

Document 2009 1533

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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

CHEK

**DEPARTMENT OF THE ARMY CORPS OF ENGINEERS PERMIT  
Recorders Cover Sheet**

**Preparer Information:**

Michael Hayes  
Department of the Army  
Rock Island District, Corps of Engineers  
Clock Tower Building, PO Box 2004  
Rock Island, IL 61204-2004  
309-794-5379

**Taxpayer Information:**

KC Real Estate, L.C.  
4949 Westown Parkway, Suite 200  
West Des Moines, IA 50266  
515-222-5229

✓ **Return to:**

Eva Moritz  
Terracon  
600 SW 7<sup>th</sup> Street, Suite M  
Des Moines, IA 50309  
515-244-3184

**Grantor:**

Department of the Army  
Rock Island District, Corps of Engineers

**Grantee:**

KC Real Estate, L.C.

**Legal Description:**

A PARCEL OF LAND IN THE NORTHWEST 1/4 OF SECTION 29, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 76 NORTH, RANGE 27 WEST OF THE 5th P.M., MADISON COUNTY, IOWA.

## **DEED RESTRICTION/COVENANT**

WHEREAS, KC Real Estate, hereinafter called the Grantor, is the owner in fee simple of certain real property, hereinafter called "Restricted Property", located at the Pearson Farm, which property is legally described as follows and is depicted on Exhibit A:

**A PARCEL OF LAND IN THE NORTHWEST 1/4 OF SECTION 29, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 76 NORTH, RANGE 27 WEST OF THE 5th P.M., MADISON COUNTY, IOWA, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AS A POINT OF REFERENCE AT THE NORTHWEST CORNER OF SAID SECTION 29, THENCE S89°51'12"E, 649.25 FEET ALONG THE NORTH LINE OF SAID SECTION 29 TO THE POINT OF BEGINNING; THENCE S89°51'12"E, 192.81 FEET ALONG THE NORTH LINE OF SAID SECTION 29 TO A POINT; THENCE S48°11'41"E, 122.07 FEET TO A POINT; THENCE S52°37'26"W, 1203.91 FEET TO A POINT; THENCE S15°09'07"W, 667.31 FEET TO A POINT; THENCE S35°59'48"W, 429.66 FEET TO A POINT; THENCE N87°48'01"W, 201.14 FEET TO A POINT; THENCE S26°24'17"W, 1003.65 FEET TO A POINT; THENCE S90°00'00"W, 201.67 FEET TO A POINT; THENCE N00°09'21"W, 194.98 FEET TO A POINT; THENCE N90°00'00"E, 76.34 FEET TO A POINT; THENCE N26°40'21"E, 453.14 FEET TO A POINT; THENCE N08°36'44"E, 287.68 FEET TO A POINT; THENCE N48°25'49"E, 698.16 FEET TO A POINT; THENCE N15°44'20"E, 751.17 FEET TO A POINT; THENCE N55°14'03"E, 1096.13 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 20.5045 ACRES MORE OR LESS.**

WHEREAS, the Restricted Property contains Waters of the United States under the regulatory jurisdiction of the Rock Island District of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 USC 1344);

WHEREAS, the Grantor is the beneficiary of a Corps of Engineers permit number CEMVR-OD-P-2007-1570 ("Permit") attached hereto as Exhibit B, to place fill in wetlands and relocate a channel in accordance with plans which form a part of the Permit and;

WHEREAS, in consideration for the Grantor to place fill in wetlands and relocate a channel, the Grantor will create a Restricted Property at the Pearson Farm. The Restricted Property will include a riparian buffer along a perennial tributary to Cedar Creek. The Grantor will dedicate the Restricted Property for the perpetual use as a conservancy area in accordance with the terms and conditions of this document, the Permit, or other applicable Iowa law;

WHEREAS, a permit to place fill in wetlands and relocate a channel would not have been granted but for the dedication of the Restricted Property for conservation purposes, and the Grantor specifically acknowledges as fact that said permit is issued in consideration for the execution and recording of this document and compliance with the covenants and deed restrictions herein;

WHEREAS, the Grantor acknowledges that these land use restrictions and other terms of this deed restriction may only be changed, modified, amended or revoked upon express written

approval for the change, modification, amendment or revocation of this deed restriction from the U.S. Army Corps of Engineers that is witnessed, authenticated, and recorded pursuant to the law of the State of Iowa with such amendment, modification, or revocation instrument;

NOW THEREFORE, the Grantor, for and in consideration of the facts recited above enters into the following covenants and deed restrictions on behalf of himself/herself, his/her heirs and assigns:

1. These land use restrictions and other terms of these deed restrictions and covenants may be changed, modified or revoked only upon express written approval of the U.S. Army Corps of Engineers that is witnessed, authenticated, and recorded pursuant to the law of the State of Iowa;

2. The U. S. Army Corps of Engineers will have the right to enforce by proceedings in law or equity the covenants and deed restrictions set out herein and this right shall not be waived by one or more incidents of failure to enforce said right;

3. Employees of the U. S. Army Corps of Engineers will have the right to view the Restricted Property in its natural, scenic, and open condition and the right to enter Restricted Property at all reasonable times for the purpose of inspecting Restricted Property to determine if the Grantor, or his heirs or assigns, is complying with the covenants and deed restrictions herein;

4. Without prior express written consent from the U. S. Army Corps of Engineers there shall be no commercial, industrial, agricultural, residential developments, buildings, or structures, including but not limited to: signs, billboards, other advertising material, or other structures placed on Restricted Property;

5. Grantee will be allowed to construct a paved pedestrian trail within the Restricted Property. The trail width will be a maximum of 8 feet.

6. Grantee will be allowed roadway and/or utility crossings through the Restricted Property. The maximum cumulative length of disturbances for the crossings will be 750 lineal feet measured perpendicular to the Restricted Area

7. Grantee will be allowed to construct wetland mitigation areas within the Restricted Area.

8. With the exception of the items listed above, without prior express written consent from the U. S. Army Corps of Engineers there shall be no removal or destruction of trees or plants, draining, plowing, mining, removal of topsoil, sand, rock, gravel, minerals or other material except as necessary for completion of mitigation as provided pursuant to the U.S. Army Corps of Engineers permit number CEMVR-OD-P-2007-1570 and the associated special conditions;

9. Without prior express written consent from the U. S. Army Corps of Engineers there shall be no grazing or keeping of cattle, sheep, horses or other livestock;

10. The terms and conditions of these deed restrictions and covenants shall bind the Grantor, his heirs and assigns to the extent of their legal and/or equitable interest in Restricted Property, and these deed restrictions and covenants shall run with the land in perpetuity and be binding on the Restricted Property and its owner(s) forever;

11. The terms and conditions of these deed restrictions and covenants shall be both explicitly included in any transfer, conveyance, or encumbrance of Restricted Property or any part thereof, and; any instrument of transfer, conveyance, or encumbrance affecting all or any part of Restricted Property shall set forth the terms and conditions of this document; and

12. If any provision of this Deed Restriction, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed Restriction, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

IN WITNESS WHEREOF, said Grantor has caused its Manager, Gerard D. Neugent, this 12<sup>th</sup> day of May, 2009.

GRANTEE:  
K.C. REAL ESTATE, L.C., an Iowa limited liability company

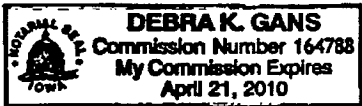
By: Gerard D. Neugent  
Gerard D. Neugent, Manager

State of Iowa)

County of Polk) ss.  
STATE OF IOWA )  
COUNTY OF Polk )

I HEREBY CERTIFY that on this 12<sup>th</sup> day of May, 2009, before me, a Notary Public, personally appeared Gerard D. Neugent, to me known (or proved to me on basis of satisfactory evidence) who acknowledged himself to be the Manager of K.C. Real Estate, L.C., an Iowa limited liability company, and that he, in such capacity, being authorized to do so, acknowledged the same on behalf of the company, and executed the foregoing instrument for the purposes therein contained and acknowledged that he executed the same as his voluntary act and deed.

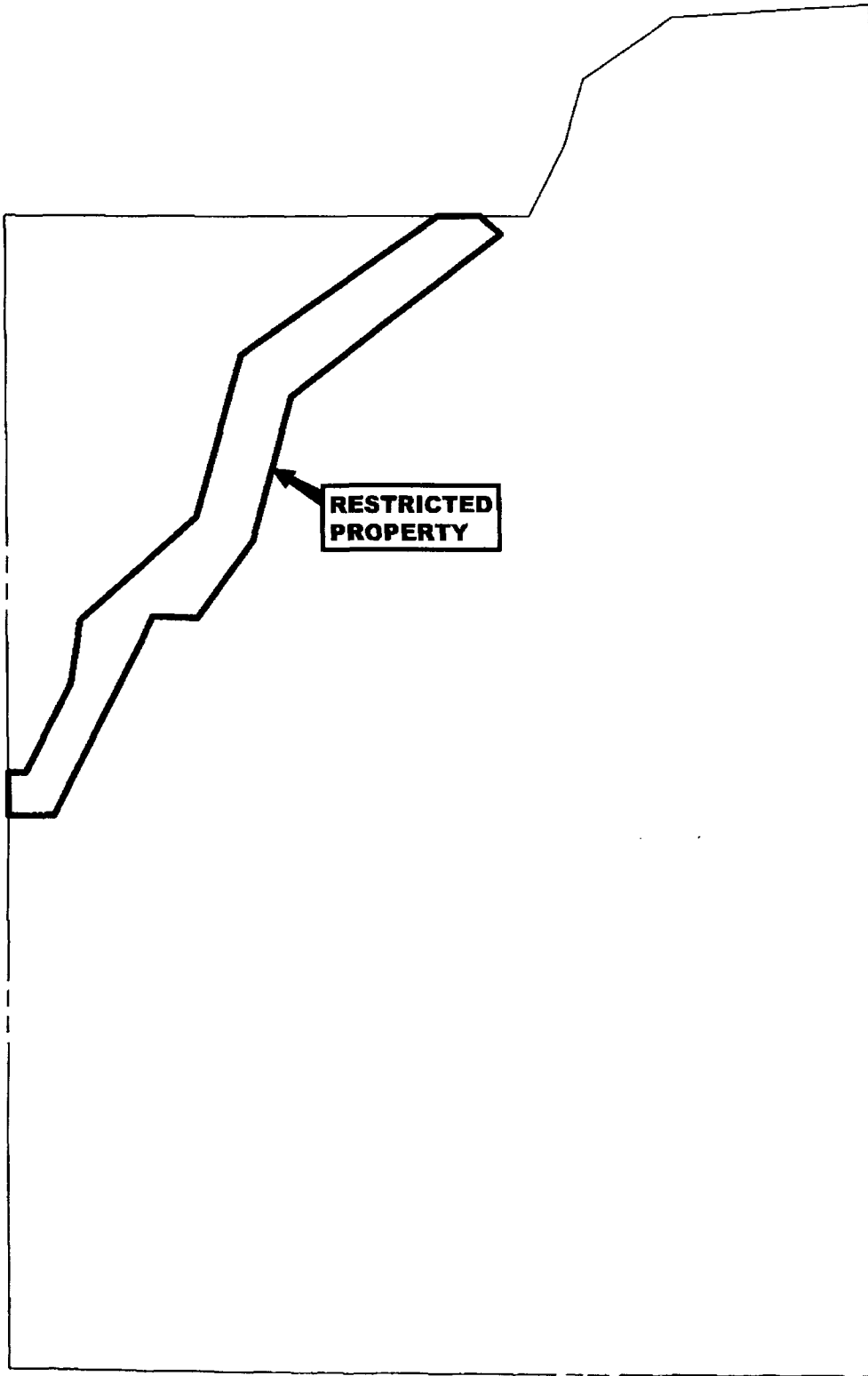
Given under my hand and seal this 12<sup>th</sup> day of May, 2009.



Debra K. Gans  
Notary Public

My commission expires: 4-21-10

EXHIBIT A



**RESTRICTED  
PROPERTY**

**PROPERTY  
BOUNDARY**

## EXHIBIT B



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING - P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

<http://www.rivr.usace.army.mil>

August 4, 2008

Operations Division

SUBJECT: CEMVR-OD-P-2007-1570

Mr. Evan Oster  
K.C. Real Estate  
4949 Westown Parkway, Suite 200  
West Des Moines, Iowa 50266-6704

Dear Mr. Oster:

We are enclosing a Department of the Army permit authorizing work in conjunction with the development of a 23 parcel within the Walnut Ridge Business Park in Section 28, Township 79 North, Range 25 West, Polk County, Iowa.

If you find it necessary to make changes in this authorization, you must submit revised plans to this office for approval before beginning work. You should also have all required Federal, state, and local approvals prior to commencing work.

Please notify this office prior to starting and completion of work. You are required to complete and return the enclosed "Completed Work Certification" upon completion of your project. A representative of this office will make periodic inspections of the work.

We appreciate your cooperation.

Should you have any questions pertaining to your permit, please contact our Regulatory Branch by letter, or telephone Mr. Gene Wassenhove at 309/794-5368.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Hayes".

Michael D. Hayes  
Regulatory Project Manager  
Regulatory Branch

Enclosures

Copies Furnished:

Ms. Christine Schwake  
Iowa Department of Natural Resources  
Water Resources Section - Water Quality  
Wallace State Office Building  
502 East 9th Street  
Des Moines, Iowa 50319-0034

Mr. Richard C. Nelson, Field Supervisor  
Fish and Wildlife Service  
Rock Island Field Office (ES)  
1511 47th Avenue  
Moline, IL 61265

Margaret Stockdale  
Chief, Watershed Planning and  
Implementation Branch  
U.S.E.P.A., Region 7  
901 North 5th Street  
Kansas City, Kansas 66101



## DEPARTMENT OF THE ARMY PERMIT

Permit Number: CEMVR-OD-P-2007-1570

Section 404

Permittee: K.C. Real Estate, L.C.  
4949 Westown Parkway  
West Des Moines, IA 50266-6704

POC: Evan Oster  
Tel: 515/222-6704

Effective Date: July 31, 2008

Expiration Date: December 31, 2012

Issuing Office: U.S. Army Corps of Engineers, Rock Island District  
Clock Tower Building - P.O. Box 2004  
Rock Island, Illinois 61204-2004

You are authorized to perform work in accordance with the terms and conditions specified below.

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.

**Project Description:** The permittee will develop a 23-acre site adjacent to the I-35/280 and Douglas Avenue Interchange in Urbandale, Iowa for the construction of commercial businesses. The project will result in the unavoidable discharge of fill material into 2 jurisdictional wetlands (Wetland Area 1 and Wetland Area 2) totaling 1.27 acres. Wetland Area 1 contains 0.59 acres of formerly forested wetland (prior to tree removal by cutting in the fall of 2005), and Wetland 2 contains 0.68 acres of primarily wet meadow with some small tree/shrub growth. The project will also result in unavoidable adverse impact to a total of 1,980 linear feet of jurisdictional intermittent stream channel through filling, culvert construction, and channel relocation.

**Mitigation:** To mitigate for the adverse impact to the aquatic resource caused by this project, the permittee proposes to establish forested and emergent wetland with a stream channel component at 2 sites, Wetland and Tributary Mitigation Area A (located at the Polk County Conservation Board's Thorn Valley Site in Section 5, Township 80 North, Range 22 West, Polk County, Iowa), and Wetland and Tributary Mitigation Area B (located onsite). In addition, the applicant will establish approximately 4,300 linear feet of 200-foot wide riparian buffer along an unnamed tributary to Cedar Creek in Section 29, Township 76 North, Range 27 West, Madison County, Iowa. A description of the plan for each site follows:

1. At Wetland and Tributary Mitigation Site A, the permittee will create 3.8 acres of wet meadow and emergent wetland. Approximately 1,500 linear feet of intermittent drainage channel will also be created. Aquatic habitat features including riffles, channel deflectors and habitat boulders will be constructed in the drainage channels. The site will contain 1.2 acres of upland buffer. The wetland area will be seeded with a local eco-type wet meadow and emergent wetland seed mix, and the buffer area will be seeded with a native grass and prairie forb mix.

2. At Wetland and Tributary Mitigation Site B, the permittee will create 0.30 acres of emergent wetland and 0.80 acres of riparian wetland buffer. The emergent wetland portion will be planted with a local eco-type emergent wetland seed mix, and the riparian buffer will be planted with a permanent warm season slope and ditch seed mix with 14 tree/shrub clusters. Within the 0.30-acre emergent wetland, the permittee will construct 580 linear feet of relocated intermittent

stream channel. The new channel will have a 16 feet wide bottom, 3:1 side slopes and a 1.6% bottom slope. Aquatic habitat features including rock riffles, habitat boulders and channel deflectors will be constructed at 150 to 200 foot intervals.

3. At Tributary Mitigation Site C (the Pearson Farm Site), the permittee will establish a 200-foot wide riparian buffer along 4,300 linear feet (both sides) of a perennial tributary to Cedar Creek. The buffer area encompasses approximately 16.9 acres and will be protected by a deed restriction.

Project Location: Section 28, Township 79 North, Range 25 West, Polk County, Iowa; UTM Zone 15, Northing 4598269, Easting 438103.

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

Drawings No. CEMVR-OD-P-2007-1570

Sheet 1 of 6, Vicinity Map (Project Site)  
Sheet 2 of 6, Vicinity Map (Mitigation Site A)  
Sheet 3 of 6, Site Plan & Mitigation Site B  
Sheet 4 of 6, Mitigation Area A Plan View  
Sheet 5 of 6, Mitigation Site B Plan View  
Sheet 6 of 6, Mitigation Site C Vicinity/Layout

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on the date specified on page 1. 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 that date is reached.
2. You must maintain the activity authorized by this permit in good condition and 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 archaeological 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. (Condition is not applicable for Section 10 Permits.)

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:

1. That the conditions listed in the attached Section 401 water quality certification from the Iowa Department of Natural Resources dated July 18, 2008, are considered to be part of this permit.

2. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

3. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States (Section B of Appendix A to 33 CFR 325).

4. That the permittee will visibly stake out all sensitive areas at the Thorn Valley Mitigation Area and avoid ALL construction activities within 100 feet of any sensitive area. If construction work (on any portion of the project area) uncovers an item or items that may be of historic or archaeological interest or if important new historical data comes to light in the project area, the work will be delayed sufficient time to notify the U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004 (telephone 309/794-5371) and the State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-02909 (telephone 515/281-8744), and to allow the significance of the discovery to be determined. The permittee may be held responsible for cost associated with identification and recovery.

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 authorizations 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. This permit does not authorize interference with any existing or proposed Federal project.

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.

Arund D Neugent mgr  
Permittee

7/30/08  
Date

The issuing officer for this permit is Robert A. Sinkler, Colonel, U.S. Army, District Engineer, Rock Island District.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, and in accordance with CEMVR-OD-P appointment order dated 28 March 2000, has signed below.

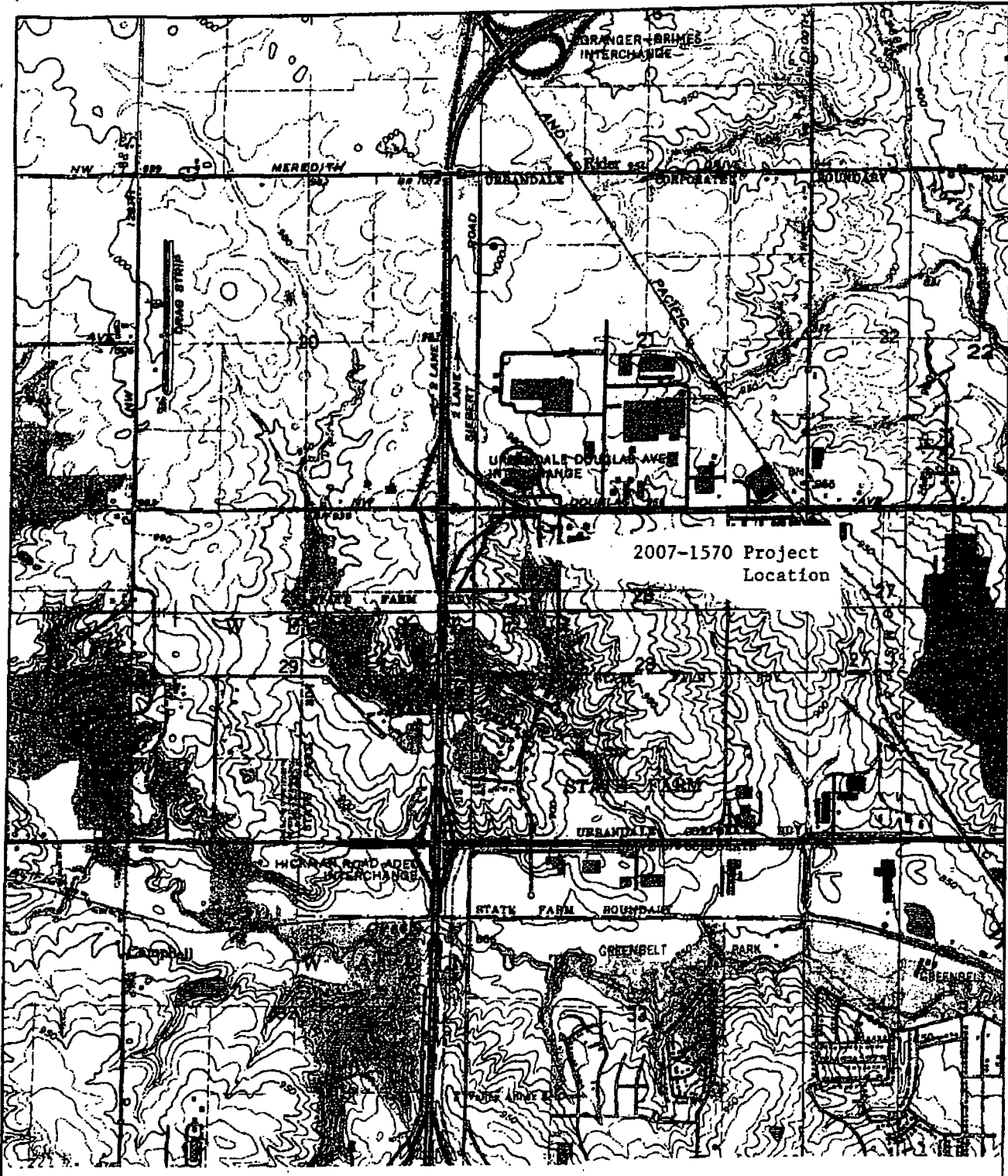
Michael D. Hayes  
Michael D. Hayes  
Project Manager  
Regulatory Branch

7/31/08  
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



2007-1570 Project Location

APPROXIMATE DRAWING SCALE 0 2000'

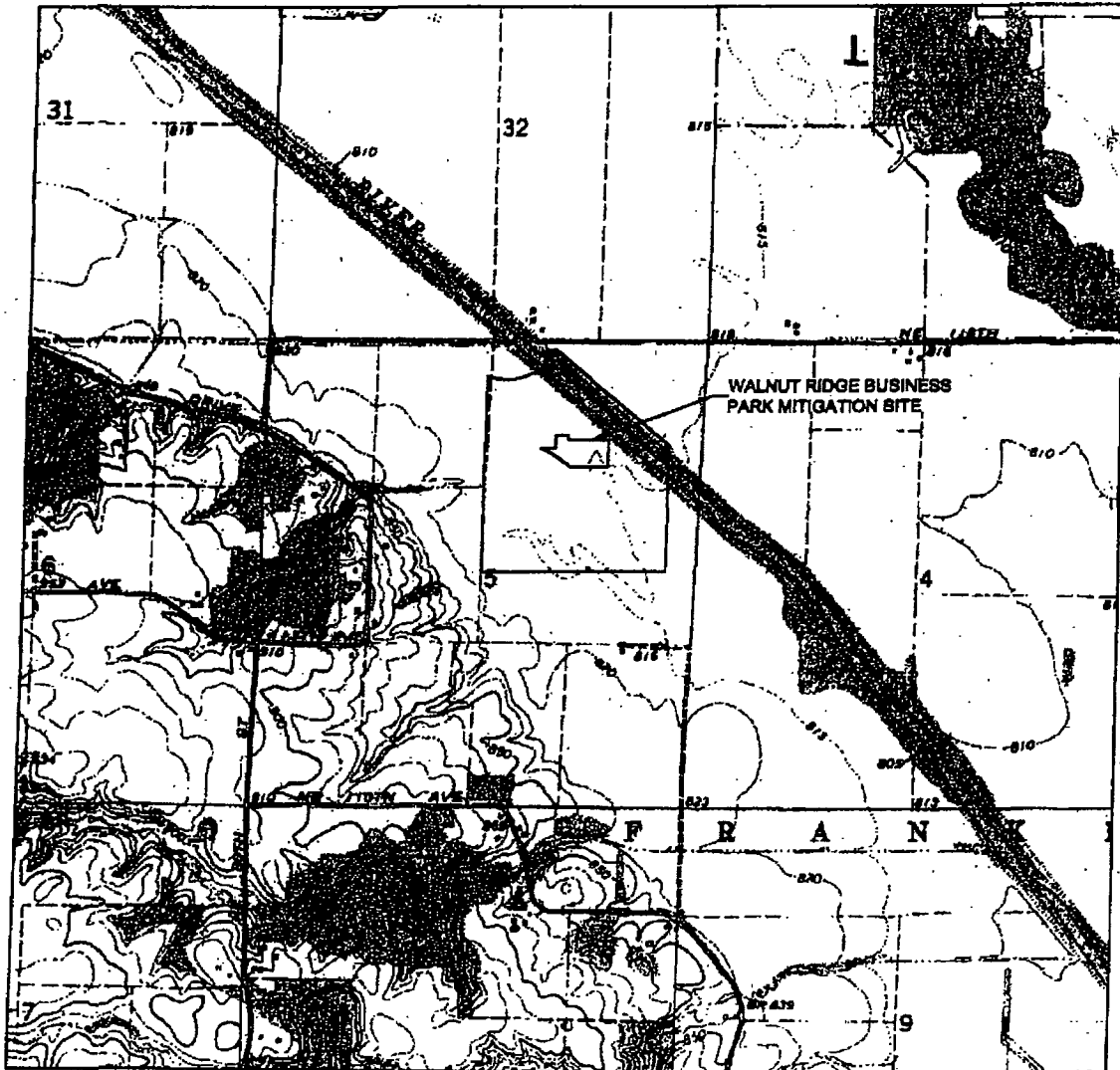
**LEGEND**

——— - PROJECT SITE BOUNDARY

CEMVR-OD-P-2007-1570  
Vicinity Map - Project Site  
Sheet 1 of 6



TOPOGRAPHIC IMAGE FROM IOWA GEOGRAPHIC MAP SERVER MAINTAINED BY IOWA STATE UNIVERSITY AND MIT - <http://calro.de.istate.edu/map.html>



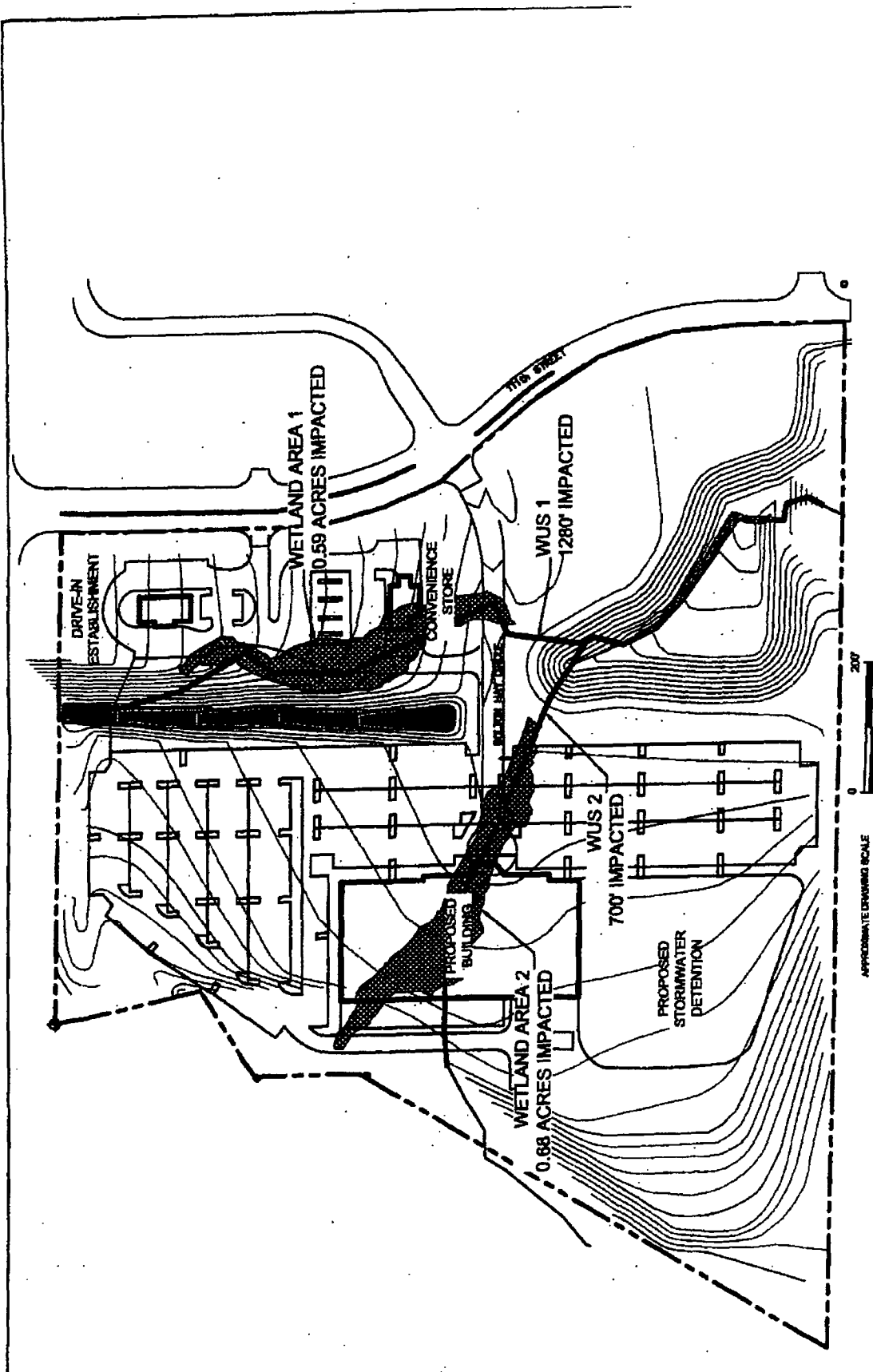
APPROXIMATE DRAWING SCALE 0 2000

CEMVR-OD-P-2007-1570  
 Vicinity Map/Mitigation Site  
 Sheet 2 of 6



514074

Topographic map provided by the Iowa State University GIS Support and Research Facility.



CEMVR-OD-P-2007-1570  
 Site Plan  
 Sheet 3 of 6

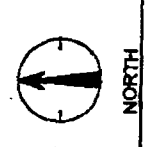


**LEGEND**

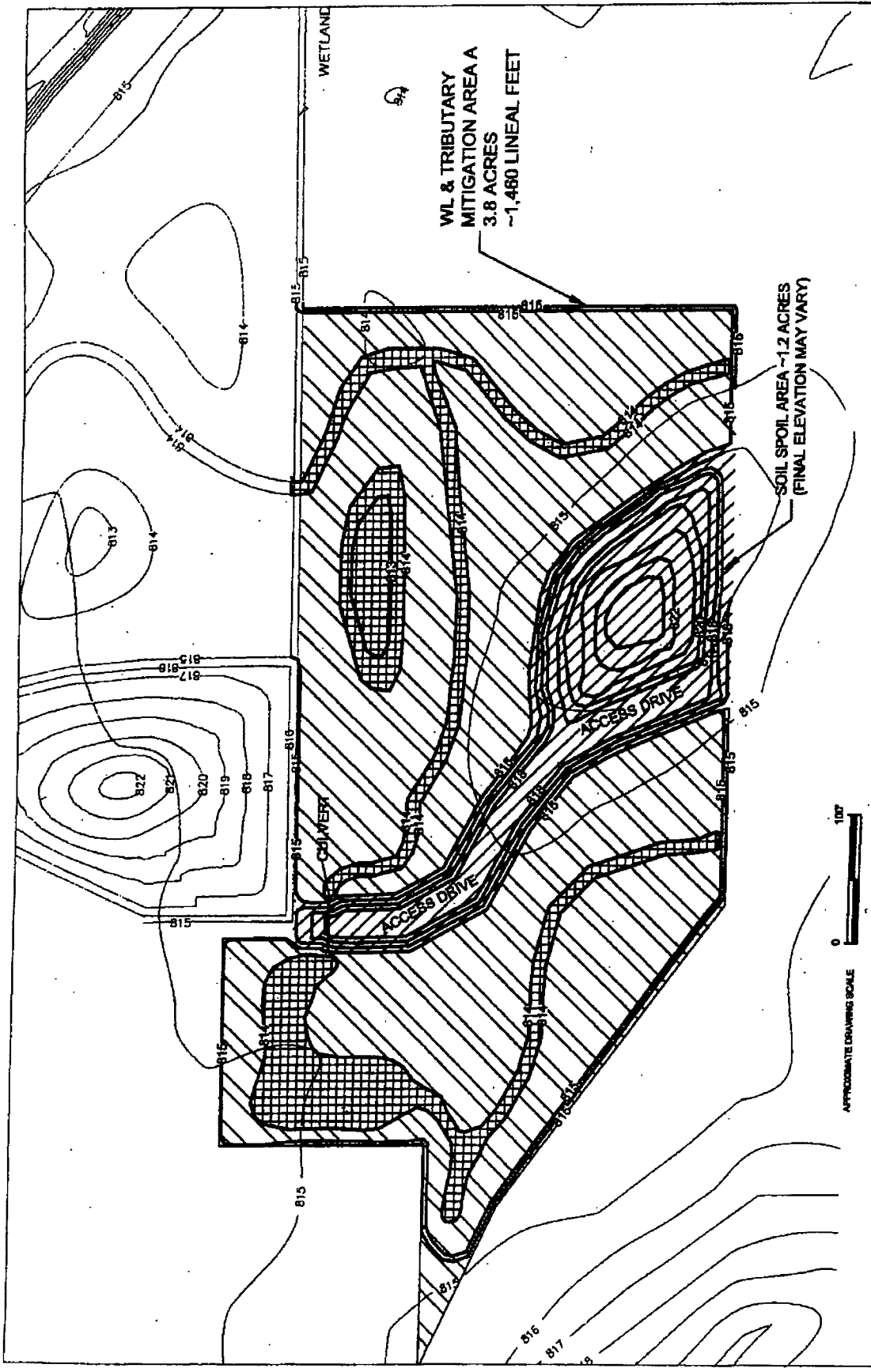
- PROJECT LIMITS
- IMPACTED WATER OF THE US
- MITIGATED WETLAND AND DRAINAGE CHANNEL
- IMPACTED WETLANDS



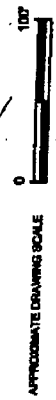
BASE DRAWING PROVIDED BY CIVIL ENGINEERING CONSULTANTS, INC.



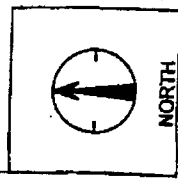




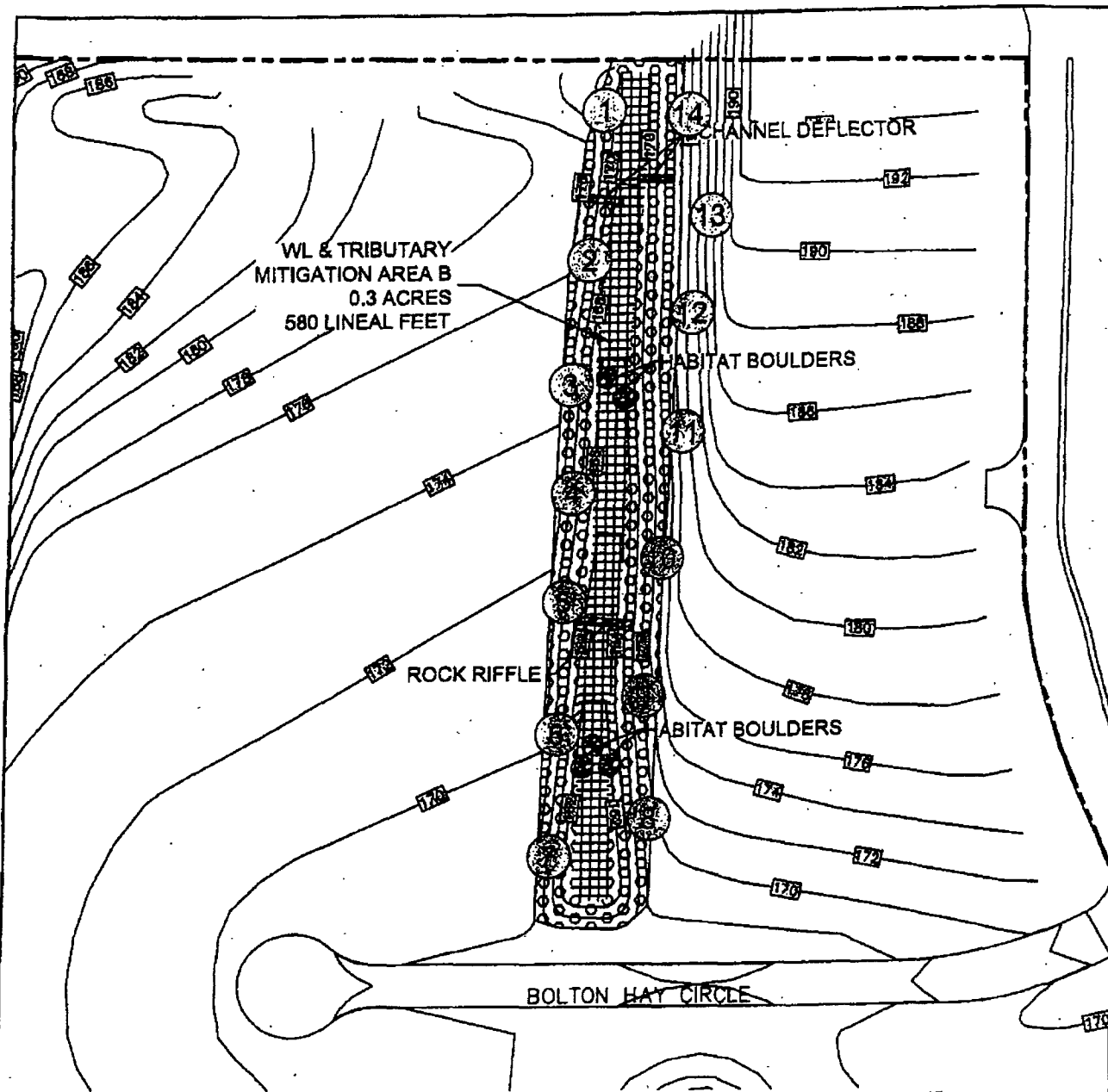
CEMVR-OD-P-2007-1570  
Mitigation Area A/Plan View  
Sheet 4 of 6



- LEGEND**
- Emergent Wetland Seed Mix
  - Wet Meadow Wetland Seed Mix
  - Buffer Seed Mix



Topographic survey data provided by the City of Deer Motives and Mills Association.



WL & TRIBUTARY  
MITIGATION AREA B  
0.3 ACRES  
580 LINEAL FEET

CHANNEL DEFLECTOR

HABITAT BOULDERS

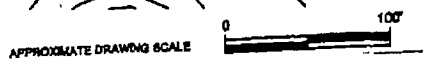
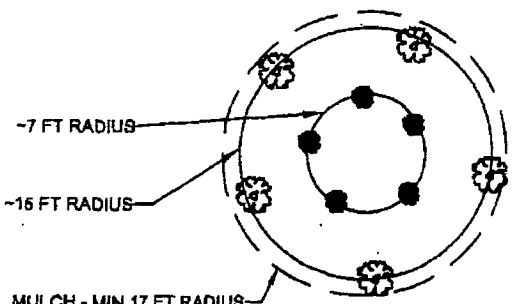
ROCK RIFFLE

HABITAT BOULDERS

BOLTON HAY CIRCLE

**LEGEND**

- # - TREE/SHRUB CLUSTER      Typical Tree/Shrub Cluster
- ☼ - TREE
- - SHRUB



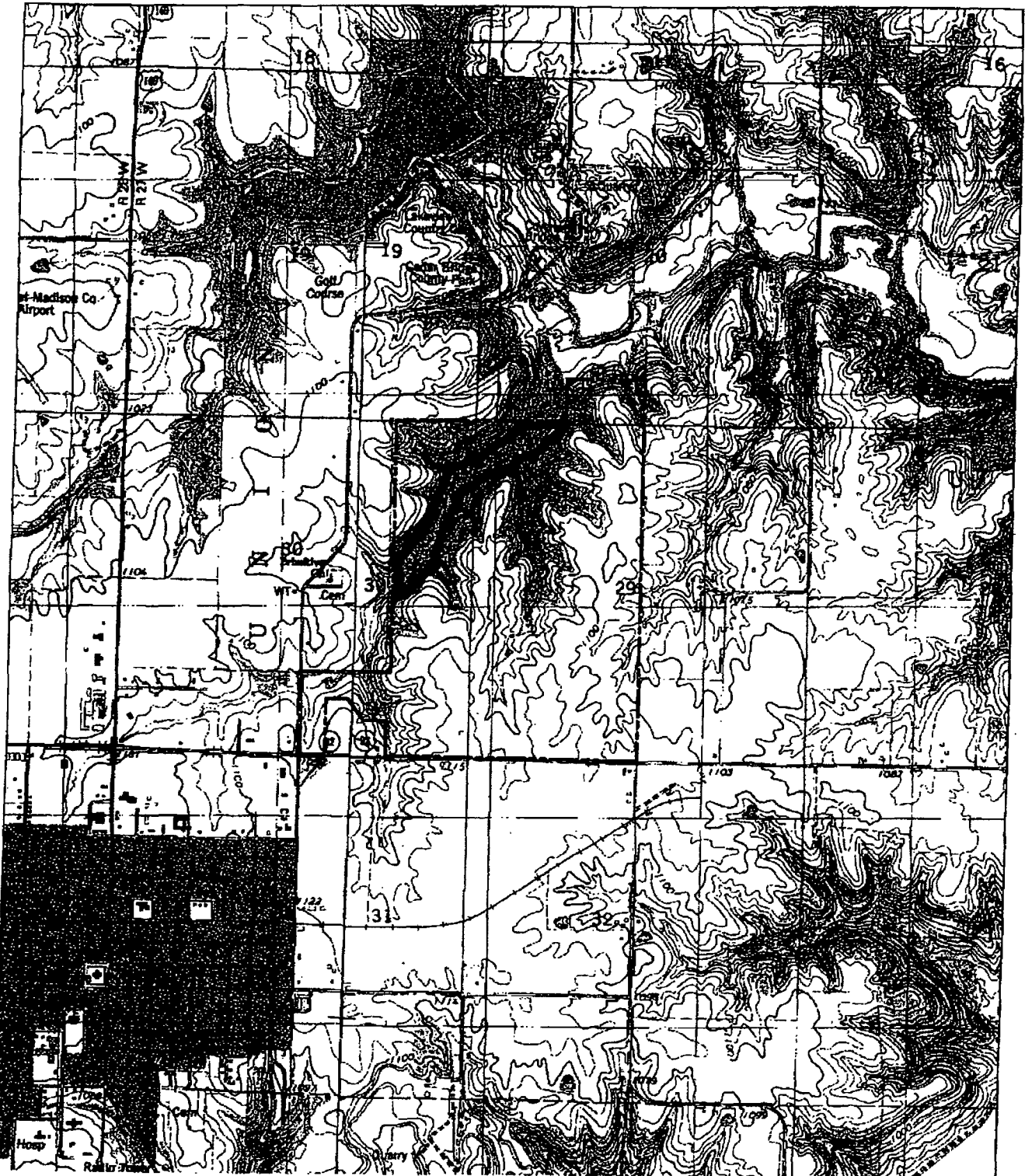
**LEGEND**

- Permanent Warm-Season Slope/Ditch Seed Mixture
- Emergent Wetland Seed Mix



CEMVR-OD-P-2007-1570  
Mitigation Area B/Plan View  
Sheet 5 of 6

BASE DRAWING PROVIDED BY CIVIL ENGINEERING CONSULTANTS, INC.



**CEMVR-OD-P-2007-1570**  
**Mitigation Site C**  
**Vicinity/Layout**  
**Sheet 6 of 6**



**NORTH**

TOPOGRAPHIC IMAGE FROM IOWA GEOGRAPHIC MAP SERVER MAINTAINED BY IOWA STATE UNIVERSITY AND IIT - <http://scale.ge.isstate.edu/map.html>



**FIGURE 11 TOPOGRAPHIC SITE DIAGRAM**

**PEARSON FARM**  
**STREAM BUFFER LOCATION**  
**HIGHWAY 92**  
**WINTERSSET, IOWA**

APPROXIMATE DRAWING SCALE 0 2000'

PROJECT #	FILE NAME	DATE	BY
08077025	ALT MIT 1.dwg	7/2/08	ESM



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
RICHARD A. LEOPOLD, DIRECTOR

July 18, 2008

Mr. William Knapp, Manager  
K.C. Real Estate, L.C.  
4949 Westown Parkway, Suite 200  
West Des Moines, IA 50266-6704

Dear Mr. Knapp:

After reviewing your request for State 401 Water Quality Certification, the Iowa Department of Natural Resources has issued the enclosed Certification. Please read the attached conditions carefully before beginning work on the project.

A copy of this Certification has been forwarded to the office of the Army Corps of Engineers as indicated below. You are advised to contact that office upon receipt of this certification.

If you have any questions or comments about the certification or any conditions contained therein, please contact me at the address shown below or call (515) 281-6615.

Sincerely,

*Christine M. Schwake*

Christine M. Schwake  
Environmental Specialist

cc: Mr. Mike Hayes, Department of the Army Corps of Engineers, Rock Island District, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61204-2004

Ms. Eva Moritz, Terracon, 600 SW 7<sup>th</sup> Street, Suite M, Des Moines, IA 50309

IOWA DEPARTMENT OF NATURAL RESOURCES

SECTION 401 WATER QUALITY CERTIFICATION

Certification issued to:

Effective: July 18, 2008

K.C. Real Estate  
4949 Westtown Parkway  
West Des Moines

Prepared By: Christine M. Schwake Date Executed: July 18, 2008  
Christine M. Schwake, IDNR, Wallace State Office Building, Des Moines, IA 50319-0034 (515) 281-6615

STATE OF IOWA COUNTY OF POLK  
I HEREBY CERTIFY I AM THE OFFICIAL AND LAWFUL CUSTODIAN OF THE PUBLIC RECORDS MAINTAINED BY THE IOWA DEPARTMENT OF NATURAL RESOURCES AND THE FOREGOING DOCUMENT IS A TRUE AND ACCURATE PHOTOCOPY OF THE RECORD COPY MAINTAINED IN MY CUSTODY AS A PUBLIC RECORD OF THE DEPARTMENT IN THE ORDINARY COURSE OF ITS BUSINESS.  
EXECUTED AT DES MOINES ON JULY 18, 2008 BY LESLIE LEAGER



Project certified: US Army Corps of Engineers, Joint Public Notice No. CEMVR-OD-P-2007-1570  
State 401 Water Quality Certification, Application Log No.: 08-D-153-05-03-S

Project Location. Section 28, Township 79 North, Range 25 West, Polk County, Iowa.

Project Description. The applicant proposes to develop a 23-acre site adjacent to the I-35/280 and Douglas Avenue Interchange in Urbandale, Iowa for the construction of commercial businesses. The project will result in the unavoidable discharge of fill material into 2 jurisdictional wetlands (Wetland Area 1 and Wetland Area 2) totaling 1.27 acres. Wetland Area 1 contains 0.59 acres of formerly forested wetland (prior to tree removal by cutting in the fall of 2005), and Wetland 2 contains 0.68 acres of primarily wet meadow with some small tree/shrub growth. The project will also result in unavoidable adverse impact to a total of 1,980 linear feet of jurisdictional intermittent stream channel through filling, culvert construction, and channel relocation.

Mitigation: To mitigate for the adverse impact to the aquatic resource caused by this project, the applicant proposes to establish forested and emergent wetland with a stream channel component at 2 sites, Wetland and Tributary Mitigation Area A (located at the Polk County Conservation Board's Thorn Valley Site in Section 8, Township 80 North, Range 22 West, Polk County, Iowa), and Wetland and Tributary Mitigation Area B (located onsite). In addition, the applicant will establish approximately 4,300 linear feet of 200 foot-wide riparian buffer along an unnamed tributary to Cedar Creek in Section 29, Township 76 North, Range 27 West, Madison County, Iowa. A description of the plan for each site follows:

1. At Wetland and Tributary Mitigation Site A, the applicant will create 3.8 acres of wet meadow and emergent wetland. Approximately 1,460 linear feet of intermittent tributary channel will also be created. Aquatic habitat features including rock riffles, habitat boulders and channel deflectors will be constructed in the intermittent tributary channel. The site will contain 1.2 acres of upland buffer. The wetland area will be seeded with a local eco-type wet meadow and emergent wetland seed mix, and the buffer area will be seeded with a native grass and prairie forb mix. At the request of U.S. EPA, the applicant will add common milkweed (*Asclepias syriaca*) to the prairie forb mix to help address the decline of North America Monarch butterfly habitat.

2. At Wetland and Tributary Mitigation Site B, the applicant will create 0.30 acres of emergent wetland and 0.80 acres of riparian wetland buffer. The emergent wetland portion will be planted with a local eco-type emergent wetland seed mix, and the riparian buffer will be planted with a permanent warm season slope and ditch seed mix with 14 tree/shrub clusters. Within the 0.30-acre emergent wetland, the applicant will construct 580 linear feet of relocated intermittent stream channel. The new channel will have a 16 feet wide bottom, 3:1 side slopes and a 1.6% bottom slope. Aquatic habitat features including rock riffles, habitat boulders and channel deflectors will be constructed at 150 to 200 foot intervals.

3. At the Pearson Farm Site, the applicant will establish a 200-foot wide riparian buffer along 4,300 linear feet (both sides) of a perennial tributary to Cedar Creek. The buffer area encompasses approximately 16.9 acres and will be protected by a deed restriction.

In summary, the project will impact 1.27 acres of forested and emergent wetlands, and 1,980 linear feet of intermittent stream channel. To compensate for these impacts, the applicant will create 4.1 acres of emergent wetlands, 0.8 acres of forested wetlands, and 2,040 linear feet of intermittent stream channel. He will also establish approximately 4,300 linear feet of riparian buffer along an existing perennial stream.

#### Water quality use designation:

This reach of an unnamed stream is designated as Class A1 Primary contact recreational use. These are waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing. This reach of an unnamed stream is also designated as Class B(WW-1) which are waters in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. All surface waters in Iowa, including wetlands and those designated for Class "A", "B", and/or "C" are classified for the following general uses: livestock and wildlife watering, noncontact recreation, crop irrigation, and industrial, agricultural, domestic, and other incidental withdrawal uses.

The Iowa Department of Natural Resources (IDNR) has issued this State 401 Water Quality Certification pursuant to Section 401 of the Clean Water Act. The Army Corps of Engineers (Corps) requires state Certification before a Section 404 permit can be issued. Section 401 Certification represents the IDNR's concurrence that the project certified is consistent with the Water Quality Standards of the state of Iowa as set forth in Chapter 61, Iowa Administrative Code.

Subject to the attached conditions, incorporated by reference herein, the IDNR has determined that there is reasonable assurance the proposed activities will be conducted in a manner that will not violate water quality standards of the state of Iowa.

#### GENERAL CONDITIONS

1. Permittee is responsible for securing and for compliance with such other permits or approvals as may be required by the IDNR, federal, state, or local governmental agencies for the project activities described.
2. You are encouraged to conduct your construction activities during a period of low flow.

3. Clearing of vegetation, including trees located in or immediately adjacent to waters of the state, shall be limited to that which is absolutely necessary for construction of the project. All vegetative clearing material shall be removed to an upland, non-wetland disposal site.
4. All construction debris shall be disposed of on land in such a manner that it cannot enter a waterway or wetland. Construction equipment, activities, and materials shall be kept out of the water to the maximum extent possible. Equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the material into waterbodies, streams or wetlands except as approved herein. Care shall be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering waterbodies, streams or wetlands.
5. Erosion control features (i.e., silt fences, silt ditches, silt dikes, silt basins, etc.) must be installed to provide continuous erosion control throughout the construction and post construction period as well as the revegetation of all disturbed areas upon project completion. Where siltation control features have been reduced in capacity by 50% or more, the features shall be restored to their original condition with a minimum of delay.
6. All disturbed areas not covered with riprap shall be seeded with native grasses, excluding Reed Canarygrass (*Phalaris arundinacea*) or any aggressive or invasive species, during an optimal seeding period. If excavation and construction are completed outside an optimal seeding period, temporary erosion control protection shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as seeding can be completed during an optimal period. The applicant shall monitor revegetated areas continuously to assure success of revegetation. If rye is initially planted to stabilize the soil then native warm season grasses shall be planted during the following growing season.
7. Riprap shall consist of clean native fieldstone, clean quarry run rock or clean broken concrete. If broken concrete is used all reinforcement material shall be completely removed from it; if removal is not possible, said reinforcement material shall be cut flush with the flat surface of the concrete. It shall be the applicant's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The concrete pieces shall be appropriately graded and no piece shall be larger than 3 feet across the longest flat surface. No asphalt or petroleum based material shall be used as or included in riprap material.
8. The rock riffles, consisting of native fieldstone or quarry run rock, shall be installed in the new channel. The rock material shall be large enough to remain where placed even during high flow conditions and is to cover the width of the channel. The riffle areas shall be installed before flow is diverted into the new channel.

#### MITIGATION CONDITIONS

1. To mitigate for the adverse impact to the aquatic resource caused by this project, the applicant proposes to establish forested and emergent wetland with a stream channel component at 2 sites, Wetland and Tributary Mitigation Area A (located at the Polk County Conservation Board's Thorn Valley Site in Section 5, Township 80 North, Range 22 West, Polk County, Iowa), and Wetland and Tributary Mitigation Area B (located onsite). In addition, the applicant will establish approximately 4,300 linear feet of 200 feet-wide riparian buffer along an unnamed tributary to Cedar Creek in Section 29, Township 76 North, Range 27 West, Madison County, Iowa. A description of the plan for each site follows:
2. At Wetland and Tributary Mitigation Site A, the applicant will create 3.8 acres of wet meadow and emergent wetland. Approximately 1,460 linear feet of intermittent tributary channel will also be

created. Aquatic habitat features including rock riffles, habitat boulders and channel deflectors will be constructed in the intermittent tributary channel. The site will contain 1.2 acres of upland buffer. The wetland area will be seeded with a local eco-type wet meadow and emergent wetland seed mix, and the buffer area will be seeded with a native grass and prairie forb mix. At the request of U.S. EPA the applicant will add common milkweed (*Asclepias syriaca*) to the prairie forb mix to help address the decline of North America Monarch butterfly habitat.

3. At Wetland and Tributary Mitigation Site B, the applicant will create 0.30 acres of emergent wetland and 0.80 acres of riparian wetland buffer. The emergent wetland portion will be planted with a local eco-type emergent wetland seed mix, and the riparian buffer will be planted with a permanent warm season slope and ditch seed mix with 14 tree/shrub clusters. Within the 0.30-acre emergent wetland, the applicant will construct 580 linear feet of relocated intermittent stream channel. The new channel will have a 16 feet wide bottom, 3:1 side slopes and a 1.6% bottom slope. Aquatic habitat features including rock riffles, habitat boulders and channel deflectors will be constructed at 150 to 200 foot intervals.
4. At the Pearson Farm Site, the applicant will establish a 200-foot wide riparian buffer along 4,300 linear feet (both sides) of a perennial tributary to Cedar Creek. The buffer area encompasses approximately 16.9 acres and will be protected by a deed restriction.
5. In summary, the project will impact 1.27 acres of forested and emergent wetlands, and 1,980 linear feet of intermittent stream channel. To compensate for these impacts, the applicant will create 4.1 acres of emergent wetlands, 0.8 acres of forested wetlands, and 2,040 linear feet of intermittent stream channel. He will also establish approximately 4,300 linear feet of riparian buffer along an existing perennial stream. Mitigation shall be completed within one year from the date that the first fill is placed in any wetland.
6. An as-built plan shall be submitted to the IDNR and to the Corps upon completion. The 4.9-acre replacement wetland, the 2,040'-long intermittent stream channel, and 4,300 linear feet of buffer shall be monitored annually and managed to confirm whether it has successfully replaced the function and values of the impacted wetlands/stream after a five-year period. If, at the end of the fifth year, the expected water level is not achieved, more than 50 percent of the emergent vegetation are non-native species, or if evidence exists that the replacement wetland/stream are becoming less effective, then additional monitoring and/or corrective actions shall be taken to achieve the compensation ratio as originally approved. Annual monitoring reports shall be submitted to the IDNR and to the Corps' office by December 31 for at least five years following planting.
7. By the end of September of each year the tree and shrub plantings will be reviewed. Trees and shrubs shall be replanted as necessary to ensure an 80% survival rate by species. If, at the end of the fifth year, the expected hydrology is not achieved, tree and shrub survival, by species, is less than the 80 percent, or if evidence exists that the replacement wetland is becoming less effective, then additional monitoring and/or corrective actions shall be taken to achieve the compensation ratio as originally approved.
8. Future development or land-use conversion of all the wetland/stream mitigation areas, or any part thereof, for any purpose which may interfere with or be detrimental to wetland functions, is prohibited without prior written approval from the IDNR and the Corps. Prior to commencement of project construction the applicant shall, with the knowledge and approval of the property owners of record, file a copy of this certification in its entirety with the County Recorder for entry into the property records, thereby notifying all parties of this restriction. Further, prior to commencement of construction, said applicant shall provide the IDNR and the Corps with a "Filed" stamped copy of this certification. If the certification cannot be filed in the manner indicated, the applicant shall provide



the IDNR with documentation of agreements, contracts, etc., demonstrating to the IDNR's satisfaction that the wetland mitigation site will be protected from future activities that may interfere with or be detrimental to wetland functions and values to a level of assurance equivalent to that provided by the aforementioned filing process (i.e., agreements with the INHF, Polk CCB, etc.).

9. The annual site surveys of the wetland/stream mitigation sites shall assess the vegetation, hydrology, and soils. The results of each survey will be documented in an annual monitoring report. Annual monitoring reports shall be submitted to the IDNR and to the Corps by December 31 for at least five years following planting. The reports must include photos, a vegetative cover map indicating dominant species in each area, an assessment of the created stream, the wetland hydrology according to the 1987 Corps of Engineers Wetland Delineation Manual ('87 Manual), a map with drawn boundaries indicating exactly what areas are wetland according to the '87 Manual, and any corrective actions taken or needed. All maps must be to scale and have the scale plainly labeled.
10. K. C. Real Estate, L.C. shall assume all liability for accomplishing any needed corrective work. Corrective work will be required if the new intermittent stream is not developing as expected, the 4.9 acres of emergent wetland not develop as wetland (according to the '87 Manual) or if the Corps determines that the mitigation sites are not developing satisfactorily. Remedial work may include grading and/or planting the mitigation sites, or may require a new mitigation site. Corrective action may also require additional monitoring to insure successful wetland restoration on 4.9 acres.