OF LAWRENCE  
387 STREET IMPROVEMENTS

DATE	BY	SCALE
07/27/2011	...	AS SHOWN





West culvert

P.L. 176-00.00, 0.00' LI. CORN.  
 See Sit. Plan

DATE	PROJECT NO.	TOTAL SHEET NO.	TOTAL SHEETS
11/17/12	211-173-00	20/20	1/1

CITY OF LAWRENCE  
 3811 STREET  
 STA. 173+00 TO STA. 173+00  
 S.W. 1/4, 16

SCALE  
 1" = 20'

PERMIT NO. NWK-2011-124  
 CITY OF LAWRENCE, KANSAS  
 DOUGLAS COUNTY, KANSAS  
 SHEET 4 OF 5, DATED 17 JUNE 2013



Bureau of Water  
Watershed Management Section  
1000 SW Jackson, Suite 420  
Topeka, KS 66612-1367



Phone: 785-296-4195  
Fax: 785-296-5509  
nps@ks.gov  
www.kdheks.gov/water

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

June 14, 2013

Mr. Brian Donahue  
Regulatory Project Manager  
U.S. Army Corps of Engineers  
Kansas City District, Regulatory Branch,  
601 East 12th Street, Room 402,  
Kansas City, Missouri 64106.

### Section 401 Water Quality Certification

RE: PN 2011-0124. Applicant: City of Lawrence, Kansas, 606 East 6th Street, Lawrence, Kansas 66044

Dear Mr. Donahue:

On May 31, 2013, the Kansas Department of Health and Environment (KDHE) received, from the U.S. Army Corps of Engineers, Kansas City District, a request for Section 401 Water Quality Certification for the proposed Section 404 project as described below.

**Description from the USACE/KDHE Joint Public Notice dated January 14, 2013: "PROPOSED:**

The applicant proposes **ACTIVITY** (As shown on the attached drawings): Proposed: Construction of approximately 1 mile of new roadway, including sidewalks, box culvert drainage structures and a water distribution line. The project will involve the placement of fill materials within wetlands and tributaries adjacent to the Wakarusa River. The roadway will be constructed on top of an embankment constructed from excavated local soils and measuring approximately 290 feet wide at the base and approximately 50 feet wide at the roadway crest. Fill material for the elevated roadway will consist of grading mostly on-site soils and consist of approximately 82,000 cubic yards of material. An estimated 37,500 cubic yards of additional fill materials will also be imported to the project site for roadway fill and grading purposes. The proposed 31st Street roadway would consist of a divided 2-lane roadway with storm water curb and gutter on the interior sides of the roadway and a 16-foot wide grassed median. The exterior shoulder of both roadways will consist of a 46-foot graded and vegetated shoulder with sidewalks constructed along both sides of the roadway. Two new box culverts will be installed through the placed fill to convey storm water under the new road embankment. The western-most culvert is designed as a 10' x 10' x 173' long, reinforced concrete box culvert. A concrete apron will extend an additional 16.5 feet at the inlet and outlet of this culvert for a total structure length of 206 feet. Rock will be placed at the downstream end of the culvert for erosion protection, impacting an additional 30 feet of wetland. Tributary flows for this drainage area were previously redirected to a ditch located along the west side of the existing wetland. The proposed work will return tributary flows closer to the historic channel. The eastern-most storm water culvert is designed as an 8' x 5' x 185' long, reinforced concrete box culvert. Due to existing stream channel alignment, the amount of stream impact for this culvert installation is estimated at 270 linear feet of tributary channel. An extension of 31st Street east of Haskell Avenue to O'Connell Road, this project is located in Sections 8 and 17, Township 13 south, Range 20 east, Douglas County, Kansas. [USGS QUAD: Lawrence, East] [Latitude: 38.9267 - Longitude: -95.2125].

**WETLANDS/AQUATIC HABITAT:** An estimated 3.46 acres of forested/scrub-shrub wetland would be impacted by the construction of the roadway along the proposed alignment.

**APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY**

**MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES:** The project avoids impacts to 7.5 acres of existing wetlands located adjacent to the roadway alignment corridor. Stream impacts of the project have been minimized by utilizing the shortest road culvert length necessary and leaving the remaining stream channels on the project site in an open and free-flowing condition. Impacts of the project to wetlands and streams will be mitigated as required. A USACE approved Mitigation Plan has been received by KDHE.

The Kansas Department of Health and Environment has reviewed the project and information provided by the USACE and has 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 riparian vegetation along the stream bank.

Discharges from these sources 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 impacted tributaries to the Wakarusa River are not described in the Kansas Surface Water Register [KAR 28-16-28(g)] as having designated uses. However, the nature of the project and the area impacted lends itself to implementing water quality protection measures included in this certification along with any other observed needs during the project to control nonpoint source pollution.

The KDHE appreciates the effort of the mitigation plan to enhance the planned mitigation areas in close proximity to the South Lawrence Traffic mitigation efforts and inclusion of the information pertaining to the objectives of the Lower Kansas Watershed Restoration and Protection Strategy (WRAPS) 9 Element Plan. Once completed, this mitigation will provide a very valuable ecological asset to the area.

The KDHE has reviewed the certification request materials and associated documents, in response to the joint public notice of the project and find there is a potential for significant water quality impacts. Therefore, KDHE issues this Section 401 Water Quality Certification subject to the conditions enumerated throughout this letter.

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

**KDHE CONDITIONS**

1. A copy of this water quality certification shall be posted on site during construction.
2. City of Lawrence shall implement good housekeeping practices to assure conditions do not cause:
  - a. Surface waters of the state within and below the project area to offal, grass clippings, discarded building or construction materials, car bodies, tires, wire and other unwanted or discarded materials[KAR 28-16-28e(b)(3)].

3. City of Lawrence shall avoid or control the discharge of suspended solids from construction activities and removal of riparian vegetation so that they may not cause:
  - a. 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. Surface waters of the state within or below the project to have 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)].
4. Construction activities disturbing one 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. City of Lawrence shall contact Mr. Larry Hook at 785/296-5549, [lhook@kdheks.gov](mailto:lhook@kdheks.gov); Bureau of Water - Industrial Programs (BOW IP) for instructions or visit KDHE's website: [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater). This permit requires a Stormwater Pollution Prevention Plan (SWP3) be prepared for implementation and be available for submittal to KDHE BOW IP.
5. City of Lawrence 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)].
  - 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)].
  - 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)].
7. City of Lawrence shall prepare a written project water quality protection plan describing the actions that will be taken to comply with Certification Conditions 2, 3, 4, 5, and 6. This condition may be waived depending on the content of the "stormwater pollution prevention plan" prepared pursuant to condition 3d. It is suggested that the stormwater pollution prevention plan's description of BMPs, include a. through f. of the following.

- a. **Erosion Control:** Measures to control erosion and minimize silt entering the stream are required.
  - 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. Good house-keeping practices described above should also be incorporated into operations and management of wetlands and other structures once constructed to the extent practicable.
  - 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 (1-800424-8802). *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. This should include reportable quantity limits (see [www.kansas.gov/kdem](http://www.kansas.gov/kdem)).
  - e. **Floating Debris:** City of Lawrence shall take appropriate measures to capture any floating debris released to surface waters as a result of this project.
8. This project area is included in the Lower Kansas Watershed Restoration and Protection Strategy (WRAPS) 9 Element Plan. This plan has been developed through cooperative efforts of KAWS (Kansas Alliance of Wetland and Streams), KDHE Watershed Management Section-Bureau of Water (providing EPA Section 319 funds) local stakeholders, (landowners, county entities, etc.), as described in the project mitigation plan's attachment. The applicant or mitigation consultant shall inform the Kansas Alliance for Wetland and Streams, Mr. John Bond, (785-560-4846 or [jabond819@yahoo.com](mailto:jabond819@yahoo.com)) of the proposed project. The KDHE strongly encourages a presentation be made the Lower Kansas WRAPS stakeholder leadership team.
  9. This certification does not relieve City of Lawrence 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.

Mr. Donahue (PN2011-0124)

June 14, 2013

Page 5 of 5

10. If City of Lawrence believes the conditions of this certification will result in impairment of important social and economic development, City of Lawrence 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 or by email at: [ssatterthwaite@kdheks.gov](mailto:ssatterthwaite@kdheks.gov).

Sincerely,



Scott L. Satterthwaite, M.S.

Non-point Source Pollution Control Specialist

Bureau of Water-Watershed Management Section

EC: KDHE- Hook, Rowlands, Stiles, Reed  
KDA-DWR, Chad Voigt  
KAWS- John Bond