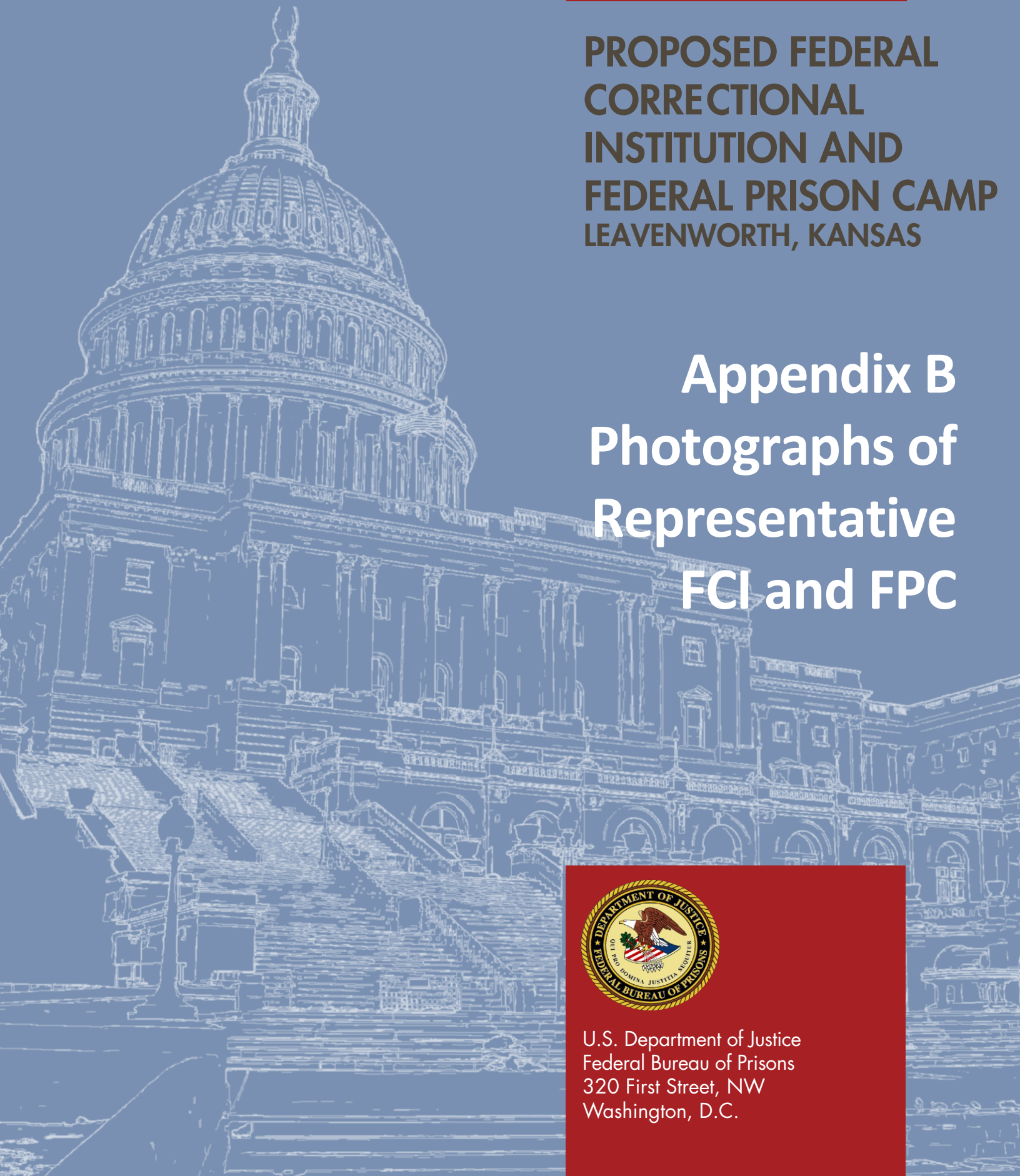


PROPOSED FEDERAL CORRECTIONAL INSTITUTION AND FEDERAL PRISON CAMP
LEAVENWORTH, KANSAS

Appendix B Photographs of Representative FCI and FPC

U.S. Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, D.C.

APPENDIX B
PHOTOGRAPHS OF REPRESENTATIVE FEDERAL CORRECTIONAL INSTITUTION AND FEDERAL PRISON CAMP

PHOTOGRAPHS OF
REPRESENTATIVE FEDERAL CORRECTIONAL INSTITUTION
AND FEDERAL PRISON CAMP

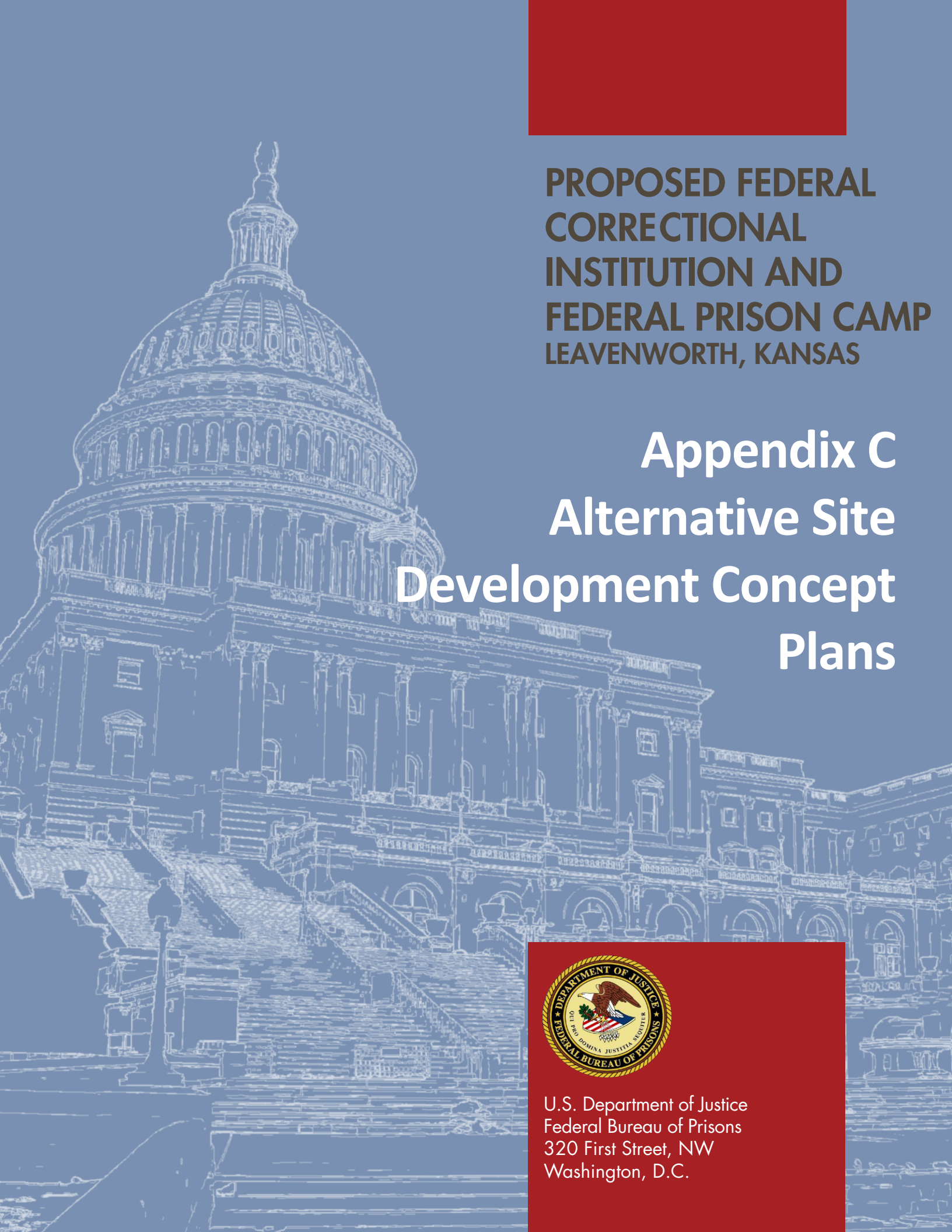
The following photographs depict typical conditions found at a medium-security Federal Correctional Institution and minimum-security prison camp. This facility was designed and constructed for the Federal Bureau of Prisons near the City of Welch in McDowell County, West Virginia and is representative of such facilities from the standpoint of design, layout, building materials, and similar features of FCI, FPC, and support facilities. (Photographs provided by AECOM)

TYPICAL FEDERAL CORRECTIONAL INSTITUTION


INTEGRITY

TYPICAL FEDERAL PRISON CAMP

TYPICAL SUPPORT FACILITIES



PROPOSED FEDERAL CORRECTIONAL INSTITUTION AND FEDERAL PRISON CAMP
LEAVENWORTH, KANSAS

Appendix C Alternative Site Development Concept Plans

U.S. Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, D.C.

APPENDIX C
ALTERNATIVE SITE DEVELOPMENT CONCEPT PLANS - FEDERAL CORRECTIONAL INSTITUTION AND FEDERAL PRISON CAMP

RELOCATED GAS TRANSMISSION LINE

STORMWATER DETENTION BASIN

STORMWATER DETENTION BASIN

STORMWATER DETENTION BASIN

STORMWATER DETENTION BASIN

STORMWATER DETENTION BASIN

PERIMETER PATROL ROAD

FCI

SERVICE ROAD

FCI PARKING

ACCESS ROAD

CAMP

RELOCATED GAS TRANSMISSION LINES

RELOCATED ELECTRICAL TRANSMISSION LINES

CENTRAL UTILITY PLANT WAREHOUSE AND/OR GARAGE LANDSCAPE BUILDING

PROPOSED EVERGY SUBSTATION

EXIST. WATER LINE

PROPOSED EARTHEN BERM

IRON GRATE

ASPHALT

GRASS

CONCRETE

36" RCP FLARED
FL 837.6

48" RCP

24" RCP

12" RCP

18" RCP

36" RCP
FL 855.26'

45" RCP

36" RCP

ELECTRIC BOX

METROPOLITAN AVENUE
(HIGHWAY 7)

400 0 400
SCALE OF FEET

Exhibit A.1
Alternative FCI EAST-1
Proposed Site Plan

Proposed FCI
USP Leavenworth, Kansas

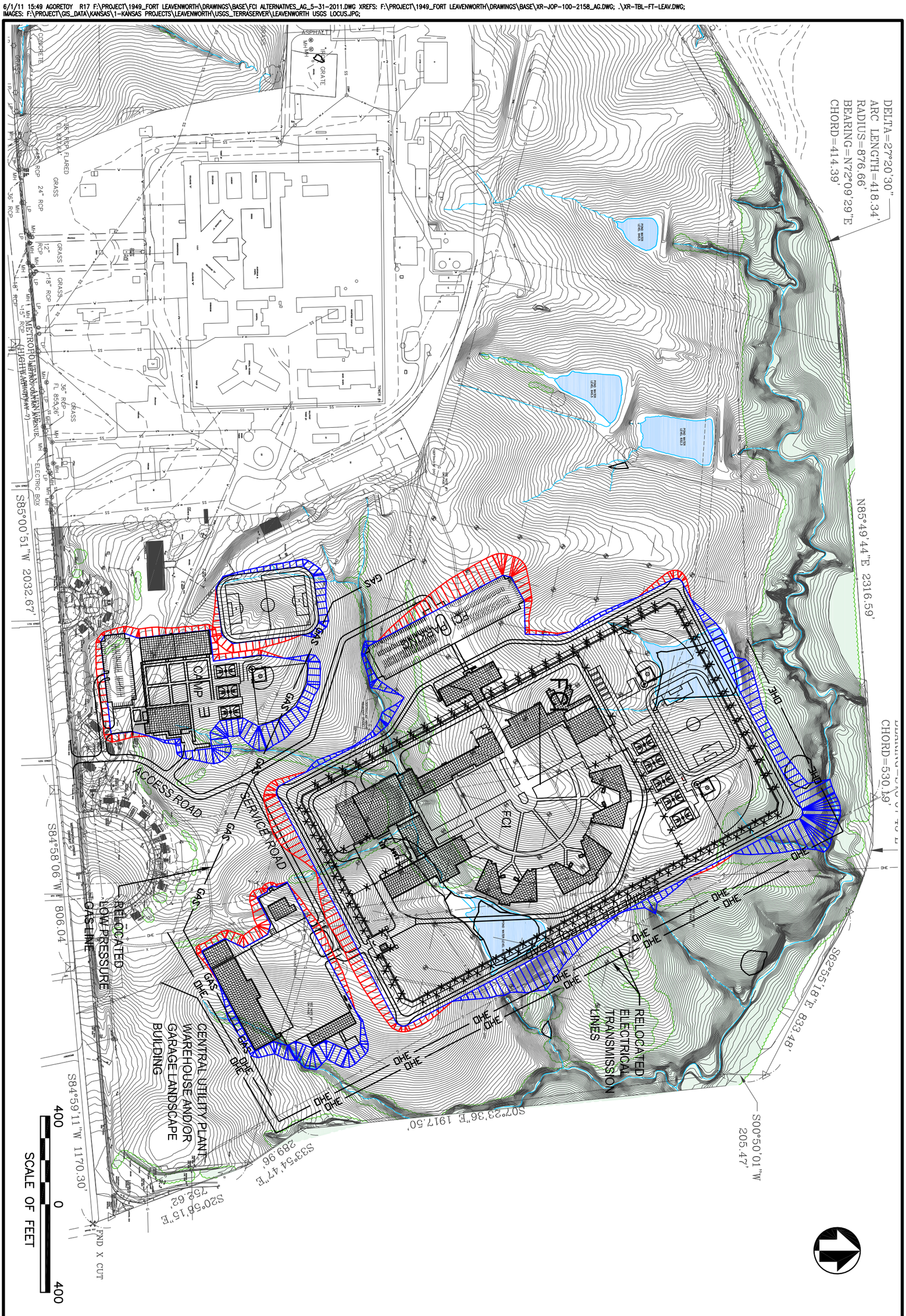
Source: KS GIS, LBG, Inc.

Scale: 1"=400'

10-28-20

US Department of Justice
Federal Bureau of Prisons

11/3/11 16:48 AGOPETOY R17 F:\PROJECT\1949_FORT LEAVENWORTH\DRAWINGS\BASE\XR-JOP-100-2158_AG.DWG; \XR-TBL-FT-LEAV.DWG; IMAGES: F:\PROJECTS\DATA\KANSAS*-KANSAS PROJECTS\LEAVENWORTH\USGS_TERRASERVER\LEAVENWORTH USGS LOCUS.JPG;

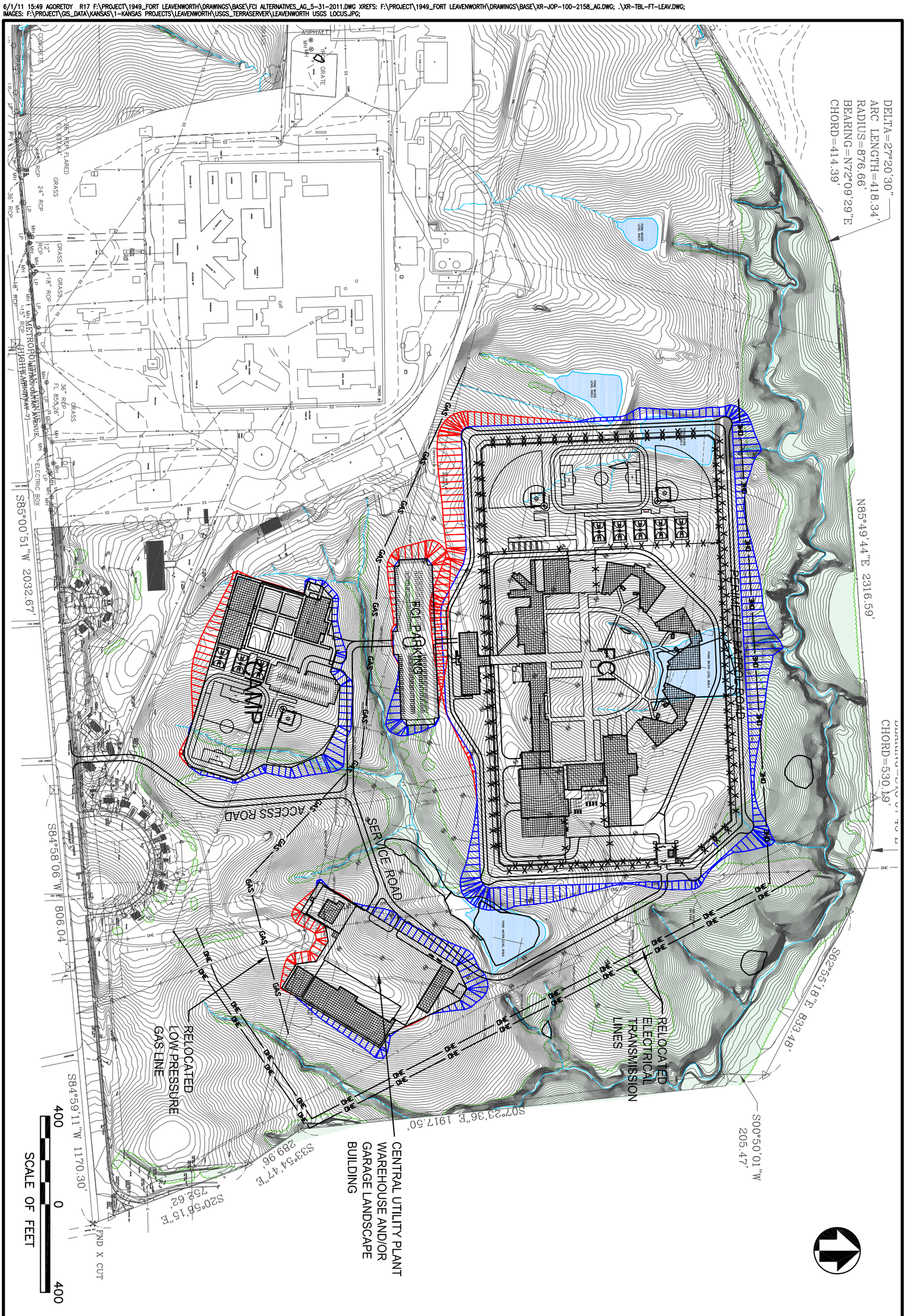


US Department of Justice
Federal Bureau of Prisons

Proposed FCI
USP Leavenworth, Kansas

Source: KS GIS, LBG, Inc. | Scale: 1"=400' | 2020

Alternative FCI EAST-2



US Department of Justice
Federal Bureau of Prisons

Proposed FCI
USP Leavenworth, Kansas

Source: KS GIS, LBG, Inc. | Scale: 1"=400' | 2020

Alternative FCI EAST-3

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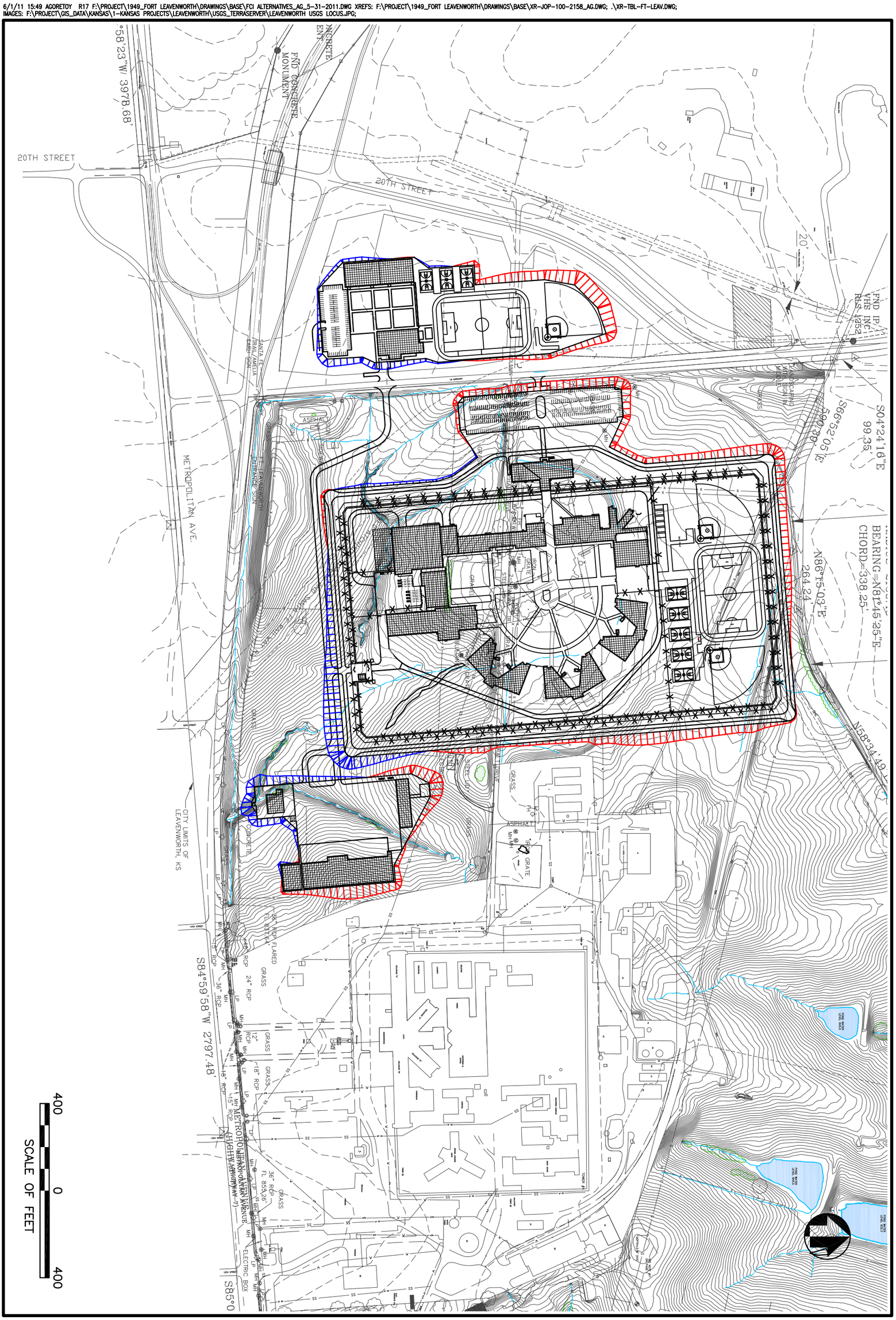
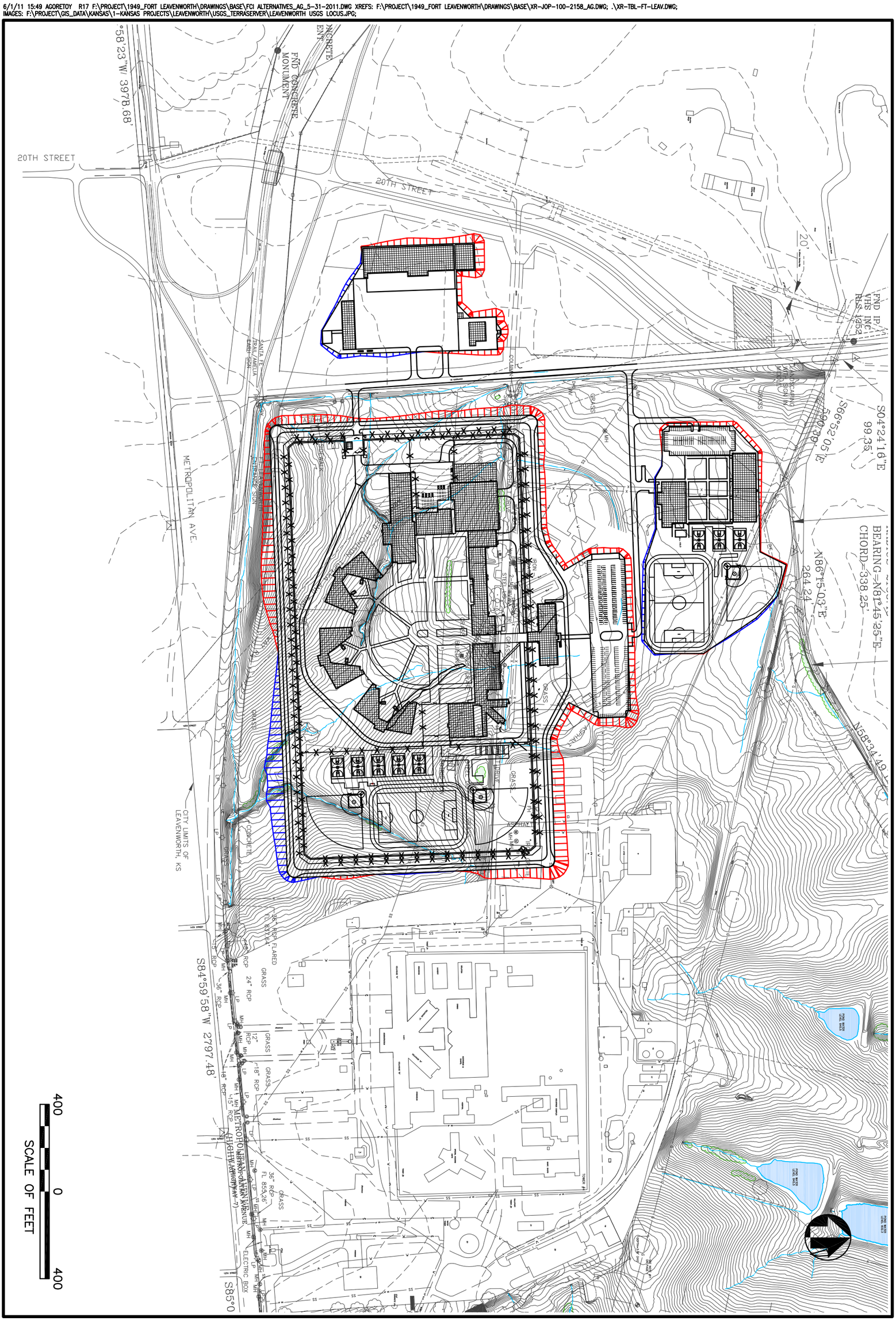


US Department of Justice
Federal Bureau of Prisons

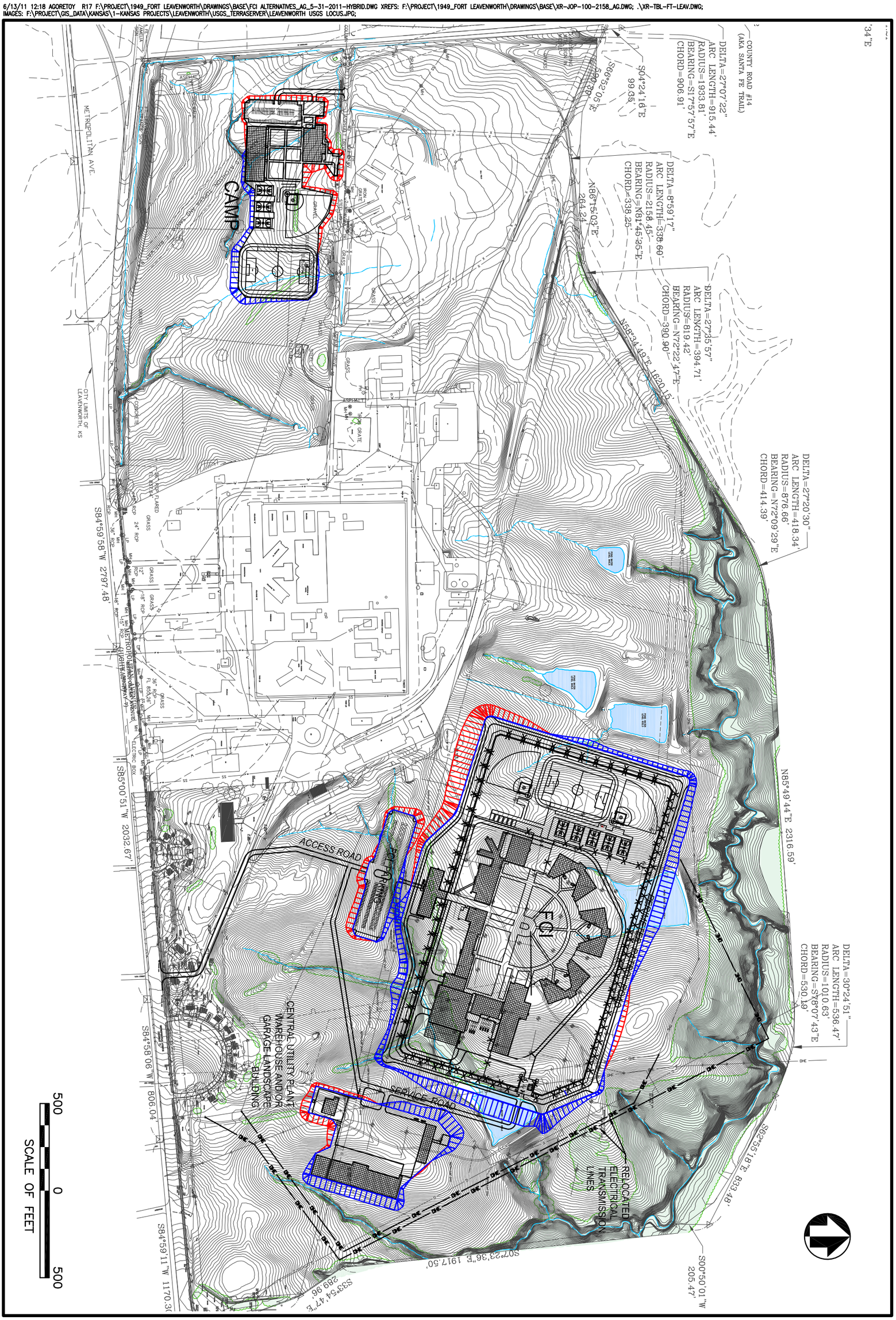
Proposed FCI
USP Leavenworth, Kansas

Source: KS GIS, LBG, Inc. | Scale: 1"=400' | 2020

Alternative FCI WEST-1



US Department of Justice Federal Bureau of Prisons	Proposed FCI USP Leavenworth, Kansas		Alternative FCI WEST-2
	Source: KS GIS, LBG, Inc.	Scale: 1"=400'	2020

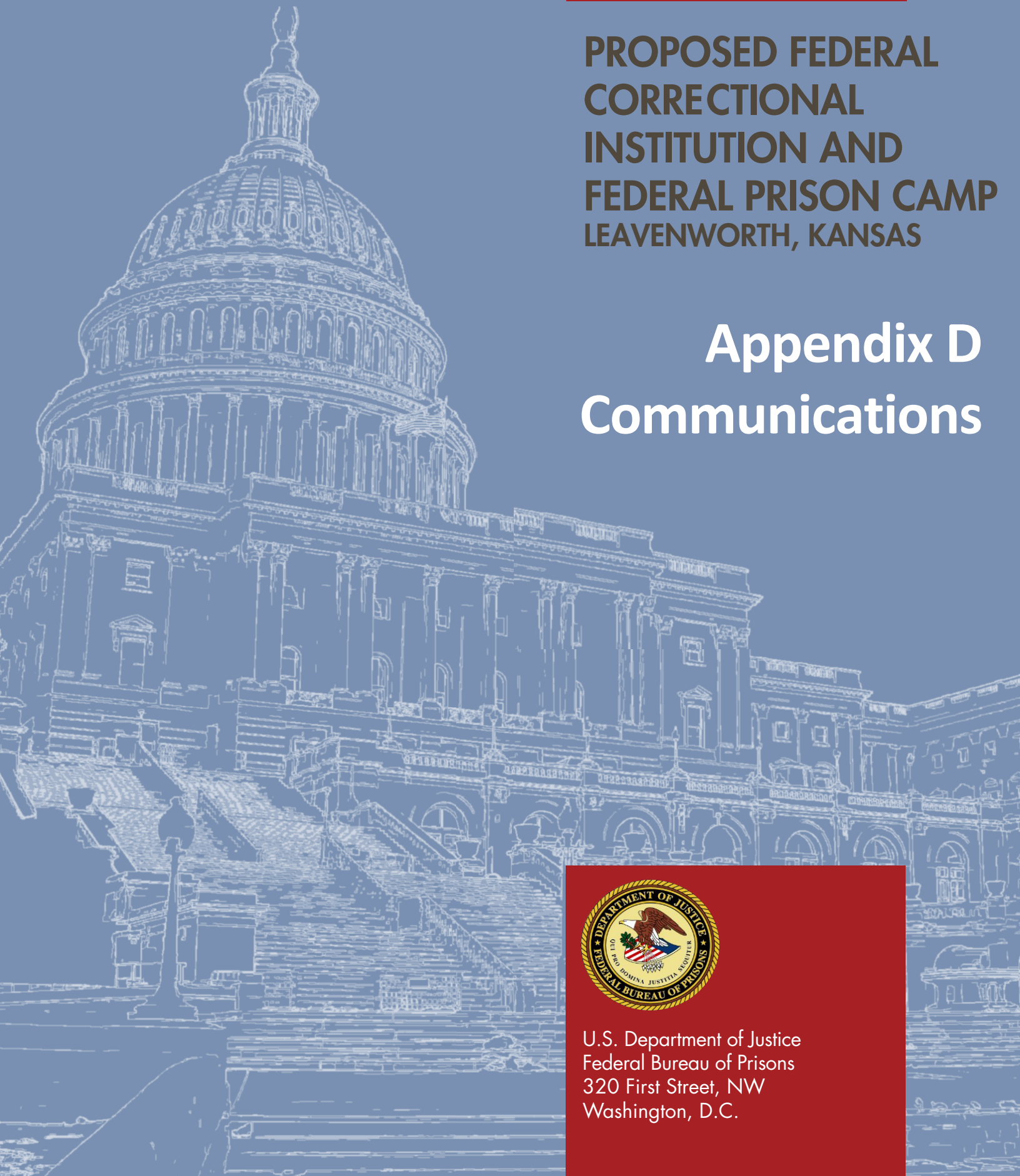


US Department of Justice
Federal Bureau of Prisons

Proposed FCI
USP Leavenworth, Kansas

Source: KS GIS, LBG, Inc. | Scale: 1"=400' | 2020

Alternative
EAST/WEST COMPOSITE



PROPOSED FEDERAL CORRECTIONAL INSTITUTION AND FEDERAL PRISON CAMP
LEAVENWORTH, KANSAS

Appendix D
Communications

U.S. Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, D.C.

APPENDIX D
COMMUNICATIONS

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kansas Ecological Services Field Office
2609 Anderson Avenue
Manhattan, Kansas 66502

May 27, 2011

Laura Totten, Senior Ecologist
The Louis Berger Group, Inc.
4050 Pennsylvania Avenue, Suite 121
Kansas City, MO 64111

RE: Proposed Federal Correctional Institution FWS Tracking # 2011-CPA-0454

Dear Ms. Totten:

This is in response to your letter received on May 2, 2011, requesting comment on the proposed development of a new Federal Correctional Institution (FCA), and a Federal Prison Camp (FPC) within two alternative development sites located within the existing Leavenworth United States Penitentiary (USP) property in Leavenworth County, Kansas.

In accordance with section 7(c) of the Endangered Species Act, it has been determined that the federally listed western prairie fringed orchid (*Platanthera praeclara*) may occur in the project area. If the project may affect listed species, the federal funding/permitting agency should initiate section 7 consultation with this office.

If warm season, native grasslands, or hay meadows are present and will be disturbed or removed by the project, we recommend that a qualified botanist inspect the proposed site in early June to determine the presence of suitable habitat and the federally listed plant species prior to ground disturbing activities. If these plants are present within the project boundaries, project construction may adversely affect the species. The Kansas Biological Survey, 2041 Constant Avenue, Lawrence, Kansas 66047-2906, (785) 864-1538 may be contacted for assistance in determining the necessity of and protocols for plant surveys.

If a permit from the Corps of Engineers is required, the USFWS will be given the opportunity to review the public notice on the proposed action and provide additional comments at that time. Section 404 guidelines require the sequence of avoidance of impacts, minimization of impacts and compensation for unavoidable impacts. When we review the public notice we will request information on alternatives considered, how the project avoided and minimized impacts to aquatic ecosystems, and the compensatory mitigation proposal, if one is required by the Corps.

Please notify this office with the results of any surveys for western prairie fringed orchid, so that we may determine whether there may be any impacts to these species. Thank you for this opportunity to comment on the proposal. If we can be of any further assistance, please call Ms. Michele McNulty, of this office, at 785-539-3474 ext. 106.

Sincerely,

Michael J. LeValley
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)
COE, Regulatory Branch, KC, MO
Kansas Biological Survey, (Delisle), Lawrence, KS

Operations Office
512 SE 25th Ave.
Pratt, KS 67124-8174

Kansas
Department of Wildlife, Parks and Tourism

Phone: (620) 672-5911
Fax: 620-672-6020
www.kdwp.state.ks.us

Robin Jennison, Secretary

Sam Brownback, Governor

July 27, 2011

Laura Totten
The Louis Berger Group, Inc.
4050 Pennsylvania Ave
Suite 121
Kansas City, MO 64111

Ref: D9.0000
Leavenworth
Track: 20100520

Ref: Leavenworth Bureau of Prisons

Dear Ms. Totten:

We have reviewed the preliminary extension boundary of the Leavenworth Bureau of Prisons development of a proposed new Federal Correctional Institution and Federal Prison Camp in Sections 22, 23, 26, and 27, Township 8 South, Range 22 East in Leavenworth County. The project was reviewed for potential impacts on crucial wildlife habitats, current state-listed threatened and endangered species and species in need of conservation, and public recreation areas for which this agency has some administrative authority.

Project plans indicate that there will be construction activity within Designated Critical Habitat (DCH) for the Smooth Earth Snake (*Virginia valeriae)* and Redbelly Snake (*Storeria occipitomaculata*). As such, an Action Permit might be required from our department, which could consist of compensatory mitigation for any lost habitat. Based upon our GIS evaluation of the proposed locations, the West Site will not impact DCH; however, the East Site contains wooded vegetation and might impact the threatened snake species. We request a more thorough site evaluation to determine the potential impacts and further request avoiding any wooded areas particularly within the East Site boundary. Project activity should not commence until more details are provided for the project.

A copy of the permit application can be obtained at
http://www.kdwp.state.ks.us/news/other_services/threatened_and_endangered_species/action_permit
We ask that all other necessary permits be held in abeyance until conditions necessary to protect threatened and endangered species have been established.

Thank you for the opportunity to provide these comments and recommendations

Sincerely,

David Bender, Ecologist
Ecological Services Section

KSR&C No. 11-01-098

6425 SW 6th Avenue
Topeka, KS 66615

Kansas

phone: 785-272-8681
fax: 785-272-8682
cultural_resources@kshs.org

Kansas Historical Society

Sam Brownback, Governor
Jennie Chinn, Executive Director

September 20, 2011

Bridget Lyles
Site Specialist
Capacity Planning and Site Selection Branch
U.S. Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

Dear Ms. Lyles:

In accordance with 36 CFR 800, the Kansas State Historic Preservation Office has reviewed a report entitled *Phase I Cultural Resources Survey at the United States Penitentiary, City of Leavenworth, Leavenworth County, Kansas,* by Christopher M. Schoen, RPA and Camilla R. Dieber of The Louis Berger Group, Inc., dated September, 2011. We find the both the archeological and architectural background/field methods to be appropriate and the report to be thorough and well written.

Our office concurs that five of the archeological sites investigated during the project (LBG-3, LBG-5, LBG-6, LBG-10, and LBG-15) are potentially eligible for listing in the National Register of Historic Places. We agree that if avoidance is not possible, they should be tested at the Phase III level in order to determine their eligibility (or lack thereof) for National Register listing. Our office further concurs that the 16 remaining sites investigated during the survey (14LV110, 14LV111, 14LV337, 14LV364, 14LV365, 14LV366, LBG-1, LBG-2, LBG-4, LBG-7, LBG-8, LBG-9, LBG-11, LBG-12, LBG-13, and LBG-14) and the 15 isolated finds (IF-1 – IF-15) are not eligible for National Register listing. As noted in your letter, we will require the use of permanent trinomial site numbers in the final report.

The report describes a total of 73 buildings and structures identified during architectural survey at the United States Penitentiary (USP) Leavenworth. Our office concurs that USP Leavenworth is eligible for listing in the National Register of Historic Places under Criteria A and C at the national level of significance with a period of significance extending to 1960. The report abstract notes that contributing structures along Metropolitan Avenue will be adversely effected regardless of which alternative is chosen for facility expansion; however, the impacts are not described. Therefore we will reserve concurrence with the determination of effect until the undertaking is presented in detail.

This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Tim Weston at 785-272-8681 (ext. 214) or Kim Gant at 785-272-8681 (ext. 225).

Sincerely,

Jennie Chinn, Executive Director and
State Historic Preservation Officer

Patrick Zollner
Deputy SHPO

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

REPLY TO
ATTENTION OF

September 21, 2011

Regulatory Branch
(2010-1805)

Ms. Laura Totten
The Louis Berger Group, Inc.
4050 Pennsylvania Avenue, Suite 121
Kansas City, Missouri 64111

Dear Ms. Totten:

This letter is in response to your August 17, 2011 request for a Jurisdictional Determination on behalf of the Federal Bureau of Prisons. The project site is located in Sections 22, 23, 26 and 27, Township 8 south, Range 22 east, Leavenworth County, Kansas. This request has been assigned Regulatory File No. NWK-2010-1805. Please reference this file number on any correspondence to us or to other interested parties concerning this matter.

In accordance with the December 2, 2008 National Guidance of Clean Water Act jurisdiction, this letter contains an approved jurisdictional determination for the defined project site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 C.F.R. Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Northwestern Division Office at the following address:

Division Engineer
ATTN: David W. Gesl
Administrative Appeals Review Officer
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870
Telephone: 503-808-3825

In order for an RFA to be accepted by the Corps, the Corps must determine that it is completed, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address within 60 days of this letter.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

In the event that you disagree with an approved jurisdictional determination and you have new information not considered in the original determination, you may request reconsideration of that determination by the Corps District prior to initiating an appeal. To request this reconsideration based upon new information, you must submit the completed RFA form and the new information to the District Office so that it is received within 60 days of the date of the NAP. Send approved jurisdictional determination reconsideration requests to:

District Commander
ATTN: Mark D. Frazier
Chief, Regulatory Branch
U.S. Army Engineer District, Kansas City
601 East 12th Street, Room 402
Kansas City, MO 64106-2896
Voice: 816-389-3990- FAX: 816-389-2032

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 403) and /or Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). The implementing regulations for these Acts are found at 33 CFR 320-332.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. We have placed an automated version of our Customer Service Survey form on our website at: http://www.nwk.usace.army.mil/regulatory/survey.pdf. At your request, we will mail a paper copy that you may complete and return to us by mail or fax.

If you have any questions concerning this letter, please feel free to contact me at (816) 389-3703 or by FAX at (816) 389-2032.

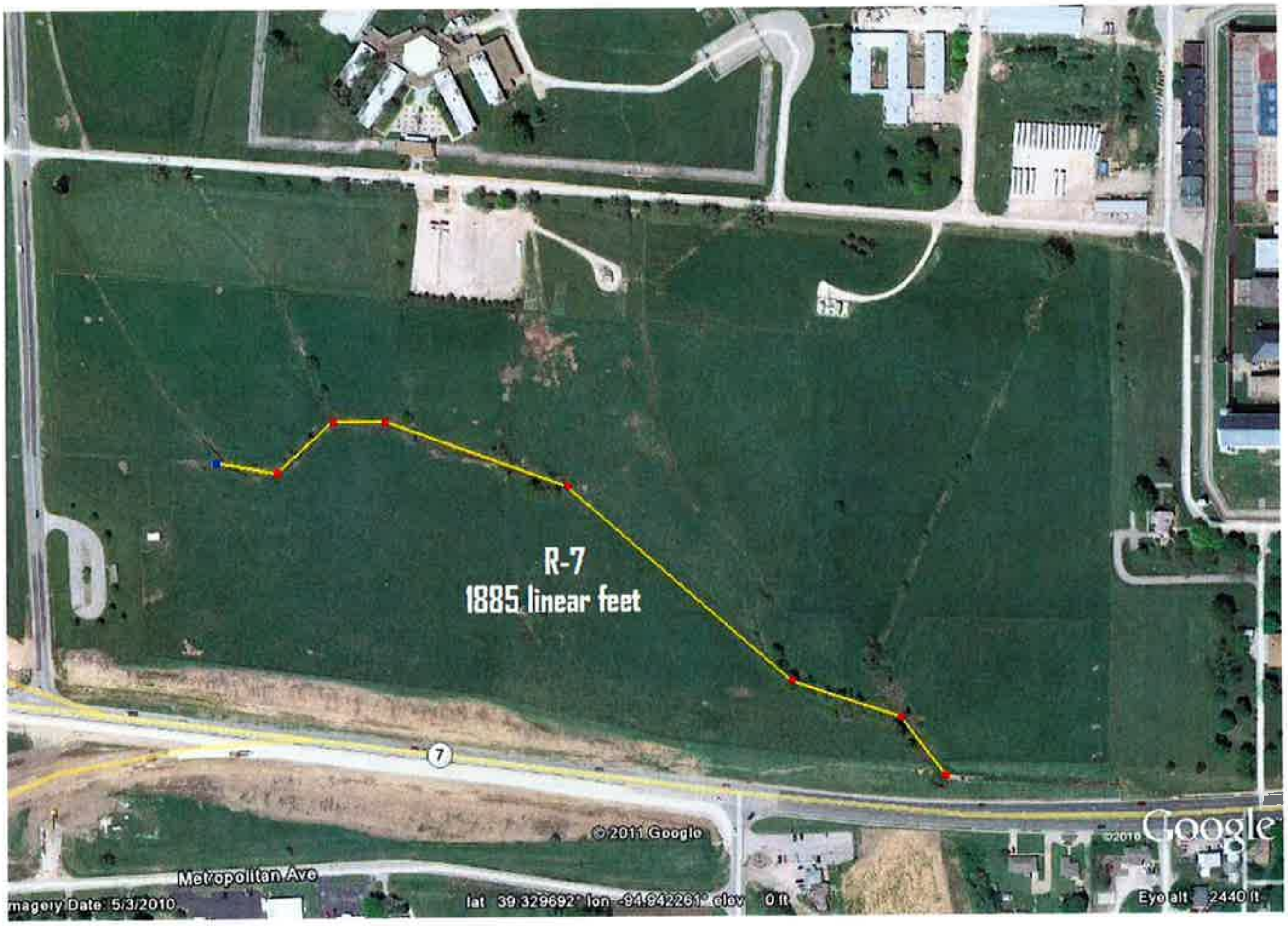
Sincerely,

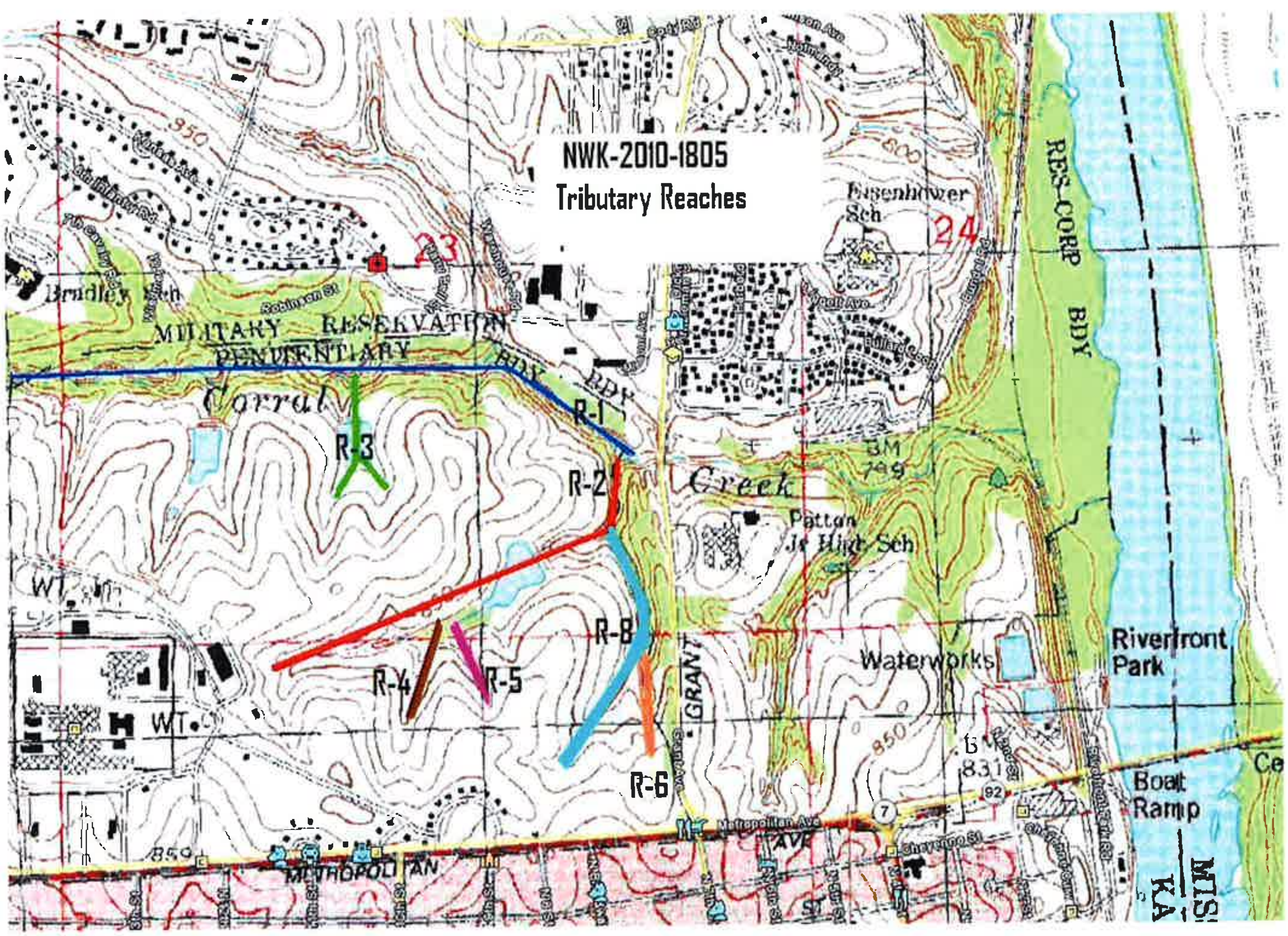
Brian Donahue
Project Manager

Enclosures

Copies Furnished (electronically w/o enclosures):

Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service,
Manhattan, Kansas
Kansas Department of Wildlife and Parks
Kansas Department of Agriculture


R-7
1885 linear feet
© 2011 Google
Metropolitan Ave
Imagery Date: 5/3/2010
Google


NWK-2010-1805
Tributary Reaches
R-1
R-2
R-3
R-4
R-5
R-6
R-8
MILITARY RESERVATION
PENITENTIARY
Corral
Creek
Patton
Jr High Sch
Waterworks
Riverfront
Park
Boat
Ramp
Eisenhower
Sch
RES-CORP BDY
GRANT
METROPOLITAN
AVE

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

REPLY TO
ATTENTION OF

October 24, 2011

Regulatory Branch
(2010-1805)

Ms. Laura Totten
The Louis Berger Group, Inc.
4050 Pennsylvania Avenue, Suite 121
Kansas City, Missouri 64111

Dear Ms. Totten:

This letter is in response to your request for clarification regarding Jurisdictional Determinations previously furnished on September 21, 2011 for the Federal Bureau of Prisons. The sites referenced in this correspondence are located in Sections 23 and 27, Township 8 south, Range 22 east, Leavenworth County, Kansas.

A total of 8 separate tributary reaches were identified by the Corps of Engineers for the entire project site. The total length of tributary reach #2 was previously incorrectly identified on jurisdictional form NWK-2010-1805-2. After comparing the delineation report completed by The Louis Berger Group, Inc. for the project site and our own jurisdictional forms, a discrepancy of 991 linear feet was discovered. This length of stream channel corresponds with the length of channel I-3 as labeled in your delineation report. This length of stream channel was inadvertently not included in our previous calculation for tributary reach #2. In addition, review of jurisdictional form NWK-2010-1805-7 revealed the omission of 2 adjacent wetlands (Wetlands 4 and 5, total of 0.25-acre) from the form. These 2 wetlands, although not directly abutting the tributary reach previously considered, are considered adjacent and regulated under the Clean Water Act. Thank you for pointing out these discrepancies in our previous calculations and jurisdictional determination forms and I apologize for any inconvenience these errors may have caused you.

In accordance with the December 2, 2008 National Guidance of Clean Water Act, this letter contains a ***revised*** jurisdictional determination form for tributary reach #2 (NWK-2010-1805-2) that includes the additional length of 991 stream channel previously omitted. This letter also contains a ***revised*** jurisdictional determination form for tributary reach #7 (NWK-2010-1805-7) that now includes 2 adjacent wetlands previously omitted from the form. These jurisdictional determinations are valid for a 5-year period from the date of this letter unless new information warrants revision of the determinations before the expiration date. If you object to these determinations, you may request an administrative appeal under Corps regulations at 33 C.F.R. Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Northwestern Division Office at the following address:

Division Engineer
ATTN: David W. Gesl
Administrative Appeals Review Officer
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870
Telephone: 503-808-3825

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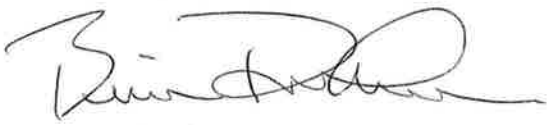
District Commander
ATTN: Mark D. Frazier
Chief, Regulatory Branch
U.S. Army Engineer District, Kansas City
601 E. 12th Street, Suite 402
Kansas City, MO 64106-2824
Voice: 816-389-3990- FAX: 816-389-2032

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 403) and /or Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). The implementing regulations for these Acts are found at 33 CFR 320-332.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. We have placed an automated version of our Customer Service Survey form on our website at: http://www.nwk.usace.army.mil/regulatory/survey.pdf. At your request, we will mail a paper copy that you may complete and return to us by mail or fax.

If you have any questions concerning this letter, please feel free to contact me at (816) 389-3703.

Sincerely,



Brian Donahue
Project Manager

Enclosure

Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service, Manhattan, Kansas
Kansas Department of Wildlife, Parks and Tourism
Kansas Department of Agriculture

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 September 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3356 °, Long. -94.9220 °.
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: **30 Aug 2011**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 3644 linear feet: 8 width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **acres**
   Drainage area: **acres**
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☐ Tributary flows through **Pick List** tributaries before entering TNW.

   Project waters are **Pick List** river miles from TNW.
   Project waters are **Pick List** river miles from RPW.
   Project waters are **Pick List** aerial (straight) miles from TNW.
   Project waters are **Pick List** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: .
   Tributary stream order, if known: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

☐ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

■ High Tide Line indicated by:	■ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .
Identify specific pollutants, if known: .

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Corral Creek is a named perennial channel having a drainage area of approximately 450 acres. There was evidence of flow within this channel during both delineations performed and during a site visit on 2 Dec 2010.
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [x] Tributary waters: **3644** linear feet **8** width (ft).
- [x] Other non-wetland waters: acres.
  Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - [x] Tributary waters: linear feet width (ft).
   - [x] Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - [ ] Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - [x] Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [x] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - [x] Demonstrate that impoundment was created from "waters of the U.S.," or
   - [x] Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - [x] Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
- [ ] which are or could be used by interstate or foreign travelers for recreational or other purposes.
- [ ] from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- [ ] which are or could be used for industrial purposes by industries in interstate commerce.
- [ ] Interstate isolated waters. Explain: .
- [ ] Other factors. Explain: .

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): **Four ephemeral tributary systems draining to Corral Creek were identified in the delineation report. These were identified as E-1, E-2, E-3 and E-4. These contributing drainages to the RPW were evaluated and determined to be non-jurisdictional based upon lack of a well defined OHWM, the steepness of the tributary gradient, short length and erosional nature of the drainage .**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets.
  - ☒ Office does not concur with delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): .
  - or ☐ Other (Name & Date): .
- ☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify):Site visit 2 Dec 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): ***21 October 2011 (REVISED JD)***

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3351° [redacted], Long. -94.9227° [redacted].
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
[redacted] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
[redacted] Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
[redacted] Office (Desk) Determination. Date: **21 Oct 2011**
[redacted] Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
[redacted] Waters subject to the ebb and flow of the tide.
[redacted] Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      - ☐ TNWs, including territorial seas
      - ☐ Wetlands adjacent to TNWs
      - ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      - ☐ Non-RPWs that flow directly or indirectly into TNWs
      - ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      - ☒ Impoundments of jurisdictional waters
      - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 3172 linear feet: 3 width (ft) and/or acres.
      Wetlands: 0.7 acres.
      Ponds: 1.2 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual and OHWM**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   [redacted] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) **General Area Conditions:**
   Watershed size: **acres**
   Drainage area: 120 **acres**
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) **Physical Characteristics:**
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through 2 tributaries before entering TNW.

   Project waters are **1 (or less)** river miles from TNW.
   Project waters are **1 (or less)** river miles from RPW.
   Project waters are **1 (or less)** aerial (straight) miles from TNW.
   Project waters are **1 (or less)** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW[5]: Tributary flows into the main branch of Corral Creek which flows approximately 1 mile to the Missouri River.

---

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Pond construction and influence from historic and present prison development in uplands draining to this creek.

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 3 feet
Average side slopes: [redacted].

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable except for lower end below pond.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☒ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

[redacted] High Tide Line indicated by:	[redacted] Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Clear-flowing stream with good buffer of pasture and trees along it.
Identify specific pollutants, if known: No known pollutants.

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[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): Mature wooded buffer, varies in width from several hundred feet down to 50 feet or none along part of its' length..

☒ Wetland fringe. Characteristics: upper end of pond and channel in this location contains wetland vegetation.

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

- ☐ Discrete wetland hydrologic connection. Explain: .
- ☐ Ecological connection. Explain: .
- ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): .

☐ Vegetation type/percent cover. Explain: .

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: The tributary is a part of Corral Creek which is a named perennial channel. There was evidence of flow within these channels during delineations performed during the Fall of 2010, Spring of 2011 and during a site visit on 2 Dec 2010.

Provide estimates for jurisdictional waters in the review area (check all that apply):
☒ Tributary waters: **3172** linear feet **3** width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: The wetlands abut portions of the tributary at locations below and above an impoundment of the RPW. The wetland above the pond is 0.4 acres in size and the wetland below the pond is 0.3 acres in size. **(Acreage of wetland below pond is based upon delineation performed for preliminary JD in the Fall of 2010).**

Provide acreage estimates for jurisdictional wetlands in the review area: **0.7** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☒ Demonstrate that impoundment was created from "waters of the U.S.," There is an OHWM both above and below the 1.2-acre open water pond
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]**
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.

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[8]See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets.
☒ Office does not concur with delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):web-based mapping.
or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):Site visit 2 December 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD: ***(REVISED JD)*** This reach includes streams I-1, I-3 & I-6, Wetlands PEM-1 and PEM-3*, in addition to open water OW-1 from the delineation report completed by Louis Berger Group dated August 2011.
*(Acreage of wetland PEM-3 located below pond is based upon delineation performed for preliminary JD in the Fall of 2010)

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 September 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3361° [redacted], Long. -94.9293° [redacted].
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
[redacted] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
[redacted] Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
[redacted] Office (Desk) Determination. Date: **30 Aug 2011**
[redacted] Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
[redacted] Waters subject to the ebb and flow of the tide.
Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      - ☐ TNWs, including territorial seas
      - ☐ Wetlands adjacent to TNWs
      - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      - ☒ Non-RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      - ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      - ☒ Impoundments of jurisdictional waters
      - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 253 linear feet: 2 width (ft) and/or acres.
      Wetlands: 0.38 acres.
      Ponds: 1.7 acre open water pond

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual & OHWM**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   [redacted] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) **General Area Conditions:**
   Watershed size: **acres**
   Drainage area: 40 **acres**
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) **Physical Characteristics:**
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through **2** tributaries before entering TNW.

   Project waters are **1-2** river miles from TNW.
   Project waters are **1 (or less)** river miles from RPW.
   Project waters are **1 (or less)** aerial (straight) miles from TNW.
   Project waters are **1 (or less)** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Ephemeral tributary drains to Corral Creek which flows to the Missouri River.
   Tributary stream order, if known: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☒ Manipulated (man-altered). Explain: Impoundment built on the drainage.

Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: 1 feet
Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain: None.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: Releases controlled by elevation of spillway from the open water pond. Limited drainage area below the pond.
Other information on duration and volume:

Surface flow is: **Confined.** Characteristics:

Subsurface flow: **Unknown**. Explain findings:
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):
- ☐ Bed and banks
- ☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☒ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

- ☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: No known chemical pollutants, drainage area is all hay pasture that is cut yearly but not grazed.
Identify specific pollutants, if known:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): The area adjacent to both sides of the tributary is 100% mature woodland that extends continuously along the entire length of the higher order RPW.

☐ Wetland fringe. Characteristics: .

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size:0.38 acres

Wetland type. Explain:0.17 acres scrub-shrub, 0.21 acres palustrine emergent.

Wetland quality. Explain: Linear wetlands located along drainages into 2 arms of the the upper extent of the pond.

Project wetlands cross or serve as state boundaries. Explain: NO.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: .

Surface flow is: **Confined**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

- ☐ Discrete wetland hydrologic connection. Explain: .
- ☐ Ecological connection. Explain: .
- ☒ Separated by berm/barrier. Explain: Located in upper extent of pond with spillway.

(d) Proximity (Relationship) to TNW

Project wetlands are **1 (or less)** river miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: No specific pollutants, uplands are all vegetated pasture in good shape with no erosion.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width):No riparian buffer for wetlands.

☐ Vegetation type/percent cover. Explain: .

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 2

Approximately (0.38) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
No, scrub-shrub	0.17	No, palustrine	0.21

Summarize overall biological, chemical and physical functions being performed: Linear wetlands located along drainages into 2 arms of the the upper extent of the pond can function to filter pollutants or sediments before reaching the pond and downstream receiving waters. No known unique biological functions at the site.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The unnamed non-RPW maintains a significant nexus to the TNW through its direct hydrologic connectivity to Corral Creek and the Missouri River (TNW). Hydrologic connectivity refers to the flow that transports organic matter, nutrients, energy, pollutants and aquatic organisms throughout the tributary system. There is only slight interruption of flow or hydrologic connectivity between the wetlands and tributary and downstream receiving waters based upon the elevation of the primary and secondary spillways of the pond. Headwater streams and wetlands such as this one can provide necessary habitat for a variety of birds, mammals, reptiles, and amphibious populations. The reach has the capacity to carry surface flow and pollutants via a confined channel to the RPW, then to the TNW. Based on these conditions, it has been determined that the non-RPW and wetlands associated with the reach have a significant nexus to the TNW.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: **253** linear feet **2** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: **0.38** acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☒ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

   1.7 acre open water pond is considered to be an impoundment of a former stream channel at this location based upon tributary conditions below it, including an OHWM and drainage feature as shown on topographical map of the area.

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets.
  - ☒ Office does not concur with delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): .

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[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

or ☐ Other (Name & Date): .

☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☒ Other information (please specify):Site visit 2 Dec 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 September 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-4

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3315° [redacted], Long. -94.9278° [redacted].
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
[redacted] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: **30 Aug 2011**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
[redacted] Waters subject to the ebb and flow of the tide.
Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 926 linear feet: 2 width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   [redacted] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: acres
   Drainage area: 30 acres
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through 2 tributaries before entering TNW.

   Project waters are 1 (or less) river miles from TNW.
   Project waters are 1 (or less) river miles from RPW.
   Project waters are 1 (or less) aerial (straight) miles from TNW.
   Project waters are 1 (or less) aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Ephemeral drainage that flows to Corral Creek , through an open water pond and then through another section of Corral Creek to the Missouri River.

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[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: 1 feet
Average side slopes: **5:1**.

Primary tributary substrate composition (check all that apply):

☒ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:	☒ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Conveys upland flow from fully vegetated pasture into RPW and open water pond.
Identify specific pollutants, if known: No known pollutants into this system.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☒ Riparian corridor. Characteristics (type, average width): Wooded 50 ft wide buffer.
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:**The unnamed non-RPW maintains a significant nexus to the TNW through its direct hydrologic connectivity to Corral Creek and the MissouriRiver (TNW). Hydrologic connectivity refers to the flow that transports organic matter, nutrients, energy, pollutants and aquatic organisms throughout the tributary system. There is a disruption of flow but between the ephemeral tributary being evaluated and downstream receiving waters caused by an open water pond impoundment. The impoundment does not however completely sever the hydrologic or biological connection between the two stream reaches. Headwater streams such as this one can provide necessary habitat for a variety of birds, mammals, reptiles, and amphibious populations. These stream types have catchment areas that can represent unique habitats for aquatic and terrestrial species. The reach has the capacity to carry surface flow and pollutants via a confined channel to the RPW, then to the TNW located less than a mile away. The non-RPW maintains hydrologic connectivity to the TNW. Based on these conditions , it has been determined that the non-RPW has a significant nexus to the TNW. .**

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - TNWs: linear feet width (ft), Or, acres.
   - Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: **253** linear feet **2** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: **Ephemeral stream channel.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets.
  - ☒ Office does not concur with delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): .
  - or ☐ Other (Name & Date): .
- ☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
- ☐ Applicable/supporting case law: .

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[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):Site visit 2 Dec 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 September 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-5

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3319° [redacted], Long. -94.9267° [redacted].
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
[redacted] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
[redacted] Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: **30 Aug 2011**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
[redacted] Waters subject to the ebb and flow of the tide.
Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 594 linear feet: 1width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   [redacted] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River**.

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: acres
   Drainage area: 20 acres
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through 2 tributaries before entering TNW.

   Project waters are 1 (or less) river miles from TNW.
   Project waters are 1 (or less) river miles from RPW.
   Project waters are 1 (or less) aerial (straight) miles from TNW.
   Project waters are 1 (or less) aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Ephemeral drainage that flows to Corral Creek , through an open water pond and then through another section of Corral Creek to the Missouri River.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 1 feet
Average depth: 1 feet
Average side slopes: [redacted].

Primary tributary substrate composition (check all that apply):

☒ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Conveys upland flow from fully vegetated pasture into RPW.
Identify specific pollutants, if known: No known pollutants.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☒ Riparian corridor. Characteristics (type, average width): Wooded 40 ft wide buffer.
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:**The unnamed non-RPW maintains a significant nexus to the TNW through its direct hydrologic connectivity to Corral Creek and the MissouriRiver (TNW). Hydrologic connectivity refers to the flow that transports organic matter, nutrients, energy, pollutants and aquatic organisms throughout the tributary system. There is a disruption of flow between the ephemeral tributary being evaluated and downstream receiving waters caused by an open water pond impoundment. The impoundment does not however sever the hydrologic or biological connection between the two stream reaches. Headwater streams such as this one can provide necessary habitat for a variety of birds, mammals, reptiles, and amphibious populations. These stream types have catchment areas that can represent unique habitats for aquatic and terrestrial species. The reach has the capacity to carry surface flow and pollutants via a confined channel to the RPW, then to the TNW located less than a mile away. The non-RPW maintains hydrologic connectivity to the TNW. Based on these conditions, it has been determined that the non-RPW has a significant nexus to the TNW. .**

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - TNWs: linear feet width (ft), Or, acres.
   - Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: **594**linear feet **1** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: **Ephemeral stream channel.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets.
☒ Office does not concur with delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): .
or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
☐ Applicable/supporting case law: .

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[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

☐ Applicable/supporting scientific literature:
☒ Other information (please specify):Site visit 2 Dec 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 September 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-6

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3317° [redacted], Long. -94.9220° [redacted].
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
[redacted] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
[redacted] Office (Desk) Determination. Date: **30 Aug 2011**
[redacted] Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
[redacted] Waters subject to the ebb and flow of the tide.
Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      - ☐ TNWs, including territorial seas
      - ☐ Wetlands adjacent to TNWs
      - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      - ☒ Non-RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      - ☐ Impoundments of jurisdictional waters
      - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 520 linear feet: 2 width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   [redacted] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **acres**
   Drainage area: 20 **acres**
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through **2** tributaries before entering TNW.

   Project waters are **1 (or less)** river miles from TNW.
   Project waters are **1 (or less)** river miles from RPW.
   Project waters are **1 (or less)** aerial (straight) miles from TNW.
   Project waters are **1 (or less)** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Ephemeral drainage that flows to Corral Creek and then to the Missouri River.
   Tributary stream order, if known: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: 1 feet
Average side slopes: [redacted].

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:

Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Conveys upland flow from fully vegetated pasture into RPW.
Identify specific pollutants, if known: No known pollutants.

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[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☒ Riparian corridor. Characteristics (type, average width): Wooded, 100 ft wide buffer.
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:**The unnamed non-RPW maintains a significant nexus to the TNW through its direct hydrologic connectivity to Corral Creek and the MissouriRiver (TNW). Hydrologic connectivity refers to the flow that transports organic matter, nutrients, energy, pollutants and aquatic organisms throughout the tributary system. There is no interruption of flow between the ephemeral tributary being evaluated and downstream receiving waters. Headwater streams such as this one can provide necessary habitat for a variety of birds, mammals, reptiles, and amphibious populations. These stream types have catchment areas that can represent unique habitats for aquatic and terrestrial species. The reach has the capacity to carry surface flow and pollutants via a confined channel to the RPW, then to the TNW located less than a mile away. The non-RPW maintains hydrologic connectivity to the TNW. Based on these observed conditions, it has been determined that the non-RPW has a significant nexus to the TNW.** .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: **520** linear feet **2** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: **Ephemeral stream channel.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

[8]See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets.
☒ Office does not concur with delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): .
or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
☐ Applicable/supporting case law: .

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[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ Applicable/supporting scientific literature:
☒ Other information (please specify): Site visit 2 Dec 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): *21 October 2011 (REVISED JD)*

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-7

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3279° N, Long. 94.9400° W.
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: **21 October 2011**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 1885 linear feet: 2 width (ft) and/or acres.
      Wetlands: .25 acres. (Wetlands 4 and 5 from delineation report)

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM. and wetland delineation manual**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: **A total of 4 contributing drainages to this reach within the project area were evaluated and determined to be non-jurisdictional waters based on the lack of an OHWM and past modifications made for stormwater drainage on the project site.**

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[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **acres**
   Drainage area: 500 **acres**
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☒ Tributary flows directly into TNW.
   ☐ Tributary flows through **Pick List** tributaries before entering TNW.

   Project waters are **1-2** river miles from TNW.
   Project waters are **1 (or less)** river miles from RPW.
   Project waters are **1-2** aerial (straight) miles from TNW.
   Project waters are **1-2** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Tributary of Three-Mile Creek which flows to Missouri River.
   Tributary stream order, if known: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Portions of the upper end of the tributary system have been graded and altered due to development and the lower portion of the drainage area have been enclosed in a stormwater system through the City of Leavenworth..

Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: 2 feet
Average side slopes: [redacted].

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: A portion of the reach in the project area is within a buffalo enclosure pasture leading to some erosion.
Presence of run/riffle/pool complexes. Explain: None.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 5 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: Conveys upland flow to RPW tributary.
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☒ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: It is likely some runoff water quality is slightly affected by presence of buffalo pasture and pollutants entering the tributay off of city streets and lawn areas via the stormwater system.
Identify specific pollutants, if known: No known pollutants.

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[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): No riparian corridor within project area, remaining portion of system channelized or piped.

☐ Wetland fringe. Characteristics: .

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: Wetland 4:=0.23, Wetland 5= 0.02 acres

Wetland type. Explain: palustrine emergent.

Wetland quality. Explain:low quality wetlands with undesirable species composition.

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: .

Surface flow is: **Confined**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: Unobstructed hydrologic connection between wetlands and tributary system.

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **1-2** river miles from TNW.

Project waters are **1-2** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: These wetlands receive storm water flow from upland areas including fully developed portions of the buildings and grounds on the project site.

Identify specific pollutants, if known: No known pollutants.

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): .

☐ Vegetation type/percent cover. Explain: .

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: [redacted]

Approximately (.25) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Wetland 4 - NO	0.23	Wetland 5 -NO	.02

Summarize overall biological, chemical and physical functions being performed: Due to the size and geographic location of the wetlands in the drainage area, they perform limited biological, chemical or physical functions. .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **The large drainage area, the average precipitation and hydrologic connection between the tributary and wetlands maintains the capacity of this reach to have a significant nexus to the TNW. This unnamed tributary has the capacity to convey pollutants from highly developed residential and commercial properties located upland and within the project site toThree-Mile Creek and the Missouri River (TNW). The reach is within close proximity of the TNW. This stream and adjacent wetlands are located in a rapidly urbanizing location with few opportunities for water quality filtration functions. Based on current guidance and instruction, the tributary reach and adjacent wetlands have a significant nexus to the TNW.**

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☒ Tributary waters: **1885** linear feet **2** width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **0.25** acres. (Wetlands 4 and 5 from delineation report)

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

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[8]See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☒ Other: (explain, if not covered above): **A total of 4 contributing drainages to this reach within the project area were evaluated and determined to be non-jurisdictional waters based on the lack of an OHWM and past modifications made for stormwater drainage on the project site.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets.
☒ Office does not concur with delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): .
or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature:
☒ Other information (please specify):Site visit on 2 Dec 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD: A previous Jurisdictional Determination (JD) was issued for this reach on 20 September 2011. This revised JD replaces that JD due to the omission of Wetlands 4 and 5 during consideration of that determination.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 September 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Federal Bureau of Prisons, NWK-2010-1805-8

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Kansas County/parish/borough: Leavenworth City: Leavenworth
Center coordinates of site (lat/long in degree decimal format): Lat. 39.3338° [redacted], Long. -94.9224° [redacted].
Universal Transverse Mercator:
Name of nearest waterbody: **Tributaries of Missouri River**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Missouri River
Name of watershed or Hydrologic Unit Code (HUC): **102400110500**
[redacted] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: **30 Aug 2011**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There [redacted] "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
[redacted] Waters subject to the ebb and flow of the tide.
Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [redacted] "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 2018 linear feet: 2width (ft) and/or acres.
      Wetlands:
      Ponds:

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual and OHWM**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   [redacted] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Missouri River.**

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **acres**
   Drainage area: 120 **acres**
   Average annual rainfall: 35-40 inches
   Average annual snowfall: 10-15 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through [redacted] tributaries before entering TNW.

   Project waters are **1 (or less)** river miles from TNW.
   Project waters are **1 (or less)** river miles from RPW.
   Project waters are **1 (or less)** aerial (straight) miles from TNW.
   Project waters are **1 (or less)** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Tributary flows into the main branch of Corral Creek which flows approximately 1 mile to the Missouri River.

---

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Pond construction and influence from historic and present prison development in uplands draining to this creek.

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 3 feet
Average side slopes: [redacted].

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable except for lower end below pond.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☒ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

[redacted] High Tide Line indicated by:	[redacted] Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Clear-flowing stream with good buffer of pasture and trees along it.
Identify specific pollutants, if known: No known pollutants.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): Mature wooded buffer, varies in width from 100 feet at the lower end of the reach to 50 feet or less at the upper extent.

☐ Wetland fringe. Characteristics: .

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

- ☐ Discrete wetland hydrologic connection. Explain: .
- ☐ Ecological connection. Explain: .
- ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): .

☐ Vegetation type/percent cover. Explain: .

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: The tributary is a part of Corral Creek which is a named perennial channel. There was evidence of flow within these channels during delineations performed during the Fall of 2010, Spring of 2011 and during a site visit on 2 Dec 2010.

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [x] Tributary waters: **2018** linear feet **2** width (ft).
- [ ] Other non-wetland waters: acres.
  Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - [ ] Tributary waters: linear feet width (ft).
   - [ ] Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - [ ] Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
     - [x] Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: The wetlands abut portions of the tributary at locations below and above an impoundment of the RPW. The wetland above the pond is 0.4 acres in size and the wetland below the pond is 0.3 acres in size. (Acreage of wetland below pond is based upon delineation performed for preliminary JD in the Fall of 2010).

   Provide acreage estimates for jurisdictional wetlands in the review area: **0.7** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - [ ] Demonstrate that impoundment was created from "waters of the U.S.,"
   - [ ] Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - [ ] Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
- [ ] which are or could be used by interstate or foreign travelers for recreational or other purposes.
- [ ] from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- [ ] which are or could be used for industrial purposes by industries in interstate commerce.
- [ ] Interstate isolated waters. Explain: .

---

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

■ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
■ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
■ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
■ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
■ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
■ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
■ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets.
☒ Office does not concur with delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Leavenworth, KS.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):web-based mapping.
or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. 2010-1805, PJD dated 8Nov2010
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):Site visit 2 December 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Federal Bureau of Prisons	File Number: 2010-1805	Date: Sept. 21, 2011
Attached is:		See Section below
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	C. PERMIT DENIAL	C
XX	D. APPROVED JURISDICTIONAL DETERMINATION	D
	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- REQUEST MODIFICATION: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- RECONSIDERATION BASED ON NEW INFORMATION: You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

A. Modification of an INITIAL PROFFERED PERMIT (Item A).
D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

B. Administrative Appeal of a PROFFERED PERMIT (Item B).
C. Administrative Appeal of a PERMIT DENIAL (Item C).
D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: DISTRICT ENGINEER **Attn: Mark D. Frazier** **Chief, Regulatory Branch** **U.S. Army Engineer District, Kansas City** **601 E. 12th Street, Suite 402** **Kansas City, MO 64106-2896** **Telephone: 816-389-3990** (Use this address for submittals to the District Engineer)	If you wish to submit an appeal or have questions regarding the appeal process you may contact: DIVISION ENGINEER **Attn: David W. Gesl** **Administrative Appeals Review Officer** **U.S. Army Engineer Division, Northwestern Division** **P.O. Box 2870** **Portland, OR 97208-2870** **Telephone: 503-808-3825**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:

The University of Kansas

Kansas Biological Survey

October 20, 2011

Laura Totten, Senior Ecologist
The Louis Berger Group, Inc.
4050 Pennsylvania Ave., Suite 121
Kansas City, MO 64111

RE: Proposed Federal Correctional Institution and Federal Prison Camp
U.S. Dept. of Justice, Federal Bureau of Prisons

Dear Ms. Totten:

I have reviewed the Kansas Natural Heritage Inventory database for records of the Western Prairie Fringed Orchid (*Platanthera praeclara*) and its habitat at the referenced site. This species could occur on any untilled, native prairie in Leavenworth County. You have stated that the grasslands to be disturbed are hay meadows planted to non-native species; it is highly unlikely the orchid would occur in this type of habitat. Also, in 2005 the Kansas Natural Heritage Inventory conducted a survey for native prairies in Leavenworth County and did not identify any such habitat in the vicinity of the proposed project site.

Thank you for providing the Kansas Biological Survey with the opportunity to comment on this proposed project. Please give me a call at 785-864-1538 if I can be of further assistance.

Sincerely,

Jennifer M. Delisle, Information Manager
Kansas Natural Heritage Inventory

Higuchi Hall • 2101 Constant Ave., Room 108 • Lawrence, KS 66047-3759
(785) 864-1500 • Fax: (785) 864-1534 • www.kbs.ku.edu

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

June 11, 2014

Re: UPDATE ON THE ENVIRONMENTAL IMPACT STATEMENT PROCESS - PROPOSAL TO CONSTRUCT A FEDERAL CORRECTIONAL INSTITUTION AND FEDERAL PRISON CAMP IN LEAVENWORTH, KANSAS

Dear Sir/Madam:

On November 18, 2011, the U.S. Department of Justice, Federal Bureau of Prisons (BOP) published a Draft Environmental Impact Statement (DEIS) concerning the proposal to construct a Federal Correctional Institution and Federal Prison Camp within the BOP's property currently containing the U.S. Penitentiary in Leavenworth, Kansas. Following publication of the DEIS, a public hearing was held on December 11, 2011 and the public comment period, allowing interested parties such as federal, state regional and local officials, agencies, organizations and the public to voice their interests and concerns regarding the proposed project, concluded on January 2, 2012. Comments were received by BOP but due to funding constraints, preparation of a Final EIS (FEIS) was postponed.

By this letter, BOP is announcing that it is reinitiating the EIS process and intends to complete its responsibilities and requirements under the National Environmental Policy Act (NEPA), which is required of all federal agencies. Key project highlights are listed below:

- There are no changes to the location or design of the proposed facilities.
- In response to comments received on the DEIS, BOP is conducting several follow on studies including cultural resources investigations (archaeological and architectural), stormwater runoff modelling and analysis, and a sanitary sewer capacity impact analysis. This information will supplement the information that was included in the DEIS and will be presented in the Final EIS (FEIS).

- The FEIS is expected to be published in late fall of 2014 and interested parties will have an opportunity to review and comment on the document.

The BOP appreciates your continued interest in this project. If you have any additional questions, please feel free to contact me or Issac Gaston, Site Selection Specialist, Capacity Planning and Site Selection Branch, Federal Bureau of Prisons, 500 First Street, NW, Washington, D.C. 20534 Tel: 202-514-6470 / Fax: 202-616-6024 / E-mail: igaston@bop.gov.

Sincerely,

Thomas A. Webber, Chief
Capacity Planning and
Site Selection Branch

Cc: Issac Gaston, BOP
Carol A. Zurawski, LBG, Inc.

Subject: Fwd: KDWPT Project Review: Federal Correctional Institution and Federal Prison Camp in Leavenworth Co. (Track 20100520-4)

FYI

>>> "Bartels, Brian" <brian.bartels@ksoutdoors.com> 8/20/2014 4:48 PM >>>

Mr. Gaston:

The referenced project was reviewed for potential impacts on crucial wildlife habitats, current State-listed Threatened and Endangered species and Species in Need of Conservation (SINC), and Kansas Department of Wildlife, Parks and Tourism managed areas for which this agency has administrative authority.

We provide the following comments and recommendations:

- **We reiterate previous remarks provided by KDWPT on 27 July 2011 and 11 June 2012. Aerial views of the project location indicate that woodland habitat is within the project boundary which indicates potential removal during project construction. Thus, Critical Habitat for State-listed Smooth Earth Snake (*Virginia valeriae*) and Redbelly Snake (*Storeria occipitomaculata*) designated within Leavenworth County might be adversely affected. Avoiding removal of woodland habitat during project construction will prevent an Action Permit from being required by this department. If removal of woodland habitat cannot be avoided, a site visit from this department to determine habitat suitability for the aforementioned species will be necessary.**

- **Be advised that the Northern Long-eared Bat (*Myotis septentrionalis*) is proposed to be listed as Endangered by the Federal Endangered Species Act. We request that the applicant coordinate with the U.S. Fish and Wildlife Service in Manhattan to avoid potential project delays should the species be listed.**

Since the Department's recreational land obligations and the State's species listings periodically change, if construction has not started within one year of this date, or if design changes are made in the project plans, the project sponsor must contact this office to verify continued applicability of this assessment report. For our purposes, we consider construction started when advertisements for bids are distributed.

Consider this email our official project review. Contact me with any questions.

Brian Bartels, Ecologist
Ecological Services
Kansas Dept. of Wildlife, Parks and Tourism
512 SE 25th Ave., Pratt, KS 67124
office: 620-672-0746

cell: 620-770-6628
fax: 620-672-2972

6425 SW 6th Avenue
Topeka, KS 66615

Kansas

phone: 785-272-8681
fax: 785-272-8682
cultural_resources@kshs.org

Kansas Historical Society

Sam Brownback, Governor
Jennie Chinn, Executive Director

KSR&C No. 11-01-098

November 6, 2014

Issac Gaston
Site Selection Specialist
Capacity Planning and Site Selection Branch
U.S. Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

Via E-Mail

RE: Federal Prison Expansion
United States Penitentiary, Leavenworth
Leavenworth County

Dear Mr. Gaston:

In accordance with 36 CFR 800, the Kansas State Historic Preservation Office has reviewed a report entitled *Phase III Evaluations of Five Archaeological Sites at the United States Penitentiary, Leavenworth, Leavenworth County, Kansas*, by Christopher M. Schoen, RPA of The Louis Berger Group, Inc., dated September, 2014. We find the report to be acceptable. Given the excavation findings, our office concurs that the five archeological sites (14LV169, 14LV171, 14LV172, 14LV176 and 14LV181) are not eligible for listing in the National Register of Historic Places.

This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Tim Weston at 785-272-8681 (ext. 214) or Patrick Zollner at 785-272-8681 (ext. 217).

Sincerely,

Jennie Chinn, Executive Director and
State Historic Preservation Officer

Timothy Weston for

Patrick Zollner
Deputy SHPO

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

REPLY TO
ATTENTION OF

July 2, 2014

Regulatory Branch
(NWK-2010-1805)

Mr. Thomas A. Weber, Chief
Capacity Planning and Site Selection Branch
Federal Bureau of Prisons
500 First Street, Northwest
Washington, D.C. 20534

Dear Mr. Weber:

This is in reply to a notice received June 11, 2014 regarding the re-initiation of the environmental impact statement (EIS) process for new correctional facilities at the U.S. Prison located in Leavenworth, Kansas. The proposed building sites are located within Sections 22, 23, 26 and 27, Township 8 south, Range 22 east, Leavenworth County, Kansas. This project is assigned Regulatory File No. NWK-2010-1805. Please reference this file number on any correspondence to us or to other interested parties concerning this matter.

The Corps of Engineers (Corps) has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (Title 33 United States Code Section 1344). The implementing regulation for this Act is found at Title 33 Code of Federal Regulations Parts 320-332.

Federal regulations require that a Department of the Army permit be issued by the Corps prior to the initiation of any construction on the portion of a proposed activity which is within the Corps' regulatory jurisdiction.

We previously reviewed the draft environmental impact statement (DEIS) and offered written comments on December 29, 2011. A copy of that letter is enclosed. During the review and evaluation process of a Section 404 permit application, the Corps must first define the basic project purpose and need for the proposed work. This basic purpose serves as the basis from which the water-dependency of the work is evaluated. The overall project purpose(s) must also be well defined to provide the basis for the range of alternatives available to an applicant. The selection of the least environmentally damaging practicable alternative is required by the Clean Water Act. This analysis is consistent with the Section 404(b)(1) guidelines found at 40 CFR, Section 230.10.

During our 2014 review of the DEIS and comparison of both the East-West Composite plans (Preferred alternative) and Alternative FCI East-3, the following observations were noted:

1. Stormwater: In section III, pages 12 and 13, the proposed construction of stormwater basin(s) is discussed to mitigate the potential adverse impact of the project to surface waters resulting from stormwater runoff. If these basins are constructed within waters of the U.S. at the site, additional impact (with possible differing amounts of impact), would result from each alternative considered for the DEIS.

2. Utilities: There are marked differences between the amount of both overhead electric line relocation and underground low pressure gas line relocation required for each of the alternatives considered in the DEIS. For the electric lines, no explanation is provided for the different routes and resulting linear

distance relocation requirements of the alignments. This factor would be of interest during Section 404 permit evaluation and comparison of the alternatives. It is stated that the preferred alternative requires no relocation of underground low-pressure gas line but alternative FCI East-3 requires approximately 3340 linear feet of relocation. The plan exhibits provided for the east site do not clearly show the current alignment of the gas line. The locations of the Central Plant and warehouse are essentially the same for both plans. No further explanation or rationalization for this required length of gas line relocation could be found in the DEIS.

3. Impacts to waters: The stream and wetland impacts listed in the alternatives discussion in Section II of the documents as well as shown in Table II-1 reflect neither the amount of existing jurisdictional waters of the U.S. within the project site(s) nor the amount of impact to waters of the U.S. for these alternatives. The entire project site(s) contain a total of only1.33 acres of jurisdictional wetland (1.08 acres on the east site and 0.25 acres on the west site). For stream resources, please reference our jurisdictional determination, dated September 21, 2011 and as amended on October 24, 2011. See also Table III-2, (Reaches 1-8 plus OW-1 (1.2 acre) and OW-2 (1.7 acre)) plus Table III-4 of the DEIS for the total stream channel, open water and wetland resources on the property. In addition, please note that Alternative FCI-East-3 extends beyond the limits of both the 2011 waters of the U.S. wetland delineation report and the identified DEIS east project site boundary. Presumed impacts associated with this alternative include 2 ponds and stream resources for which no jurisdictional determination has yet been investigated or concluded.

The East-West Composite was selected as the preferred alternative for the proposed project. In comparison to Alternative FCI East-3, that alternative would have more than three times the stream impact, more wetland impact and almost twice the impact to jurisdictional open water ponds on the project site. The notice we received on June 11, 2014 stated that no changes to location or design of the facilities is proposed from that represented in the DEIS from 2011. If the final EIS is published in late fall of 2014 unchanged from the DEIS as you propose, issuance of a permit by the Corps of Engineers under Section 404 will be difficult given the factors considered in accordance with the Section 404(b)(1) guidelines. We urge you to carefully consider the preferred alternative for the project (East-West composite). Selection of either the Alternative FCI-East-3 plan layout or the utilization of this plan layout for the east site while incorporating the same west site component found in the preferred alternative would appear to have less impact to both stream and wetland resources.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. We have placed an automated version of our Customer Service Survey form on our website at: http://www.nwk.usace.army.mil/regulatory/survey.pdf. At your request, we will mail a paper copy that you may complete and return to us by mail or fax.

If you have any questions concerning this matter, please feel free to contact Mr. Brian Donahue at (816) 389-3703. Please reference File No. NWK-2010-1805 in all comments and/or inquiries relating to this project.

Sincerely,

David R. Hibbs
Regulatory Program Manger
Regulatory Branch

Enclosure

Copy Furnished (electronically w/enclosure):

U.S. Environmental Protection Agency,
Watershed Planning and Implementation Branch

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 22, 2014

Dr. Timothy Weston
SHPO Archeologist
Kansas State Historic Preservation Office
Kansas Historical Society
6425 SW 6th Avenue
Topeka, Kansas 66615-1099

Re: Cultural Resources Survey KSR&C File #11-01-098

Dear Dr. Weston

Please find enclosed for your review and comment a copy of the draft report entitled Phase III Evaluations of Five Archaeological Sites at the United States Penitentiary, Leavenworth, Leavenworth County, Kansas for proposed Federal Correctional Institution (FCI)/ Federal Prison Camp (FPC) project at Leavenworth, Kansas. This document is provided to fulfill the requirements of the National Environmental Policy Act of 1969, as amended and Section 106 of the National Historic Preservation Act, as amended.

Sincerely,

Issac Gaston,
Site Selection Specialist

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 8, 2014

Ms. Kim Gant
Review and Compliance Coordinator
6425 SW 6th Avenue
Topeka, Kansas 6615-1099

RE: Environmental Impact Statement Process - Level 2 Documentation for Proposed Correctional Institution and Federal Prison Camp in Leavenworth, Kansas

Dear Ms. Gant,

On June 11, 2014, the U.S. Department of Justice, Federal Bureau of Prisons (BOP) reinitiated the Environmental Impact Statement (EIS) process concerning the proposal to construct a Federal Correctional Institution and Federal Prison Camp within the current property of the U.S. Penitentiary at Leavenworth, Kansas.

In fulfillment of its responsibilities and requirements under the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA), BOP has completed mitigation for the adverse effect of the project on two 2-story double houses at 920-922 Metropolitan Avenue and 1002-1004 Metropolitan Avenue (Buildings 17 and 18). The mitigation, Level 2 Documentation including completion of online forms in the KSHS digital database, measured floor plans, and high resolution digital photographs, was agreed to between BOP and SHPO in a meeting on December 13, 2011.

If you have any additional questions, please feel free to contact me, Federal Bureau of Prisons, 500 First Street, NW, Washington, D.C. 20534 Tel: 202-514-6470/Fax: 202-616-6024/ E-mail: igaston@bop.gov.

Sincerely,

Isaac Gaston,
Site Selection Specialist

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

June 12, 2020

Subject: Resumption of National Environmental Policy Act Process – Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in Leavenworth, Kansas

Dear Sir/Madam:

On November 18, 2011, the U.S. Department of Justice, Federal Bureau of Prisons (BOP) published a Draft Environmental Impact Statement (DEIS) concerning a proposal to develop a new Federal Correctional Institution and Federal Prison Camp within property comprising the U.S. Penitentiary in Leavenworth, Kansas. Following publication of the DEIS, a public hearing was held on December 11, 2011, and the public comment period was concluded on January 2, 2012. Publication of the Final EIS (FEIS) occurred on April 10, 2015, and the public comment period concluded on May 10, 2015. A decision whether to proceed with the proposed action was delayed and a Record of Decision to be issued by the Director of the BOP, pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended and U.S. Department of Justice regulations, was never adopted.

By this letter, the BOP is announcing the resumption of the NEPA process and its intent to complete its responsibilities and obligations under NEPA with preparation of a Draft Supplemental FEIS (DSFEIS). The DSFEIS will include updated information about the proposed project; the purpose and need for proceeding with developing a new FCI and FPC in Leavenworth, Kansas; potential impacts and mitigation measures associated with the project; and to provide the public, elected and appointed officials, regulatory agencies and others the opportunity to voice their interests and provide comments concerning the proposed action. The DSFEIS is expected to be published by the

end of 2020 and notice will be given concerning the availability of the DSFEIS for public review along with plans for a public hearing following DSFEIS publication. The BOP appreciates your continued interest in this project. Please direct any inquiries to:

- Kimberly S. Hudson, COR - Site Selection Specialist
  Construction and Environmental Review Branch
  Federal Bureau of Prisons, 320 First Street, NW,
  Room 901-5, Washington, D.C. 20534
  Tel: 202-616-2574 / Fax: 202-260-0702 /
  Email:kshudson@bop.gov

Sincerely,

Kimberly S. Hudson

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

July 1, 2020

Mr. Jeff Ladner
Leavenworth County District Conservationist
USDA, Natural Resources Conservation Service
700 Jefferson Street, Suite B
Oskaloosa, Kansas 66066
Jeffery.ladner@usda.gov

RE: **Prime Farmland Conversion Impact Rating Form AD1006 for Proposed Federal Correctional Institution and Federal Prison Camp– Leavenworth, Kansas**

Dear Mr. Ladner:

WSP USA Solutions, Inc. has been contracted to prepare a Draft Supplemental Final Environmental Impact Statement (DSFEIS) as part of a proposed action by U.S. Department of Justice, Federal Bureau of Prisons (BOP) to house approximately 1,152 medium-security federal inmates within a newly developed Federal Correctional Institution (FCI) and approximately 256 minimum-security inmates in a new Federal Prison Camp (FPC). The proposed facilities would include housing, food service, a medical unit, indoor and outdoor recreation facilities, support and service areas, and employee and visitor parking. The proposed FCI/FPC development site lies within the BOP's 754-acre property comprising the U.S. Penitentiary (USP) located at 1300 Metropolitan Avenue in Leavenworth, Kansas.

According to the 2010 City of Leavenworth Comprehensive Land Use Plan, the City comprises approximately 10,990 acres including the following predominant uses: Agricultural – 3,553 acres or 32.3% of the total area; Commercial – 1,764 acres or 16.1% of the total area; and Single-family residential – 1,373 acres or 12.5% of the total area. Remaining uses include parks, schools and industrial uses. The City of Leavenworth's land use pattern is unique in some respects as a result of the large percentage of federally-owned land (approximately 6,790 acres) comprising USP Leavenworth and the U.S. Army's Fort Leavenworth.

Much of the southern portion of the USP Leavenworth property, bordered by Metropolitan Avenue, has already been developed with the USP, minimum-security satellite prison camp, warehouses, staff housing, internal roadways, parking areas and other ancillary support facilities. Of the remainder of the property, an area described as the East Site and shown on attached maps, consisting of approximately 225 acres of primarily undeveloped land situated east of the USP and north of Metropolitan Avenue, west of Grant Avenue, and south of Corral Creek, is proposed for FCI/FPC development. Currently, the East Site is comprised primarily of regularly maintained and undeveloped hilly, grassland, bordered to the north by riparian forest that parallels Corral Creek. Two man-made ponds are also situated on the East Site, located north of the primary drainage that bisects the property.

Lands surrounding the East Site consist of mixed commercial and residential uses. Military family housing (known as the Frontier Heritage Community) associated with Fort Leavenworth is found to the north, with two schools situated northeast (Eisenhower Elementary) and east (Patton Junior High) of the East Site. Commercial development fronting on Metropolitan Avenue forms a buffer between the USP Leavenworth property and the concentration of residential housing located further south of Metropolitan Avenue. The USP abuts the western boundary of the East Site.

Enclosed find a Farmland Impact Rating Form (AD-1006) with Parts I and III completed. We request that your agency complete Parts II, IV and V and return the form to me for completion (Parts VI and VII). The facility has not yet been designed so there are no detailed drawings available, however, the proposed development will utilize the majority of the East Site. For your reference, Attachment A depicts the regional location of the proposed project site; Attachment B is a land use map of the site and surroundings; Attachment C shows topographic conditions in and around the site, and Attachment D is the proposed development plan.

We appreciate your assistance with this matter and look forward to your response. Please do not hesitate to contact me with questions at robert.nardi@wsp.com or by phone at 973-407-1681. Thank you.

Sincerely yours,

WSP USA Solutions, Inc.

Robert J. Nardi, PP
Vice President

Cc: S. Hoffman, WSP

Form AD-1006
Attachment A: Regional Location – Proposed FCI/FPC – Leavenworth County, Kansas
Attachment B: Land Use Map - Proposed FCI/FPC – Leavenworth County, Kansas
Attachment C: Topographic Conditions - Proposed FCI/FPC – Leavenworth County, Kansas
Attachment D: Conceptual Development Plan (East Site)

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I *(To be completed by Federal Agency)*	Date Of Land Evaluation Request July 1, 2020
Name of Project Proposed FCI/FPC, Leavenworth	Federal Agency Involved USDOJ, Federal Bureau of Prisons
Proposed Land Use New federal prison & satellite camp	County and State Leavenworth County, KS
PART II *(To be completed by NRCS)*	Date Request Received By NRCS / Person Completing Form: Robert J. Nardi

Does the site contain Prime, Unique, Statewide or Local Important Farmland? *(If no, the FPPA does not apply - do not complete additional parts of this form)* YES ☐ NO ☐		Acres Irrigated	Average Farm Size
Major Crop(s)	Farmable Land In Govt. Jurisdiction Acres: %	Amount of Farmland As Defined in FPPA Acres: %	
Name of Land Evaluation System Used	Name of State or Local Site Assessment System	Date Land Evaluation Returned by NRCS	

PART III *(To be completed by Federal Agency)*	Alternative Site Rating			
	Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly	150			
B. Total Acres To Be Converted Indirectly	75			
C. Total Acres In Site	225			
PART IV *(To be completed by NRCS)* Land Evaluation Information				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide Important or Local Important Farmland				
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				
PART V (To be completed by NRCS) Land Evaluation Criterion Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)				

PART VI *(To be completed by Federal Agency)* Site Assessment Criteria *(Criteria are explained in 7 CFR 658.5 b. For Corridor project use form NRCS-CPA-106)*	**Maximum Points**	Site A	Site B	Site C	Site D
1. Area In Non-urban Use	(15)				
2. Perimeter In Non-urban Use	(10)				
3. Percent Of Site Being Farmed	(20)				
4. Protection Provided By State and Local Government	(20)				
5. Distance From Urban Built-up Area	(15)				
6. Distance To Urban Support Services	(15)				
7. Size Of Present Farm Unit Compared To Average	(10)				
8. Creation Of Non-farmable Farmland	(10)				
9. Availability Of Farm Support Services	(5)				
10. On-Farm Investments	(20)				
11. Effects Of Conversion On Farm Support Services	(10)				
12. Compatibility With Existing Agricultural Use	(10)				
TOTAL SITE ASSESSMENT POINTS	160	0	0	0	0
PART VII ***(To be completed by Federal Agency)***					
Relative Value Of Farmland *(From Part V)*	100	0	0	0	0
Total Site Assessment *(From Part VI above or local site assessment)*	160	0	0	0	0
TOTAL POINTS ***(Total of above 2 lines)***	260	0	0	0	0

Site Selected: East Site	Date Of Selection	Was A Local Site Assessment Used? YES ☐ NO ☐

Reason For Selection:

Portions of project site (East) at USP Leavenworth has been developed with penitentiary-related uses for over 100 years. Portions of project site mapped as prime farmland soils have been altered as part of penitentiary operations and installation of underground utilities and do not retain original characteristics.

Name of Federal agency representative completing this form:	Date:

(See Instructions on reverse side)

Form AD-1006 (03-02)

STEPS IN THE PROCESSING THE FARMLAND AND CONVERSION IMPACT RATING FORM

Step 1 - Federal agencies (or Federally funded projects) involved in proposed projects that may convert farmland, as defined in the Farmland Protection Policy Act (FPPA) to nonagricultural uses, will initially complete Parts I and III of the form. For Corridor type projects, the Federal agency shall use form NRCS-CPA-106 in place of form AD-1006. The Land Evaluation and Site Assessment (LESA) process may also be accessed by visiting the FPPA website, http://fppa.nrcs.usda.gov/lesa/.

Step 2 - Originator (Federal Agency) will send one original copy of the form together with appropriate scaled maps indicating location(s)of project site(s), to the Natural Resources Conservation Service (NRCS) local Field Office or USDA Service Center and retain a copy for their files. (NRCS has offices in most counties in the U.S. The USDA Office Information Locator may be found at http://offices.usda.gov/scripts/ndISAPI.dll/oip_public/USA_map**,** or the offices can usually be found in the Phone Book under U.S. Government, Department of Agriculture. A list of field offices is available from the NRCS State Conservationist and State Office in each State.)

Step 3 - NRCS will, within 10 working days after receipt of the completed form, make a determination as to whether the site(s) of the proposed project contains prime, unique, statewide or local important farmland. (When a site visit or land evaluation system design is needed, NRCS will respond within 30 working days.

Step 4 - For sites where farmland covered by the FPPA will be converted by the proposed project, NRCS will complete Parts II, IV and V of the form.

Step 5 - NRCS will return the original copy of the form to the Federal agency involved in the project, and retain a file copy for NRCS records.

Step 6 - The Federal agency involved in the proposed project will complete Parts VI and VII of the form and return the form with the final selected site to the servicing NRCS office.

Step 7 - The Federal agency providing financial or technical assistance to the proposed project will make a determination as to whether the proposed conversion is consistent with the FPPA.

INSTRUCTIONS FOR COMPLETING THE FARMLAND CONVERSION IMPACT RATING FORM

(For Federal Agency)

Part I: When completing the "County and State" questions, list all the local governments that are responsible for local land use controls where site(s) are to be evaluated.

Part III: When completing item B (Total Acres To Be Converted Indirectly), include the following:

1. Acres not being directly converted but that would no longer be capable of being farmed after the conversion, because the conversion would restrict access to them or other major change in the ability to use the land for agriculture.
2. Acres planned to receive services from an infrastructure project as indicated in the project justification (e.g. highways, utilities planned build out capacity) that will cause a direct conversion.

Part VI: Do not complete Part VI using the standard format if a State or Local site assessment is used. With local and NRCS assistance, use the local Land Evaluation and Site Assessment (LESA).

1. Assign the maximum points for each site assessment criterion as shown in § 658.5(b) of CFR. In cases of corridor-type project such as transportation, power line and flood control, criteria #5 and #6 will not apply and will, be weighted zero, however, criterion #8 will be weighed a maximum of 25 points and criterion #11 a maximum of 25 points.

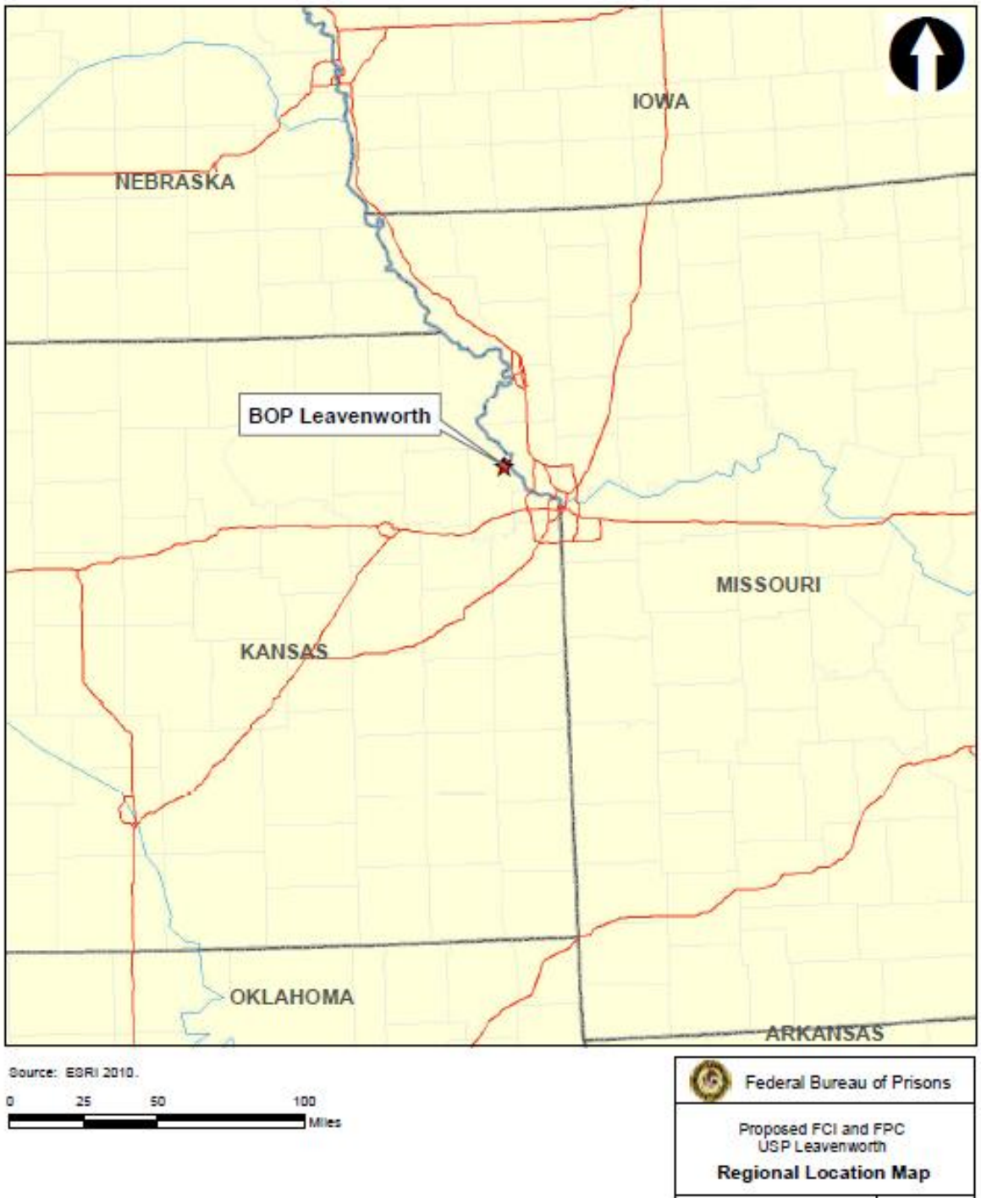
2. Federal agencies may assign relative weights among the 12 site assessment criteria other than those shown on the FPPA rule after submitting individual agency FPPA policy for review and comment to NRCS. In all cases where other weights are assigned, relative adjustments must be made to maintain the maximum total points at 160. For project sites where the total points equal or exceed 160, consider alternative actions, as appropriate, that could reduce adverse impacts (e.g. Alternative Sites, Modifications or Mitigation).

Part VII: In computing the "Total Site Assessment Points" where a State or local site assessment is used and the total maximum number of points is other than 160, convert the site assessment points to a base of 160.
Example: if the Site Assessment maximum is 200 points, and the alternative Site "A" is rated 180 points:

$$\frac{\text{Total points assigned Site A}}{\text{Maximum points possible}} = \frac{180}{200} \text{ X } 160 = 144 \text{ points for Site A}$$

For assistance in completing this form or FPPA process, contact the local NRCS Field Office or USDA Service Center.

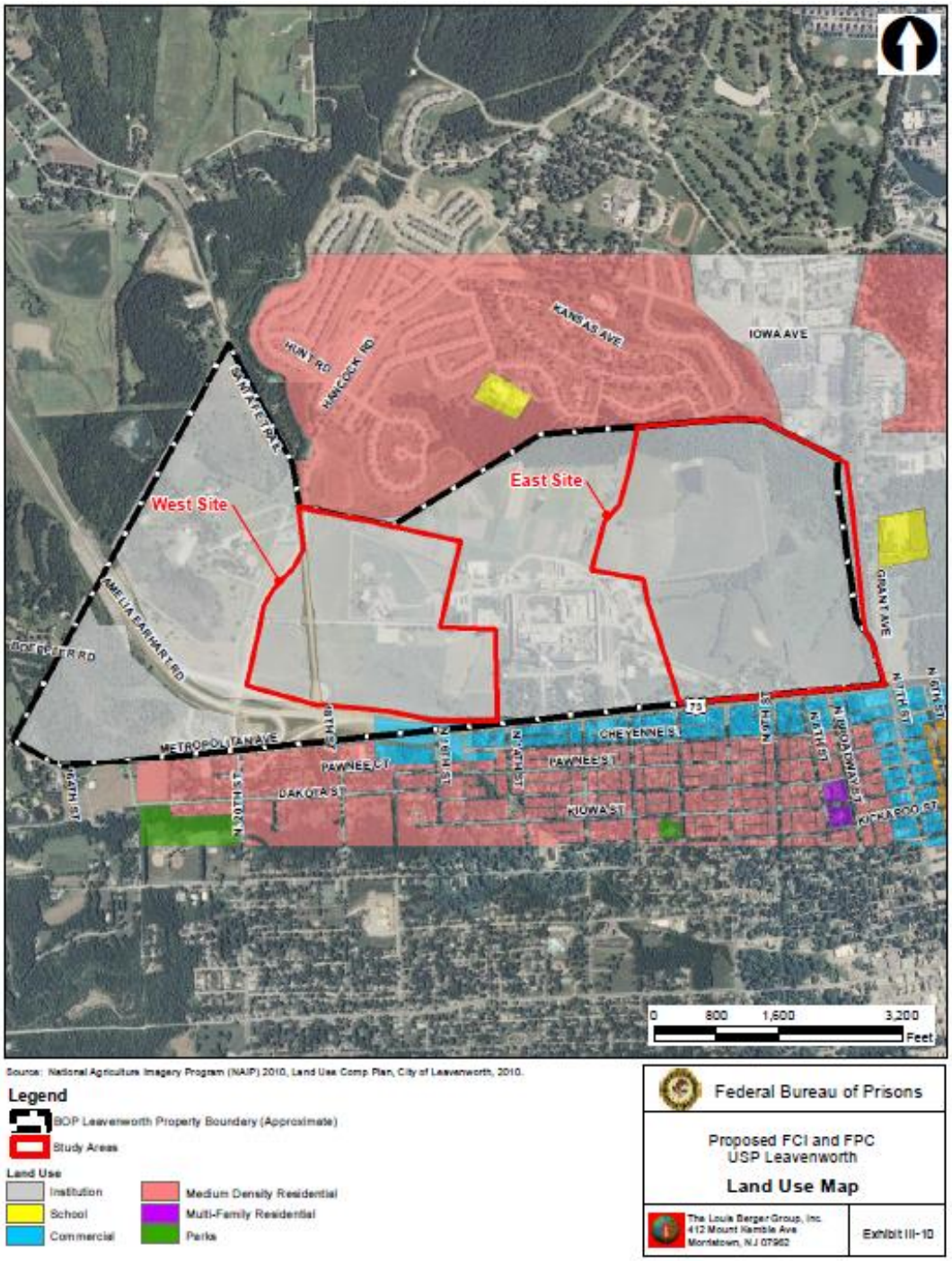
NRCS employees, consult the FPPA Manual and/or policy for additional instructions to complete the AD-1006 form.



Source: WSP, 2020.

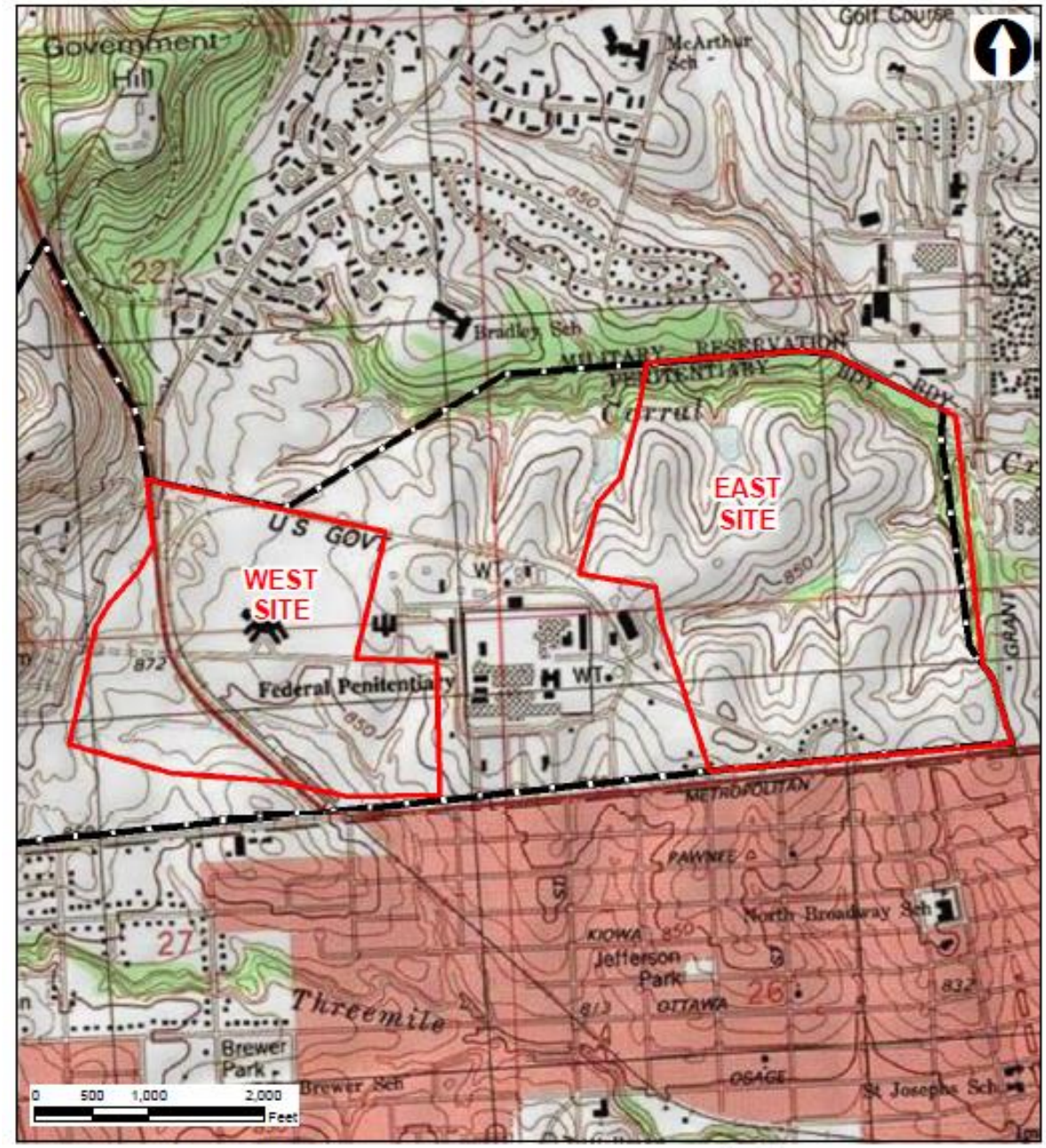
Attachment A: Regional Location

Proposed FCI/FPC – Leavenworth County, Kansas



Attachment B: Land Use Map

Proposed FCI/FPC – Leavenworth County, Kansas



Source: ESRI, USGS Map Service.

Legend

BOP Leavenworth Property Boundary (Approximate)

Study Areas

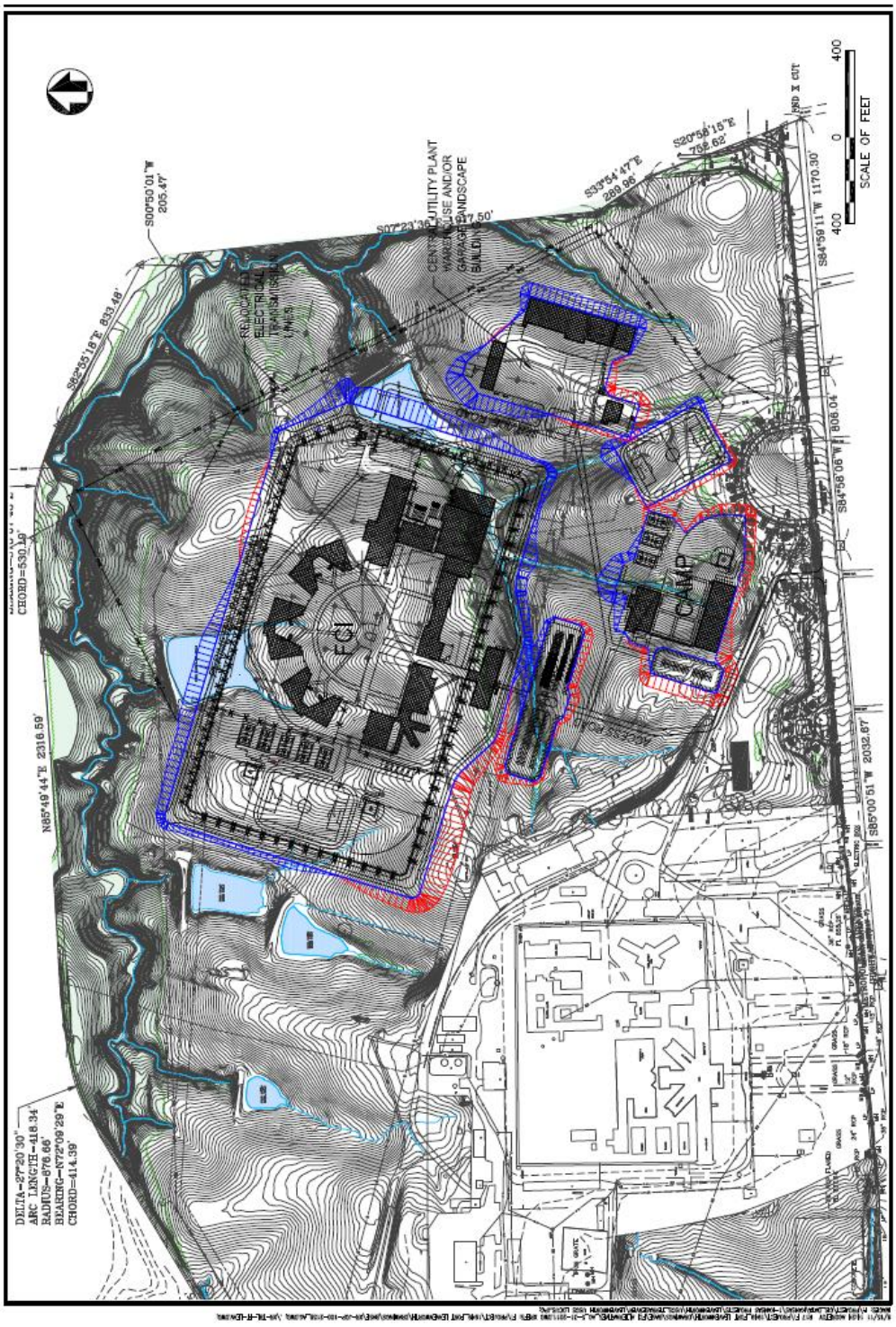
Federal Bureau of Prisons

Proposed FCI and FPC
USP Leavenworth

Topographic Features

Attachment C: Topographic Conditions

Proposed FCI/FPC – Leavenworth County, Kansas



Attachment D: Conceptual Development Plan (East Site)

Proposed FCI/FPC – Leavenworth County, Kansas

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367

Kansas
Department of Health and Environment

Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

Comments by: KDHE

Transmittal Date: July 15, 2020

This form provides notification and the opportunity for your agency to review and comments on this proposed project as required by Executive Order 12372. Review Agency, please complete Parts II and III as appropriate and return to the contact person listed below. Your prompt response will be appreciated.

Return To: Kimberly S. Hudson, COR - Site Selection Specialist
Construction and Environmental Review Branch
Federal Bureau of Prisons
320 First Street, NW, Room 901-5
Washington, D.C. 20534

PART I **REVIEW AGENCIES/COMMISSION**

___Aging	___Education	___State Forester
___Agriculture	___Geological Survey, KS	___Transportation
___Biological Survey	_X_Health & Environment	___Water Office, KS
___Conservation Commission	___Historical Society	___Wildlife & Parks
___Corporation Commission	___Social & Rehabilitation	___Commerce

PART II **AGENCY REVIEW COMMENTS**

COMMENTS: (Attach additional sheet if necessary) Re: Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in Leavenworth, Kansas
Please see the enclosed comments from Christopher Wierman, Delbert Smith and Lea Tipton, Bureau of Environmental Remediation.
Kevin Heit, Bureau of Waste Management offers this comment: The City and contractor should review the enclosed Technical Guidance Document and a map. Please ensure all waste is properly disposed. Waste that does not meet the definition of clean rubble or construction / demolition waste should be disposed at a permitted municipal solid waste landfill.
Connie Ellis, Bureau of Air offers this comment: BOA does not have any concerns about picking this project back up.
Tom Stiles, Bureau of Water has enclosed his comments for this project.

PART III
RECOMMENDED ACTION COMMENTS:

___Clearance of the project should be granted.

___Clearance of the project should not be granted.

___Clearance of the project should be delayed until the issues or questions above have been clarified.

___Request a State Process Recommendation in concurrence with the above comments

_X_ Clearance of the project should not be delayed but the Applicant should (in the final application) address and clarify the question or concerns indicated above.

___Request the opportunity to review final application prior to submission to the federal funding agency.

DIVISIONS/ AGENCY/ COMMISSION

Donna Fisher
Director's Office

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 410
Topeka, KS 66612-1367

Kansas
Department of Health
and Environment

Phone: 785-296-1660
Fax: 785-559-4261
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

MEMORANDUM

TO: Donna Fisher

FROM: Christopher Wierman

DATE: June 24, 2020

RE: Intergovernmental Agency Review requested by the Federal Bureau of Prisons for development of a Federal Correctional Institution and Prison Camp in the City of Leavenworth

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The Kansas Department of Health and Environment Bureau of Environmental Remediation (KDHE/BER), Assessment and Restoration Section, Dry Cleaner / Superfund Unit, has not identified contaminated Drycleaner or Superfund sites within the vicinity of the proposed project.

Staff members or representatives for the Federal Bureau of Prisons or the City of Leavenworth are welcome to come and view the KDHE/BER files in accordance with the Kansas Open Records Act. Please contact me at (785) 296-5548 or by email at christopher.wierman@ks.gov if you have any questions.

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 410
Topeka, KS 66612-1367

Kansas
Department of Health
and Environment

Phone: 785-296-1660
Fax: 785-559-4261
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

MEMORANDUM

TO: Donna Fisher

FROM: Delbert Smith

DATE: June 25, 2020

RE: Intergovernmental Agency Review requested by U.S. Department of Justice / Federal Bureau of Prisons (Leavenworth Project).

The Kansas Department of Health and Environment Bureau of Environmental Remediation (KDHE/BER), Assessment and Restoration Section, Spills Unit, has no identified contaminated spill sites within the vicinity of the proposed project.

Staff members or representatives for U.S. Department of Justice are welcome to come and view the KDHE/BER files in accordance with the Kansas Open Records Act. Please contact me at (785) 368-7301 or by email at delbert.smith@ks.gov if you have any questions.

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 410
Topeka, KS 66612-1367

Kansas
Department of Health
and Environment

Phone: 785-296-1660
Fax: 785-559-4261
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

MEMORANDUM

TO: Donna Fisher

FROM: Lea Tipton

DATE: July 2, 2020

RE: Intergovernmental Agency Review requested by the U.S. Department of Justice Federal Bureau of Prisons for the Proposal to Develop a New Federal Correctional Institution and Federal Prison Camp

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The Kansas Department of Health and Environment Bureau of Environmental Remediation (KDHE/BER), Assessment and Restoration Section, Orphan Sites Unit, has not identified any sites within the vicinity of the project which would be or would impact the proposed project.

Staff members or representatives for the U.S. Department of Justice are welcome to come and view the KDHE/BER files in accordance with the Kansas Open Records Act. Please contact me at (785) 291-3246 or by email at lea.tipton@ks.gov if you have any questions.

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367

Kansas
Department of Health
and Environment

Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

July 14, 2020

Kimberly S. Hudson
COR-Site Selection Specialist
Construction and Environmental Review Branch
Federal Bureau of Prisons
320 First Street, NW
Room 901-5
Washington, D.C. 20534

Re: Proposal to develop a Federal Correctional Institution and Federal Prison Camp

Dear Ms. Husdon:

Please see the following comments submitted by Tom Stiles, Director, Bureau of Water.

BOW comments:

1. Construction will require a Construction Stormwater NPDES permit from BOW.
2. Water supply for the facility will need to be certified by KDHE; either hooking into Leavenworth public water supply or with a stand-alone water treatment plant, which will require approval of plans and specs by BOW and provision of a certified operator to act as operator-in-charge.
3. Wastewater will either need to be put within Leavenworth's sanitary sewer or a NPDES permit will be required for a stand along wastewater treatment plant.
4. A facility of the anticipated size as the Federal correctional institution will need a NPDES industrial stormwater permit.

Sincerely,

Donna Fisher
Director's Office

TS/df

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367

Kansas
Department of Health
and Environment

Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

MEMORANDUM

TO: Donna Fisher

CC: Ken Powell, Julie Coleman

FROM: Kevin Heit – Bureau of Waste Management

DATE: July 2nd, 2020

RE: Intergovernmental Agency Review requested by US Department of Justice/Federal Bureau of Prisons for the proposed development of a Federal Prison Camp at the United States Penitentiary in the City of Leavenworth, in Leavenworth County, KS.

The Department of Justice/Federal Bureau of Prisons should be aware that there are two (3) closed landfill sites within the Penitentiary compound, (see attached map). The sites should not be disturbed during the construction of the proposed camp. Additionally, the Department of Justice/Federal Bureau of Prisons and its contractor(s) should review the attached Technical Guidance Document and ensure all waste is properly disposed. Waste that does not meet the definition of clean rubble or construction/demolition waste should be disposed at a permitted municipal solid waste landfill. If further information is required, I may be reached via email at kevin.heit@ks.gov or by phone at (785) 296-1757.


Kansas
KDHE Closed City Dump Cleanup Program
Unlawful to use names/location for commercial purposes
Leavenworth, ks
Show search results for Lea...
Basemap Gallery
Earthstar Geographics
POWERED BY esri

Kansas Department of Health and Environment
Bureau of Waste Management
1000 SW Jackson, Suite 320, Topeka, Kansas 66612-1366

Construction and Demolition Wastes and Clean Rubble

Technical Guidance Document SW-1994-G2

Construction and Demolition (C&D) waste is solid waste generated during construction or demolition activities. Clean rubble is also generated during construction or demolition activities, but it differs in composition from C&D waste. This document explains the definitions of C&D waste and clean rubble and acceptable methods for disposal of both.

Construction and Demolition Waste

Definition of C&D waste

C&D waste is defined in KSA 65-3402 (u) as:

- solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities;
- untreated wood and untreated sawdust from any source;
- treated wood from construction or demolition projects;
- small amounts of municipal solid waste generated by the consumption of food and drinks at construction or demolition sites, including, but not limited to, cups, bags and bottles;
- furniture and appliances from which ozone depleting chlorofluorocarbons have been removed in accordance with the provisions of the federal clean air act;
- solid waste consisting of motor vehicle window glass; and
- solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm related cleanup.

Such wastes include, but are not limited to, bricks, concrete, and other masonry materials, roofing materials, soil, rock, wood, wood products, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials, non-asbestos insulation and construction related packaging.

Other statutes and regulations further refine the definition:

Construction related packaging means small quantities of packaging wastes that are generated in the construction, remodeling or repair of structures and related appurtenances. "Construction related packaging" does not include packaging wastes that are generated at retail establishments selling construction materials, chemical containers generated from any source or packaging generated during maintenance of existing structures. *KSA 65-3402(dd)*

Furniture and appliances do not include computer monitors and other computer components, televisions, videocassette recorders, stereos, and similar waste electronics.
KAR 28-29-300(a)(4)(A)

Treated wood includes wood treated with any of the following:
(i) Creosote;
(ii) oil-borne preservatives, including pentachlorophenol and copper naphthenate;

revised 09/29/2014

(iii) waterborne preservatives, including chromated copper arsenate (CCA), ammoniacal copper zinc arsenate (ACZA), and ammoniacal copper quaternary compound (ACQ); or
(iv) any other chemical that poses risks to human health and the environment that are similar to the risks posed by the chemicals specified in paragraphs (i) through (iii).
KAR 28-29-300(a)(4)(B)

Untreated wood includes the following, if the wood has not been treated with any of the chemicals listed in the definition of treated wood:
(i) Coated wood, including wood that has been painted, stained, or varnished; and
(ii) engineered wood, including plywood, laminated wood, oriented-strand board, and particle board. *KAR 28-29-300(a)(4)(C)*

Wastes which may be disposed of in a C&D landfill
In addition to the items *explicitly* identified as C&D waste in KSA 65-3402 (u), the Kansas Department of Health and Environment (KDHE) considers the following materials as *acceptable* for disposal in a C&D landfill:

1. Uncontaminated wooden pallets;
2. Street sweepings (litter must be removed and concentrations of metals, volatile organic compounds, and other compounds must be below regulatory levels);
3. Floor tile, siding, and roofing material containing non-friable asbestos. This material should be:
   a. handled so it remains non-friable (e.g., may have to be manually removed prior to demolition of structure);
   b. transported wet (covered with a mist spray to suppress dust) or transported with tarp cover; and
   c. covered immediately at the landfill;
4. Trees, brush, sod, and incidental quantities of leaves and grass;
5. Ash and other residues from the burning of trees and brush (trees and brush must have been burned in accordance with KAR 28-19-647);
6. Metal scrap (e.g. tie strapping);
7. Mobile homes and trailers (except the tires and fuel tanks). KDHE encourages the recycling of metal components.

Dry mud trap solids from commercial car washes may be applied as cover at a C&D landfill. To be considered a solid the material must pass the paint filter test, EPA method SW 846/9095.

Wastes which may *not* be disposed of in a C&D landfill
Construction and demolition waste does not include waste material containing friable asbestos, garbage, appliances from which ozone depleting chlorofluorocarbons have not been removed in accordance with the provisions of the federal clean air act, electrical equipment containing hazardous materials, tires, drums and containers even though such wastes resulted from construction and demolition activities.
KSA 65-3402(u)

In addition to the items *explicitly* identified as not being C&D waste, KDHE considers the following wastes *unacceptable* for disposal in a C&D landfill:

1. Processed tires - i.e. cut or baled;
2. Mud trap wastes from businesses other than commercial car washes;
3. Bagged or bulk quantities of leaves and/or grass clippings;
4. Trash bags, unless demonstrated to contain only acceptable wastes.

Disposal options for C&D wastes

Acceptable C&D wastes may be disposed of in either a municipal solid waste landfill (MSWLF) or in a C&D landfill. Both MSWLFs and C&D landfills must be approved by KDHE through a permit process. But because of the relatively inert nature of the wastes disposed in C&D landfills, these landfills do not have to meet design standards as strict as those for MSWLFs.

Most C&D landfills will, on occasion, receive waste that is not appropriate for disposal. Therefore, all C&D landfills should conduct waste screening (i.e., inspect incoming waste and remove unacceptable materials) and maintain a dumpster or roll-off container onsite for unacceptable wastes which are received at the landfill. Waste screening is covered in Technical Guidance Document SW 02-01, and storage of unapproved wastes screened from construction and demolition landfills is addressed in Bureau of Waste Management Policy 02-01.

Clean Rubble

Definition of clean rubble

According to KSA 65-3402 (w), "Clean rubble means the following types of construction and demolition waste: concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."

KSA 65-3415b lists "clean rubble" as a waste which is exempt from the state solid waste tonnage fee. The definition of "construction and demolition waste" in KSA 65-3402(u) states: "Clean rubble that is mixed with other construction and demolition waste during demolition or transportation shall be considered to be construction and demolition waste. "

Clean rubble that is brought separately to a construction and demolition landfill or a municipal solid waste landfill is not subject to the tonnage fee, even if the clean rubble is mixed with construction and demolition waste or municipal solid waste upon disposal.

Disposal of clean rubble

The stable nature of the materials in clean rubble means it may be disposed of with C&D waste, or it may be disposed of separately at a clean rubble site. However, clean rubble that is mixed with other C&D waste during demolition or transportation is considered to be C&D waste and must be disposed of at either a MSWLF or at a C&D landfill.

Unlike a C&D landfill, state statutes do not require a solid waste permit for operation of a site that accepts only clean rubble. However, a clean rubble site may be subject to local city or county requirements such as local approval (zoning or land use) and local ordinances.

Approval from the Division of Water Resources (DWR) may be required if the site is located in the 100-year flood plain. The operation and appearance of the site must not create a public nuisance or adversely affect the public health or the environment.

For additional information regarding the proper management of solid or hazardous waste in Kansas, you may visit the Bureau of Waste Management website at http://www.kdheks.gov/waste/ or contact the Bureau at: (785) 296-1600, bwm_web@kdheks.gov, or the address at the top of this document.

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

July 28, 2020

Donna Fisher, Director's Office
Kansas Department of Health and Environment
Division of Environment
Curtis State Office Building
1000 SW Jackson Street, Suite 400
Topeka, Kansas 66612-1367

Subject: Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in the City of Leavenworth, KS

Dear Ms. Fisher:

On behalf of the Federal Bureau of Prisons (FBOP), I wish to acknowledge receipt of comments and information provided by the Kansas Department of Health and Environment concerning the FBOP's proposal to develop a new Federal Correctional Institution and Federal Prison Camp in the City of Leavenworth. I have shared the information provided by the Department among our team of staff and consultants for consideration as they prepare the Draft Supplemental Final Environmental Impact Statement (DSFEIS) and develop plans for the new facilities.

As I noted in my letter of June 12, 2020, the DSFEIS is expected to be published by the end of 2020 and notice will be given concerning the availability of the DSFEIS to Department officials for review and comment. In the meantime, feel free to contact me at: Kimberly S. Hudson, Site Selection Branch, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C., 20534 Tel: (202) 616-2574/Fax: (202) 260-0702/Email: kshudson@bop.gov.

Thank you for your interest and support.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

On 8/2/2020 at 10:25 PM, Johnnie Jacobs
johnnie.jacobs.ctr@osagenation-nsn.gov> wrote:
Date: August 2, 2020

File: 1920-4148KS-6

RE: DOJ, BOP, Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in Leavenworth, Leavenworth County, Kansas

Federal Bureau of Prisons, Construction and Environmental Review Branch Kimberly Hudson
320 First Street, NW Room 901-5
Washington, D.C. 20534

Dear Ms. Hudson,

The Osage Nation Historic Preservation Office has received notification and accompanying information for the proposed project listed as DOJ, BOP, Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in Leavenworth, Leavenworth County, Kansas. The Osage Nation requests additional project specific information for this project including topographic and aerial maps with project locations clearly indicated, latitude and longitude of all construction locations, acreage utilized, depth of intended construction activity, utility line routes, staging locations, and any borrow/fill site locations.

In accordance with the National Historic Preservation Act, (NHPA) [54 U.S.C. § 300101 et seq.] 1966, undertakings subject to the review process are referred to in 54 U.S.C. § 302706 (a), which clarifies that historic properties may have religious and cultural significance to Indian tribes. Additionally, Section 106 of NHPA requires Federal agencies to consider the effects of their actions on historic properties (36 CFR Part 800) as does the National Environmental Policy Act (43 U.S.C. 4321 and 4331-35 and 40 CFR 1501.7(a) of 1969).

The Osage Nation has a vital interest in protecting its historic and ancestral cultural resources. The Osage Nation anticipates reviewing and commenting on the proposed DOJ, BOP, Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in Leavenworth, Leavenworth County, Kansas.

Should you have any questions or need any additional information please feel free to contact me at the address listed below. Thank you for consulting with the Osage Nation on this matter.

Thank you,

Miss Johnnie Jacobs
Historic Preservation Specialist
Osage Nation Historic Preservation Office
627 Grandview Avenue
Pawhuska, OK 74056

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

August 5, 2020

Miss Johnnie Jacobs
Historic Preservation Specialist
Osage Nation Historic Preservation Office
627 Grandview Avenue
Pawhuska, Oklahoma 74056

Subject: Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in City of Leavenworth, Kansas

Dear Miss Jacobs:

On behalf of the Federal Bureau of Prisons (BOP), thank you for your recent inquiry concerning the BOP's proposal to develop a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) in the City of Leavenworth. The BOP has been considering developing a new FCI/FPC in Leavenworth for over 10 years and previously prepared a Draft Environmental Impact Statement (EIS) in 2011 and a Final EIS in 2015. However, a decision whether to proceed with the proposed action was delayed and a Record of Decision to be issued by the Director of the BOP, pursuant to the requirements of the National Environmental Policy Act (NEPA) and U.S. Department of Justice regulations, was never adopted. The BOP has resumed the NEPA process and is currently preparing a Draft Supplemental Final EIS (DSFEIS) to provide updated information about the proposed project, the purpose and need for proceeding with developing a new FCI/FPC in Leavenworth, Kansas, and to provide the public, elected and appointed officials, regulatory agencies, and others the opportunity to voice their interests and provide comments concerning the proposed action.

The BOP's 754-acre Leavenworth property is bordered by Metropolitan Avenue, immediately north of the City of Leavenworth, and south and west of the Fort Leavenworth U.S. Army Base. Alternative locations within the USP Leavenworth property, totaling approximately 371 acres, were investigated as

part of the Draft EIS, Final EIS and will be again during preparation of the DSFEIS. The attached Project Summary provides currently available information and should answer many of your questions. In addition, the BOP has established a dedicated FCI/FPC project website to host the Draft and Final EIS documents and all technical appendices (including detailed cultural resource investigations), communications, contact information and to solicit questions and comments: https://www.proposed-fci-fpc-leavenworth.com/. Whatever questions not answered in the Project Summary or the previous EISs will be addressed in the DSFEIS as the BOP is undertaking a review of the project and updating its plans to 2020 conditions as necessary.

I have shared your inquiry with our team of staff and consultants for consideration as they prepare the DSFEIS and develop plans for the new facilities. The DSFEIS is expected to be published by the end of 2020 and notice will be given concerning the availability of the DSFEIS to Osage Nation officials for review and comment. In the meantime, feel free to direct any additional questions to me at: Kimberly S. Hudson, Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C. 20534 Tel: 202-616-2574/Fax: 202-260-0702/Email: kshudson@bop.gov.

The BOP shares the Osage Nation's interest in protecting its historic and ancestral cultural resources and we look forward to working with you to advance this important project. Thank you for your interest and support.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Attachment: Project Summary

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

September 22, 2020

Patrick Zollner, Division Director
Cultural Resources
Kansas State Historical Society
6425 SW 6th Avenue
Topeka, Kansas 66615-1099

Subject: Section 106 Consultation – Proposal to Develop a Federal Correctional Institution and Federal Prison Camp in Leavenworth Kansas
KSR&C No. 11-01-098

Dear Mr. Zollner:

On behalf of the Federal Bureau of Prisons (BOP), thank you again for participating during our recent discussion concerning the BOP's proposal to develop a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) in Leavenworth, Kansas. We appreciated the guidance received during that meeting and in response, are providing the additional and updated project related information requested.

Since the publication of the Final Environmental Impact Statement (FEIS) on April 10, 2015, the purpose for developing the proposed project has changed based on changing circumstances within the federal prison system. In 2015, the BOP was facing a capacity shortfall throughout the system. The purpose for developing a new FCI and FPC at that time was to provide additional bed space capacity to address the increasing inmate population and supplement facilities in Leavenworth where the BOP currently operates the U.S. Penitentiary (USP) and prison camp. As a result of various legislative reforms enacted since 2015, the need for additional capacity has diminished. However, an emerging challenge to the BOP's mission is the growing number of federal correctional facilities that are aging, resulting in an on-going need for new, modern facilities and supporting infrastructure. Among the oldest federal correctional

facilities is USP Leavenworth which has been housing inmates since 1906.

The BOP is now proposing construction of a FCI and FPC to meet the need for new, modern correctional facilities and infrastructure. By today's standards, USP Leavenworth is operationally inefficient compared to similar-sized institutions of modern design. Due to its age and condition, the necessity exists for costly security, life safety, mechanical, electrical and plumbing system renovations, replacements and/or upgrades which are not feasible to carry out. The proposed development will address the need for a new medium-security FCI and minimum-security FPC to replace the existing, aged correctional facilities.

Status of Section 106 Consultation

At the time the FEIS was published (2015), consultation regarding the archaeological potential at the site of the proposed project concluded that none of the archaeological sites present on the two alternative development sites, East Site and West Site, were eligible for listing in the National Register of Historic Places. However, the Kansas Historical Society (SHPO) determined that both development alternatives would adversely affect contributing staff housing located with the USP Leavenworth Historic District (Chinn 2015).

Proposed Undertaking - 2020

In 2020, the BOP is proposing to construct and operate a new FCI and FPC entirely within the 277-acre East Site as defined in the 2015 FEIS (Exhibit 1 attached). As in 2015, the new FCI will be designed to house approximately 1,152 medium-security inmates and an FPC designed to house 256 minimum-security inmates for a total population of 1,408 inmates. However, once development is completed and the new facilities are activated, inmates currently housed at the USP and FPC will be transferred to the new facilities along with the complement of correctional officers and other staff followed thereafter by the deactivation of the existing USP and FPC. This is one of two departures from the original proposal which envisioned continued operation of the USP.

The second departure is the avoidance of direct impacts to the staff housing fronting along Metropolitan Avenue by altering the route of the FCI/FPC entrance road. The new entrance driveway would be sited mid-way between North 10th Street and

North 11th Street and between two clusters of staff housing that avoids adversely impacting the housing units. In addition, an earthen berm will be installed behind the staff housing to block sightlines between the new facility and the housing and minimize indirect impacts to the contributing structures.

The third departure is that in 2015, underground gas pipelines were not proposed to be relocated. Now both overhead electric lines and two underground gas pipelines within the East Site are to be relocated.

General Design Features of the Proposed Federal Correctional Institution

All structures comprising the proposed FCI would be similar in scale and appearance to a light industrial park or secondary school with most buildings comprising one and two-story structures. The buildings would provide multi-purpose activity spaces, with areas divided according to function. Basic groupings would include administration, services, housing, religion, education, training, recreation, with an option for prison industries, a central utility plant, and warehouse and storage structures, and taken together, having a gross building area of approximately 580,000 square feet. Buffer zones of undeveloped acreage would generally surround the facility, providing both visual and physical setbacks from the property boundaries. A dedicated entrance road for controlled access from the public roadway network (Metropolitan Avenue) is planned along with a parking lot accommodating both employees and visitors to be located near FCI's public entrance.

Perimeter security at the FCI would be provided by two parallel 12-foot high chain-link fences with coils of barbed tape mounted on the fences and placed within the 20-foot wide space between the two fences. Energy-efficient high-mast LED lighting would also be installed at the new FCI to provide ground and perimeter illumination to be supplemented by common walkway and roadway lighting. Attention would be given to the avoidance of excessive illumination of adjacent areas. Guard towers, searchlights or similar security measures associated with traditional prisons will not be used. Plans for the new FPC do not include perimeter security fencing or high-mast lighting.

Future of the Existing USP and FPC

Once construction of the new FCI and FPC are completed and activated, inmates housed at the existing facilities will be transferred to the new facilities. The BOP shall continue to operate the USP and FPC until the new FCI/FPC are activated followed by deactivation of the current USP and FPC. Until inmates and staff are transferred to the new facilities (which is several years in the future), the BOP will continue to operate and maintain the existing USP. As part of its plan to vacate the USP, the BOP intends to conduct a "deactivation study" that will focus on two objectives: maintain services to the USP that are necessary to avoid deterioration of the structures and infrastructure; and identify options for a new mission for the facility.

The potential to adapt and/or reuse the USP for uses other than housing inmates will be determined as the necessary architectural and engineering studies of the facility are undertaken to determine the nature and costs for adapting the structure for a future use. It's important to state that the BOP has no plans to alter or demolish the existing USP facility and instead intends to maintain the facility in its current state until other uses can be determined.

The BOP appreciates your assistance and support and hope this letter provides all the information needed to advance the consultation process. In the meantime, feel free to contact me with questions or comments at Tel: 202-616-2574/ Email: kshudson@bop.gov.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Attachment

Cc: T. Weston, L. Jones, KHS
C. McDonald, S. Hoffman, R. Nardi, WSP
C. Ciccone, J. Organic, G. Younger, BOP

September 23, 2020

U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th Street, Room 402
Kansas City, Missouri 64106
Attention: Brian Donahue

RE: **Jurisdictional Determination Request File # NWK-2010-1805**
Proposed Federal Correctional Institution and Federal Prison Camp
City of Leavenworth, Leavenworth County, Kansas

Dear Mr. Donahue:

On behalf of the U.S. Department of Justice, Federal Bureau of Prisons (BOP), WSP USA, Inc., submits herein additional information as requested for the continued review of the Jurisdictional Determination Request for the proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) located in the City of Leavenworth, Leavenworth County, Kansas.

The BOP would like to modify its request for a Jurisdictional Determination from a Preliminary Jurisdictional Determination (PJD) to an Approved Jurisdictional Determination (AJD).

Per the U.S. Army Corps of Engineers (Corps) request we have attached the additional information noted below.

- Additional site photographs of Stream R
- Revised Jurisdictional Determination request form, requesting an Approved Jurisdictional Determination

Please do not hesitate to contact me (973-407-1462, chanlon@louisberger.com) with questions. Thank you for your attention and consideration.

Sincerely,

WSP USA, Inc.

Craig P. Hanlon

Craig Hanlon
Principal Environmental Scientist

Attachment
cc: R. Nardi, T. Stewart; WSP USA, Inc.
K. Hudson, C. Ciccone, J. Organic, BOP

WSP USA
412 Mount Kemble Avenue
Morristown, NJ 09462

Tel.: +1 973-407-1000
wsp.com

ADDITIONAL SITE PHOTOGRAPHS

Photo 1 – View of origin of Stream R, facing south, upstream from flag R-2.

Photo 2 - View of origin of Stream R, facing north, downstream from flag R-3.

Photo 3 - View of Stream R at confluence with Stream T, facing south, upstream at flag R-19.

Photo 4 - View of Stream R facing south, upstream at flag R-24.

U.S. ARMY CORPS OF ENGINEERS

REQUEST FOR CORPS JURISDICTIONAL DETERMINATION

*__Authorities__: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332. __Principal Purpose__: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above. __Routine Uses__: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website. __Disclosure__: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

CORPS USE ONLY:
DATE RECEIVED:

PROJECT NO.: _____

1. PROPERTY LOCATION:

Street Address: *1300 Metropolitan Avenue*

City/Township/Parish: *Leavenworth*

County: *Leavenworth* State: *Kansas*

Acreage of Parcel/Review Area for JD: *247.00000000*

Section: *0* Township: *O* Range: *RO*

Latitude: *39.33324900* Longitude: *-94.92763300*

(For linear projects, please include the center point of the proposed alignment.)

2.REQUESTOR CONTACT INFORMATION:

Typed or Printed Name: *Craig Hanlon*

Company Name: *WSP USA*

Street Address: *412 Mount Kemble Avenue*

City: *Morristown* State: *NJ* ZIP: *07962*

Phone Number: *(973) 407-1462*

E-mail: *craig.hanlon@wsp.com*

3. MAP: Please attach a survey/plat map and vicinity map identifying location and review area for the JD.

4. REASON FOR REQUEST (check as many as applicable):

- ☐ I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all aquatic resources.
- ☐ I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all jurisdictional aquatic resources under Corps authority.
- ☑ I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps, and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources and as an initial step in a future permitting process.
- ☐ I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps; this request is accompanied by my permit application and the JD is to be used in the permitting process.
- ☐ I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district Section 10 list and/or is subject to the ebb and flow of the tide.
- ☐ A Corps JD is required in order to obtain my local/state authorization.
- ☐ I intend to contest jurisdiction over a particular aquatic resource and request the Corps confirm that jurisdiction does/does not exist over the aquatic resource on the parcel.
- ☐ I believe that the site may be comprised entirely of dry land.
- ☐ Other: _____

5. TYPE OF DETERMINATION BEING REQUESTED:

- ☑ I am requesting an approved JD.
- ☐ I am requesting a preliminary JD.
- ☐ I am requesting a “no permit required” letter as I believe my proposed activity is not regulated.
- ☐ I am unclear as to which JD I would like to request and require additional information to inform my decision.

6. OWNERSHIP DETAILS:

- ☐ I currently own this property.
- ☐ I plan to purchase this property.
- ☑ I am an agent/consultant acting on behalf of the requestor.
- ☐ Other (please explain:)

_____

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the site if needed to perform the JD. Your signature shall be an affirmation that you possess the requisite property rights to request a JD on the subject property.

Signature: Craig P. Hanlon Digitally signed by Craig P. Hanlon DN: C=US, E=craig.hanlon@wsp.com, O=WSP USA, CN=Craig P. Hanlon Date: 2020.09.23 12:39:20-04'00' Date: *9-23-2020*

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT
635 FEDERAL BUILDING
601 E. 12TH STREET
KANSAS CITY, MISSOURI 64106-2824

September 29, 2020

Regulatory Branch
(NWK-2010-1805)

Mr. Craig Hanlon
WSP USA, Inc.
412 Mount Kemble Avenue
Morristown, New Jersey 07962

Dear Mr. Hanlon:

This letter is in response to your September 23, 2020 request, submitted on behalf of the Federal Bureau of Prisons, for an Approved Jurisdictional Determination. The project site consists of approximately 250 acres of land at the Leavenworth, Kansas Federal Correctional Institution. The project site is located in Sections 23 and 26, Township 8 south, Range 22 east, Leavenworth County, Kansas. Your request has been assigned Regulatory File No. NWK-2010-1805, retained from previous correspondence and actions related to this facility. Please reference this file number on any correspondence to us or to other interested parties concerning this matter.

This letter contains an approved jurisdictional determination for your project site. This jurisdictional determination is valid for a 5-year period from the date of this letter unless new information warrants revision of the determination before the expiration date. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal (NAO-RFA) form. If you request to appeal this determination, you must submit a completed NAO-RFA form to the Northwestern Division Office at the following address:

Division Engineer
U.S. Army Corps of Engineers, Northwestern Division
ATTN: Melinda M. Larsen
Regulatory Appeals Review Officer
1201 NE Lloyd Blvd., Suite 400
Portland, OR 97232
Telephone: 503-808-3888

In order for an NAO-RFA to be accepted by the Corps, the Corps must determine that it is completed, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAO-RFA. Should you decide to submit an NAO-RFA form, it must be received at the above address by November 28, 2020. It is not necessary to submit an NAO-RFA form to the Division Office if you do not object to the determination in this letter.

In the event that you disagree with an approved jurisdictional determination and you have **new information** not considered in the original determination, you may request reconsideration of that determination by the Corps District prior to initiating an appeal. To request this reconsideration based upon new information, you must submit the completed NAO-RFA form and the new information to the District Office so that it is received within 60 days of the date of the NAO-RFA. Send approved jurisdictional determination reconsideration requests to:

District Commander
U.S. Army Corps of Engineers, Kansas City District
ATTN: Mark D. Frazier
Chief, Regulatory Branch
601 East 12th Street, Suite 402
Kansas City, MO 64106-2824
Telephone: 816-389-3990 - FAX: 816-389-2032

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-332.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete our Customer Service Survey form on our website at: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. You may also call and request a paper copy of the survey which you may complete and return to us by mail.

If you have any questions concerning this matter, please feel free to write or contact me at 816-389-3703 or by email at brian.t.donahue@usace.army.mil. Please reference Permit No. NWK-2010-1805 in all comments and/or inquiries relating to this project. This letter is only being provided to you electronically at: craig.hanlon@wsp.com.

Sincerely,

Brian Donahue

Brian Donahue
Project Manager

Enclosures

cc (electronically w/o enclosures):

Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service, Manhattan, Kansas
Kansas Department of Wildlife, Parks and Tourism
Kansas Department of Health and Environment
Kansas Department of Agriculture

U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 9/29/2020
ORM Number: NWK-2010-1805
Associated JDs: NWK-2010-1805, PJD dated 8 Nov 2010 and AJD dated 21 Sept 2011
Review Area Location[1]: State/Territory: KS City: Leavenworth County/Parish/Borough: Leavenworth
Center Coordinates of Review Area: Latitude 39.33383 Longitude -94.92747

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
10-1805-K Corral Creek	4,006	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The stream channel has well-defined ordinary high water mark features and stream characteristics indicating more than seasonal or intermittent flow. This tributary drains approximately 700 acres of land within and up-slope of the reviewed project site. The channel bed has an average width of 10-15 feet and is depicted on USGS topographic maps as a named blue-line stream. The observed condition of flow and volume of flow during both of the site visits in 2010 and 2020, supports a determination of perennial classification for this stream.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
10-1805-R Tributary of Corral Creek	600	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This tributary contributes flow to a perennial stream channel. It exhibits both bed and bank features and drains approximately 130 acres of land. Flow was observed during the 2020 site visit downstream of a contributing sub-watershed, (Stream T). No flow was observed upstream of that point for the remainder of the 1,813 feet of tributary channel. A typical year assessment was conducted to evaluate observed conditions during the site visits 28 July 2020. The site conditions according to the assessment were normal at the time of the July 2020 observation and occurred during a dry season. Several rainfall events did however precede the site visit. The observed condition with evidence of flow in the lower 600 linear feet of this drainage in 2020 supports a determination of intermittent flow for this stream that is more than just in direct response to rainfall. See Section IIIB of this form.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
10-1805- J Tributary J	370	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	NWI and NHD mapping does not include the stream channel. The topography at the site is typified by a steep gradient. A typical year assessment was conducted to evaluate flow duration (see section III.B). There was no observation of flow within this feature several days following a rainfall event. Channel morphology within this drainage is erosional. The combined evidence supports a determination of Ephemeral classification.

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
10-1805-L Tributary L	221	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Same as above
10-1805- M Tributary M	840	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This stream segment is the upper limit of drainage to a watershed shown on NHD and topographic maps. The contributing drainage area is approximately 20 acres and is characterized by the upland developed site of the prison grounds. A typical year assessment was conducted to evaluate flow duration (see section III.B). There was no observation of flow within this feature several days following a rainfall event. The combined evidence supports a determination of Ephemeral classification.
10-1805-P Tributary P	771	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Same as above
10-1805-Q Tributary Q	575	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This stream segment is near the upper limit of drainage to a watershed shown on NHD and topographic maps. The contributing drainage area is approximately 50 acres and includes drainage from Tributaries M and P described above. It is characterized by the upland developed site of the prison grounds. A typical year assessment was conducted to evaluate flow duration (see section III.B). There was no observation of flow within this feature several days following a rainfall event. The combined evidence supports a determination of Ephemeral classification.
10-1805-S Tributary S	490	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	NWI and NHD mapping does not include the stream channel. The topography at the site is typified by a shallow gradient that conveys upland flow to the upper drainage to Stream R. A typical year assessment was conducted to evaluate flow duration (see section III.B). There was no observation of flow within this feature several days following a rainfall event. Channel morphology within this drainage is erosional. The combined evidence supports a determination of Ephemeral classification.
10-1805-T Tributary T	450	linear feet	(b)(3) Ephemeral feature, including	The topography at the site is typified by a steep gradient. A typical year assessment was

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			an ephemeral stream, swale, gully, rill, or pool.	conducted to evaluate flow duration (see section III.B). There was no observation of flow within this feature several days following a rainfall event. Channel morphology within this drainage is erosional. The combined evidence supports a determination of Ephemeral classification.
10-1805-V Tributary V	258	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Same as above
10-1805-A Wetland A	0.57	acre(s)	(b)(1) Non-adjacent wetland.	The wetland is connected by surface water flow to the downstream receiving water only by a non-jurisdictional ephemeral or erosional feature and is not subject to inundation by flooding from the tributary in a typical year. Therefore, the wetland is not jurisdictional.
10-1805-B Wetland B	1.04	acre(s)	(b)(1) Non-adjacent wetland.	Same as above.
10-1805-D Wetland D	1.44	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-E Wetland E	0.10	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-G Wetland G	0.14	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-I Wetland I	2.43	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-MM Wetland MM	0.004	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-N Wetland N	2.40	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-O Wetland O	0.22	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-U Wetland U	0.19	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
10-1805-W Wetland W	0.06	acre(s)	(b)(1) Non-adjacent wetland.	Same as above
N/A.	N/A.	N/A.	N/A.	N/A.
N/A.	N/A.	N/A.	N/A.	N/A.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: Jurisdictional Delineation Report completed for the site by WSP-USA, including field data and observations on 28 July 2020.
This information is sufficient for purposes of this AJD.
Rationale: N/A or describe rationale for insufficiency (including partial insufficiency).
☐ Data sheets prepared by the Corps: Title(s) and/or date(s).
☒ Photographs: Aerial and Other: Google Earth, Digital Globe and on-site photographs taken during 2010 and 2020 field visits.
☐ Corps site visit(s) conducted on: Date(s).
☒ Previous Jurisdictional Determinations (AJDs or PJDs): NWK-2010-1805, PJD dated 8 Nov 2010 and AJD dated 21 Sept 2011.
☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.
☐ USDA NRCS Soil Survey: Title(s) and/or date(s).
☒ USFWS NWI maps: Leavenworth, Kansas
☒ USGS topographic maps: Leavenworth, Kansas

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): A typical year assessment was conducted to evaluate observed conditions observed on the site within the stream channels by WPS-USA on 28 July 2020. Conditions were considered normal at the time of the July site visit but the APT does show several rainfalls preceeding this visit. The indications and observed flow in tributary K and lower extent of tributary R and their classification as perennial and intermittent, respectively, are supported by the APT analysis. The classification of the remaining drainages on the project site as ephemeral, based upon the lack of flow at the time of the 28 July 2020 visit, and the APT data, is also supported.

C. Additional comments to support AJD: N/A

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Federal Bureau of Prisons	File Number: 2010-1805	Date: Sept. 29, 2020
Attached is:		See Section below
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	C. PERMIT DENIAL	C
XX	D. APPROVED JURISDICTIONAL DETERMINATION	D
	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- REQUEST MODIFICATION: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- RECONSIDERATION BASED ON NEW INFORMATION: You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

A. Modification of an INITIAL PROFFERED PERMIT (Item A).
D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

B. Administrative Appeal of a PROFFERED PERMIT (Item B).
C. Administrative Appeal of a PERMIT DENIAL (Item C).
D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you wish to submit an appeal or have questions regarding the appeal process you may contact:
DISTRICT ENGINEER **Attn: Mark D. Frazier** **Chief, Regulatory Branch** **U.S. Army Engineer District, Kansas City** **601 12th Street, Room 402** **Kansas City, MO 64106-2824** **Telephone: 816-389-3990** (Use this address for submittals to the District Engineer)	DIVISION ENGINEER **Attn: Melinda M. Larsen** **Regulatory Appeals Review Officer** **U.S. Army Corps of Engineers, Northwestern Division** **1201 NE Lloyd Blvd., Suite 400** **Portland, OR 97232** **Telephone: 503-808-3888** **Email: Melinda.M.Larsen@usace.army.mil**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

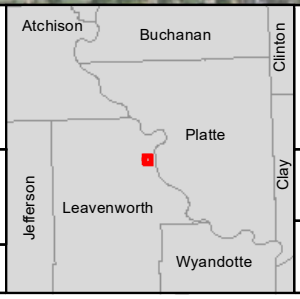
	Date:	Telephone number:
Signature of appellant or agent.		

Project Area
Corp Jurisdictional Feature

Sources:
ESRI World Imagery Map Services, obtained 2020.
WSP, 2020.

Coordinate System/Datum:
UTM, Zone 15
NAD 83

September 2020



Jurisdictional Determination

Proposed Federal Correctional Institution and Federal Prison Camp
Leavenworth, KS

WSP

N

0 350 700 Feet

Cultural Resources Division
State Historic Preservation Office
6425 SW 6th Avenue
Topeka KS 66615-1099

Kansas Historical Society

785-272-8681, ext. 240
kshs.shpo@ks.gov
kshs.org

Jennie Chinn, Executive Director

Laura Kelly, Governor

KSR&C No. 20-09-146
October 9, 2020

Kimberly Hudson
Federal Bureau of Prisons
Via E-mail

RE: Proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC)
1300 Metropolitan Avenue, Leavenworth
Leavenworth County

The Kansas State Historic Preservation Office acknowledges receipt of your letter dated September 22, 2020 regarding the above-referenced project. As you noted in your letter and during our teleconference meeting on September 10th, the Federal Bureau of Prisons (BOP) is restarting the project designed to replace the Leavenworth Federal Penitentiary with new FCI and FPC facilities. Our office reviewed the project during its initial stages, from 2011 until 2015 (KSR&C No. 11-01-198).

As you noted, archeological investigations (survey and testing) have been completed. None of the recorded archeological sites were determined to be eligible for National Register listing. Our remaining concerns at the time involved potential impacts to the historic staff housing east of the main facility. It is our understanding that those structures will be avoided by the current project configuration and that existing overhead transmission lines and buried gas pipelines will be relocated.

As to the new project configuration, it is our understanding that the existing penitentiary will deactivated once the new facilities have been constructed and all inmates and staff have been transferred. As indicated during the meeting, our office does have concerns regarding the long-term future of the historic federal prison complex. It is our understanding the Bureau of Prisons (BOP) has no plans to alter or demolish the existing facility and will conduct a deactivation study focused on steps necessary to avoid deterioration and to explore options for new uses. We will await further information as project planning proceeds.

This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Tim Weston at 785-272-8681 (ex. 214) or Lauren Jones at 785-272-8681 ext. 225. Please refer to the Kansas Review & Compliance number (KSR&C#) above on all future correspondence relating to this project.

Sincerely,
Jennie Chinn
State Historic Preservation Officer

Patrick Zollner
Deputy State Historic Preservation Officer

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 21, 2020

Joel Mahnken, P.E., General Manager
Leavenworth Waterworks
601 Cherokee Street
Leavenworth, Kansas 66048

Subject: Proposed Federal Correctional Institution and Federal Prison Camp Leavenworth, Kansas

Dear Mr. Mahnken:

As you know from our recent discussions, the Federal Bureau of Prisons (BOP) is proposing to develop a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) within lands comprising the U.S. Penitentiary (USP) in Leavenworth, Kansas. In compliance with the National Environmental Policy Act of 1969, as amended, the BOP is currently preparing a Draft Supplemental Final Environmental Impact Statement (DSFEIS) to include current information concerning the purpose and need for the new FCI and FPC, potential impacts and mitigation measures associated with the project, and to provide the public and others the opportunity to voice their interests and provide comments concerning the proposed project. We expect the DSFEIS to be published within the next several weeks and notice will be given concerning its availability along with plans for a public hearing.

We understand Leavenworth Waterworks is planning to construct new elevated water storage near USP Leavenworth. While the current USP does not maintain its own water storage tank, it is our preference that the new FCI and FPC have access to water storage for additional redundancy. To avoid the cost of constructing and maintaining a separate BOP water storage tank, we wish to enter into discussions about partnering on the development of this tank. While an engineering study to determine conceptual design and costs is still underway by

Leavenworth Waterworks, we believe a partnership between our two organizations regarding the new water tank would be mutually beneficial and in everyone's best interest.

It is the BOP's intent to work with Leavenworth Waterworks to reach an equitable arrangement to provide dedicated water storage for the new FCI and FPC. To confirm and document our understanding for purposes of the DSFEIS, a letter acknowledging Leavenworth Waterworks' willingness and intent to work with the BOP to reach an equitable agreement on water storage is requested.

Feel free to direct any questions regarding this request to me at: Kimberly S. Hudson, Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C. 20534 Tel: 202-616-2574/Fax: 202-260-0702/Email: kshudson@bop.gov. Thank you for your cooperation and support.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Cc: C. Ciccone, G. Younger, J. Organic, BOP

R. Nardi, S. Hoffman, T. Payne, WSP

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 21, 2020

Mike DeGraeve, Design Engineer
Bob Bath, Leader Land Acquisition
Southern Star Central Gas Pipeline, Inc.
8195 Cole Parkway
Shawnee, Kansas 66227

Subject: Proposed Federal Correctional Institution and Federal Prison Camp Leavenworth, Kansas

Dear Sirs:

As you know from our recent discussions, the Federal Bureau of Prisons (BOP) is proposing to develop a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) within lands comprising the U.S. Penitentiary (USP) in Leavenworth, Kansas. In compliance with the National Environmental Policy Act of 1969, as amended, the BOP is currently preparing a Draft Supplemental Final Environmental Impact Statement (DSFEIS) to include current information concerning the purpose and need for the new FCI and FPC, potential impacts and mitigation measures associated with the project, and to provide the public and others the opportunity to voice their interests and provide comments concerning the proposed project. We expect the DSFEIS to be published within the next several weeks and notice will be given concerning its availability along with plans for a public hearing.

The DSFEIS will address the variety of related actions including development of a previously planned substation (by Evergy) within the southeastern portion of the USP property. In addition, with the limited land area available for development along with environmental and other constraints, it is necessary to relocate two existing overhead power lines (owned and operated by Evergy and the FreeState Electric Cooperative) to avoid conflicting with FCI and FPC development. The BOP is working with both companies to establish a new alignment for which a new permit or permits would be provided by the BOP followed by a new easement or easements to be provided by the U.S. Department of Justice (DOJ), upon receipt of a request for the same that includes a metes and bounds description and survey of the

new permit/ easement area that are satisfactory to BOP and DOJ.

As with the powerlines, there are two underground natural gas pipelines owned and operated by Southern Star Central Gas Pipeline, Inc. (Southern Star) that bisect the USP property; one in an east-west alignment and one in a north-south alignment. To avoid conflicting with FCI and FPC development, there is a need to relocate the underground pipelines. We understand there are two alternatives under consideration and while studies are still on-going by Southern Star, one alternative involves relocating both pipelines within a new alignment to the east, and a second alternative that involves the abandonment of the east-west pipeline with reliance on a relocated north-south pipeline to continue to provide service to Southern Star customers.

It is the BOP's intent to work with Southern Star to reach an equitable arrangement regarding relocation of one or both natural gas pipelines. For any relocated pipelines a permit would be provided by the BOP to be followed by an easement provided by DOJ, upon receipt of a request for the same that includes a metes and bounds description and survey of the new permit/easement area that is satisfactory to BOP and DOJ. To confirm and document our understanding for purposes of the DSFEIS, a letter acknowledging Southern Star's willingness and intent to work with the BOP to reach an equitable agreement on pipeline relocation(s) is requested.

Feel free to direct any questions regarding this request to me at: Kimberly S. Hudson, Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C. 20534 Tel: 202-616-2574/Fax: 202-260-0702/Email: kshudson@bop.gov. Thank you for your cooperation and support.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Cc: C. Ciccone, G. Younger, J. Organic, BOP

R. Nardi, S. Hoffman, T. Payne, WSP

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 21, 2020

Chris Parr, Assistant General Manager
FreeState Electric Cooperative
507 N. Union
McLouth, Kansas 66054

Subject: Proposed Federal Correctional Institution and Federal Prison Camp Leavenworth, Kansas

Dear Mr. Parr:

As you know from our recent discussions, the Federal Bureau of Prisons (BOP) is proposing to develop a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) within lands comprising the U.S. Penitentiary (USP) in Leavenworth, Kansas. In compliance with the National Environmental Policy Act of 1969, as amended, the BOP is currently preparing a Draft Supplemental Final Environmental Impact Statement (DSFEIS) to include current information concerning the purpose and need for the new FCI and FPC, potential impacts and mitigation measures associated with the project, and to provide the public and others the opportunity to voice their interests and provide comments concerning the proposed project. We expect the DSFEIS to be published within the next several weeks and notice will be given concerning its availability along with plans for a public hearing.

The DSFEIS will address the variety of related actions including development of Evergy's planned substation within the USP property. Unrelated to the planned substation is the need to relocate the existing FreeState Electric Cooperative's overhead power line, which in its present alignment conflicts with FCI and FPC development. Therefore, FreeState agrees to relocate its power line a new alignment to be mutually agreed upon to the east; and a new permit will be provided to FreeState by the BOP to be followed by an easement provided by the U.S.

Department of Justice (DOJ), upon receipt of a metes and bounds description and survey of the new permit/easement area that is satisfactory to BOP and DOJ. The need to relocate overhead power lines applies to Evergy's existing line as well and discussions are currently underway between BOP and Evergy officials about such a relocation.

It is the BOP's intent to work with FreeState as well to reach an equitable arrangement regarding relocation of its overhead power line. To confirm and document our understanding for purposes of the DSFEIS, a letter acknowledging FreeState's willingness and intent to work with the BOP to reach an equitable agreement on power line relocation is requested.

Feel free to direct any questions regarding this request to me at: Kimberly S. Hudson, Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C. 20534 Tel: 202-616-2574/Fax: 202-260-0702/Email: kshudson@bop.gov. Thank you for your cooperation and support.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Cc: C. Ciccone, G. Younger, J. Organic, BOP

R. Nardi, S. Hoffman, T. Payne, WSP

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 21, 2020

Ed Broxterman, Customer Solutions Manager
Evergy
23505 West 86th Street
Shawnee, Kansas 66227

Subject: Proposed Federal Correctional Institution and Federal Prison Camp Leavenworth, Kansas

Dear Mr. Broxterman:

As you know from our recent discussions, the Federal Bureau of Prisons (BOP) is proposing to develop a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) within lands comprising the U.S. Penitentiary (USP) in Leavenworth, Kansas. In compliance with the National Environmental Policy Act of 1969, as amended, the BOP is currently preparing a Draft Supplemental Final Environmental Impact Statement (DSFEIS) to include current information concerning the purpose and need for the new FCI and FPC, potential impacts and mitigation measures associated with the project, and to provide the public and others the opportunity to voice their interests and provide comments concerning the proposed project. We expect the DSFEIS to be published within the next several weeks and notice will be given concerning its availability along with plans for a public hearing.

The DSFEIS will address the variety of related actions including development of Evergy's planned substation within the USP property. It is the BOP's understanding that Evergy has been planning to develop a new substation within the USP property which is not part of the planned FCI and FPC development. However, the substation's original planned location would conflict with FCI and FPC development. Evergy and the BOP have agreed that Evergy can relocate the planned substation within the southeastern portion of the USP property

and satisfy the needs of both parties. Unrelated to the planned substation is the need to relocate the existing Evergy overhead power line (which in its present alignment conflicts with FCI and FPC development), among other utilities to a new alignment to the east for which a new permit or permits will be provided by the BOP and a new easement or easements will be provided by the U.S. Department of Justice (DOJ), upon receipt of a request for the same that includes a metes and bounds description and survey of the new permit/easement area for the substation and overhead power lines that are satisfactory to BOP and DOJ.

It is the BOP's intent to work with Evergy to reach an equitable arrangement regarding relocation of the overhead power line. To confirm and document our understanding for purposes of the DSFEIS, a letter acknowledging Evergy's willingness and intent to work with the BOP to reach an equitable agreement on power line relocation is requested.

Feel free to direct any questions regarding this request to me at: Kimberly S. Hudson, Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C. 20534 Tel: 202-616-2574/Fax: 202-260-0702/Email: kshudson@bop.gov. Thank you for your cooperation and support.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Cc: C. Ciccone, G. Younger, J. Organic, BOP

R. Nardi, S. Hoffman, T. Payne, WSP

USDA
United States Department of Agriculture

10/28/2020

Robert Nardi, PP
Vice President
WSP USA Solutions, Inc.
412 Mt. Kemble Avenue
Morristown, NJ 07962

RE: Farmland Protection Policy Act (FPPA) Request

Dear Mr. Nardi:

We received the information that you provided regarding the Federal Correctional Institution and Federal Prison Camp in Leavenworth, Kansas.

The Agriculture and Food Act of 1981 (Public Law 97-98) includes provisions for the Farmland Protection Policy Act (FPPA) in Subtitle 1 of Title XV, Sections 1539-1549. This Act is intended to minimize the impact of Federal programs on unnecessary and irreversible conversion of prime and important farmland to nonagricultural uses.

Please find enclosed Form AD-1006, Farmland Conversion Impact Rating. Please note that parts II, IV, and V have been completed by Natural Resources Conservation Service (NRCS). Please complete Parts VI and VII, then return a completed copy by email to KS.NRCS.ER.FPPA@usda.gov.

If you have any questions or concerns regarding FPPA or Form AD-1006, please contact Jeffrey A. Hellerich, State Soil Scientist, by phone at 785-823-4564 or email jeffrey.hellerich@usda.gov.

Sincerely,

Karen A Woodrich

KAREN A. WOODRICH
State Conservationist

Enclosure

ec:
Jeffrey A. Hellerich, State Soil Scientist, NRCS, Salina, Kansas
Brian K. Nester, Soil Scientist, NRCS, Salina, Kansas
Bruce Wells, Acting Assistant State Conservationist for Field Operations, NRCS, Manhattan, Kansas

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I *(To be completed by Federal Agency)*		Date Of Land Evaluation Request	July 1, 2020
Name of Project	Proposed FCI/FPC, Leavenworth	Federal Agency Involved	USDOJ, Federal Bureau of Prisons
Proposed Land Use	New federal prison & satellite camp	County and State	Leavenworth County, KS
PART II *(To be completed by NRCS)*		Date Request Received By NRCS	7/13/2020
		Person Completing Form:	Brian Nester

Does the site contain Prime, Unique, Statewide or Local Important Farmland? *(If no, the FPPA does not apply - do not complete additional parts of this form)*	YES ☑	NO ☐	Acres Irrigated: 310 / Average Farm Size: 163
Major Crop(s): Wheat, Corn	Farmable Land In Govt. Jurisdiction: Acres: 295566 % 98.4		Amount of Farmland As Defined in FPPA: Acres: 1995[illegible] % 66.4
Name of Land Evaluation System Used: Leavenworth County	Name of State or Local Site Assessment System: none		Date Land Evaluation Returned by NRCS: 07/15/2020

PART III *(To be completed by Federal Agency)*	Alternative Site Rating: Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly	150			
B. Total Acres To Be Converted Indirectly	75			
C. Total Acres In Site	225			
PART IV *(To be completed by NRCS)* Land Evaluation Information				
A. Total Acres Prime And Unique Farmland	122.6			
B. Total Acres Statewide Important or Local Important Farmland	84.9			
C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted	0.11275			
D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value	36			
PART V (To be completed by NRCS) Land Evaluation Criterion Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)	65			

PART VI *(To be completed by Federal Agency)* Site Assessment Criteria *(Criteria are explained in 7 CFR 658.5 b. For Corridor project use form NRCS-CPA-106)*	Maximum Points	Site A	Site B	Site C	Site D
1. Area In Non-urban Use	(15)	8			
2. Perimeter In Non-urban Use	(10)	5			
3. Percent Of Site Being Farmed	(20)	0			
4. Protection Provided By State and Local Government	(20)	5			
5. Distance From Urban Built-up Area	(15)	5			
6. Distance To Urban Support Services	(15)	5			
7. Size Of Present Farm Unit Compared To Average	(10)	5			
8. Creation Of Non-farmable Farmland	(10)	0			
9. Availability Of Farm Support Services	(5)	5			
10. On-Farm Investments	(20)	0			
11. Effects Of Conversion On Farm Support Services	(10)	0			
12. Compatibility With Existing Agricultural Use	(10)	0			
TOTAL SITE ASSESSMENT POINTS	160	38	0	0	0
PART VII *(To be completed by Federal Agency)*					
Relative Value Of Farmland *(From Part V)*	100	65	0	0	0
Total Site Assessment *(From Part VI above or local site assessment)*	160	38	0	0	0
TOTAL POINTS *(Total of above 2 lines)*	260	103	0	0	0

Site Selected: Site A	Date Of Selection: October 28, 2020	Was A Local Site Assessment Used? YES ☐ NO ☑

Reason For Selection:

Portions of Site A (aka East Site) at USP Leavenworth has been developed with prison-related uses for over 110 years. Portions of project site mapped as prime farmland soils have been altered as part of prison operations and installation of underground utilities and do not retain original characteristics.

Name of Federal agency representative completing this form: Robert J. Nardi — Date: Oct. 28, 2020

(See Instructions on reverse side)

Form AD-1006 (03-02)

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

November 23, 2020

Mike DeGraeve, Design Engineer
Bob Bath, Leader Land Acquisition
Southern Star Central Gas Pipeline, Inc.
8195 Cole Parkway
Shawnee, Kansas 66227
(913) 422-6341
mike.degraeve@southernstar.com

Subject: Proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) at USP Leavenworth and Gas Pipelines of Southern Star Central Gas Pipeline, Inc.

Dear Sirs:

Based on prior communications, it is mutually understood between the Federal Bureau of Prisons' (BOP) and Southern Star Central Gas Pipeline, Inc. (Southern Star) that portions of two of Southern Star's natural gas pipelines affecting the proposed project above are to be relocated to an agreed utility corridor on USP property that will not be affected by the proposed project.

Any agreement between the parties regarding relocation of Southern Star's gas pipelines will depend primarily upon the existing rights Southern Star has to be on USP Leavenworth property. To that end, at BOP's request, Southern Star recently forwarded three revocable documents, including a 1928 revocable license; a 1955 supplemental revocable license; and a 1969 revocable permit. Based on BOP's review of these documents, it does not appear that they describe, or apply to, pertinent portions of the gas pipelines to be relocated. Further, none of the three documents obligates, nor provides authority for, the BOP to pay for relocation related costs for portions of Southern Star's pipelines to be relocated by virtue of the proposed FCI/FPC project.

If Southern Star may have, or be able to locate, any additional documentation, especially documentation such an easement or rights that are not revocable, that documentation would be important in determining the extent of any agreement that might be entered into for

Sincerely,

Guido A. Rivas, PE, Civil Engineer
Construction and Environmental Review Branch

Copy: Cheryl Ciccone, CERB
Judah Organic, CERB
Kimberly Hudson, CERB
Michelle Morgan, PPB

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

November 23, 2020

Christopher S. Parr
Assistant General Manager
FreeState Electric Cooperative, Inc.
1100 SW Auburn Road
Topeka, KS 66615
(785)438-4802 / chris.parr@freestate.com

Subject: Proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) at USP Leavenworth

Dear Mr. Parr:

We received your November 17, 2020, letter and appreciate the willingness of FreeState Electric Cooperative, Inc. (FreeState) to work with the Bureau of Prison (BOP) for the relocation of your existing 34kV overhead transmission power line.

However, BOP is required to determine what, if any, existing rights Freestate has to be on USP Leavenworth property, whether it be in the form of an easement, license, permit, or existing Federal contract. Please provide BOP with any and all documentation you may have concerning any right to be on Federal property so that negotiations may begin in earnest.

We look forward to working with FreeState to reach an equitable agreement regarding the current questions and the relocation. If you have any questions, feel free to contact me at:

Alexander Rivas, PE, Civil Engineer
Construction and Environmental Review Branch
Federal Bureau of Prisons
320 First Street, NW, Room 901-5084
Washington, D.C. 20534
Tel: 202-307-1288
Fax: 202-260-0702
Email: grivas@bop.gov.

Sincerely,

Guido A. Rivas, PE, Civil Engineer
Construction and Environmental Review Branch

Copy: Cheryl Ciccone, CERB
Judah Organic, CERB
Kimberly Hudson, CERB
Michelle Morgan, PPB

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

November 23, 2020

David Peck, Senior Project Manager
Evergy
818 South Kansas Ave.
Topeka, KS 66612-1203
(785) 207-2645
David.Peck@evergy.com

Subject: Proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) at USP Leavenworth

Dear Mr. Peck:

Thank you for your November 12, 2020, letter and enclosed template of an Electric Line Modification/Relocation Agreement.

Existing law requires that such agreements comply with the Federal Acquisition Regulations (FAR) which govern the form and content of the agreement as well as the ability and extent of any payments or reimbursements. A Federal Bureau of Prisons' Contracting Officer will be working closely with Evergy representatives in the development of an agreement that satisfies all parties and its legal requirements.

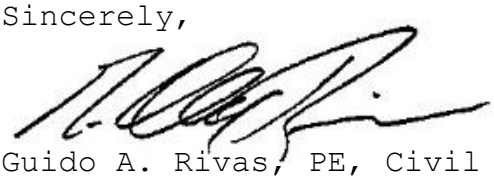
It is BOP's understanding that Evergy's current access rights are found in a 1992 easement granted to Western Resources f/k/a Kansas Power & Light Company and recorded at Bk 674 Pg 1803. To the extent Evergy has any other facilities in the project area, please inform Judah Organic, BOP's Projects Administrator. As we move forward, BOP will need to know any other existing rights or facilities that Evergy maintains within the project area.

BOP looks forward to continue working with Evergy to complete the electric line and facilities relocation that meets the needs

of both Evergy and the BOP. If you have any questions, feel free to contact me at:

Alexander Rivas, PE, Civil Engineer
Construction and Environmental Review Branch
Federal Bureau of Prisons
320 First Street, NW, Room 901-5084
Washington, D.C. 20534
Tel: 202-307-1288
Fax: 202-260-0702
Email: grivas@bop.gov.

Sincerely,



Guido A. Rivas, PE, Civil Engineer
Construction and Environmental Review Branch

Copy: Cheryl Ciccone, CERB
Judah Organic, CERB
Kimberly Hudson, CERB
Michelle Morgan, PPB

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

November 23, 2020

Joel Mahnken, P.E., General Manager
Leavenworth Waterworks
601 Cherokee Street
Leavenworth, Kansas 66048
(913) 682-1513, ext. 310
JMahnken@lvnwater.org

Subject: Proposed Geotech work and construction of new Water Tank on USP Leavenworth property

Dear Mr. Mahnken:

Thank you for your November 16, 2020, email to Ms. Kimberly Hudson indicating an interest in locating a new water tank on the western portion of the Federal Bureau of Prisons' (BOP) USP Leavenworth property. The BOP understands that the proposed water tank would serve both the City of Leavenworth and the BOP. Further, Leavenworth Waterworks (LW) would provide the BOP with a dedicated amount of water storage in the new tank for use with the BOP's proposed new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC).

In your email, you also indicated that LW would like to perform geotechnical investigations at the proposed site on the BOP property; and you asked what process would be required to conduct the geotechnical investigations and to make the property available for the proposed water tank use.

As proposed by LW, in addition to a separate agreement between the BOP and LW that would be needed regarding the terms of BOP's water storage and use, access to and use of BOP land would require that the Bureau issue a temporary permit to LW, which typically would be followed by issuance of a permanent easement to LW by the U.S. Department of Justice (DOJ).

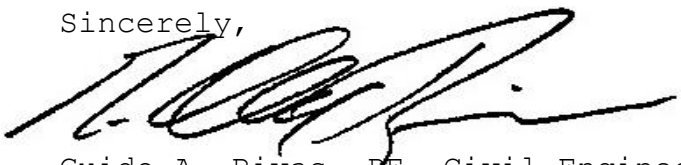
Prior to issuance of a permit or easement, BOP policy requires that LW submit a written request for the permit and easement to the Warden, USP Leavenworth. The request would briefly describe the purpose for which the request is made. In addition, the request must be accompanied by 1) a metes and bounds (M&B) legal description and 2) a survey (including the M&B description) of the proposed permit/easement area needed for the water tank and access to it. Both of these accompanying documents must be prepared by a licensed surveyor and should be in a form that would be acceptable for recording in the land records where an easement from DOJ would be recorded.

Since geotechnical investigations would require access over and ground disturbance of BOP property, a permit to LW would need to be issued to LW prior to beginning such investigations. It may be that a temporary permit, separate from a permit for the water tank, granting access and use of BOP property for only the geotechnical investigations would be appropriate. If so, no permanent easement from DOJ would be required since the access and geotechnical investigations would be for a limited time only.

We hope this is responsive to your inquiry and we look forward to working with LW in this regard. If you have any questions, feel free to contact me at:

Alexander Rivas, PE, Civil Engineer
Construction and Environmental Review Branch
Federal Bureau of Prisons
320 First Street, NW, Room 901-5084
Washington, D.C. 20534
Tel: 202-307-1288
Fax: 202-260-0702
Email: grivas@bop.gov.

Sincerely,



Guido A. Rivas, PE, Civil Engineer
Construction and Environmental Review Branch

Copy: Cheryl Ciccone, CERB
Judah Organic, CERB
Kimberly Hudson, CERB
Michelle Morgan, PPB

Cultural Resources Division
State Historic Preservation Office
6425 SW 6th Avenue
Topeka KS 66615-1099

Kansas Historical Society

785-272-8681, ext. 240
kshs.shpo@ks.gov
kshs.org

Jennie Chinn, Executive Director

Laura Kelly, Governor

KSR&C No. 20-09-146
December 4, 2020

Kimberly Hudson
Federal Bureau of Prisons
Via E-mail

RE: Draft Supplemental Environmental Impact Statement (DSEIS)
Proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC)
1300 Metropolitan Avenue, Leavenworth
Leavenworth County

The Kansas State Historic Preservation Office acknowledges receipt of your letter dated November 16, 2020 describing availability of the Draft Supplemental Environmental Impact Statement (DSEIS) for the above-referenced project. We have no role in the NEPA process, but we have been involved with this project since 2011 are continuing with Section 106 consultation. As noted in earlier correspondence and during our teleconference meeting on September 10th, the Federal Bureau of Prisons (BOP) is restarting the project designed to replace the Leavenworth Federal Penitentiary with new FCI and FPC facilities. Our office reviewed the project during its initial stages, from 2011 until 2015 (KSR&C No. 11-01-198).

As noted in the DSEIS and in earlier correspondence, archeological investigations (survey and testing) have been completed. None of the recorded archeological sites were determined to be eligible for National Register listing. Our remaining concerns at the time involved potential impacts to the historic staff housing east of the main facility. But it remains our understanding that those structures will be avoided by the current project configuration and that existing overhead transmission lines and buried gas pipelines will be relocated.

As to the new project configuration, it is our understanding that the existing penitentiary will be deactivated once the new facilities have been constructed and all inmates and staff have been transferred. As indicated during the meeting and in earlier correspondence, our office does have concerns regarding the long-term future of the historic federal prison complex. It is our understanding that the Bureau of Prisons (BOP) has no plans to alter or demolish the existing facility and will conduct a deactivation study focused on steps necessary to avoid deterioration and to explore options for new uses. We will await further information as the Section 106 process proceeds.

This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Tim Weston at 785-272-8681 (ex. 214) or Lauren Jones at 785-272-8681 ext. 225. Please refer to the Kansas Review & Compliance number (KSR&C#) above on all future correspondence relating to this project.

Sincerely,
Jennie Chinn
State Historic Preservation Officer

Patrick Zollner
Deputy State Historic Preservation Officer

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

December 23, 2020

Jennie Chinn, State Historic Preservation Officer
Patrick Zollner, Deputy State Historic Preservation Office
Kansas Historical Society
6425 SW 6th Avenue
Topeka, Kansas 66615-1099

Subject: Section 106 Consultation – Proposed Development of Federal Correctional Institution and Federal Prison Camp, Leavenworth, Kansas
KSR&C No. 20-09-146

Dear Ms. Chinn and Mr. Zollner:

On behalf of the Federal Bureau of Prisons (BOP), thank you for your letter of December 4, 2020, concerning the U.S. Penitentiary (USP) located in Leavenworth, Kansas. Given the age and condition of the USP and the necessity for costly and difficult to implement security, life safety, mechanical, electrical and plumbing system replacements and/or upgrades, the BOP is developing a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) to accommodate inmate housing needs and meet current standards. Once developed, inmates housed at the existing USP and FPC will be transferred to the new FCI and FPC along with correctional officers and other staff at which time the USP and FPC will cease housing inmates.

Prior to transferring inmates and staff to the new FCI and FPC, the BOP will prepare a Transition Plan to identify the actions and measures necessary to maintain the USP in order to avoid deterioration of the vacated structures and infrastructure. The Transition Plan will also examine the potential to adapt and/or reuse the USP for purposes other than housing inmates as the necessary architectural and engineering investigations are conducted to determine the feasibility and costs for adapting the USP for a future use.

At this time, the potential to adapt and/or reuse the contributing buildings within the USP historic district for uses other

than housing inmates is unknown. However, the BOP has no plans to alter or demolish the USP and intends to maintain the facility until future uses and/or missions are developed.

Apart from the large walled penitentiary and rotunda, the BOP has tentatively identified several existing buildings at the USP that will continue to serve the BOP's mission for the new FCI. These existing buildings include, but are not limited to: the staff training center (STC), staff fitness center (SFC), staff housing, and the firing range. Additional buildings and elements will be identified as the BOP develops the Transition Plan for the USP.

The STC, SFC and staff housing are all contributing resources within the USP historic district; and the Secretary of the Interior's Standards shall be considered by the BOP for any future improvements performed at these existing buildings and other elements when prudent.

Given that the BOP will continue to operate the USP for the three to five years needed to plan, design, and construct the new FCI and FPC and the uncertainty over its continuing maintenance needs, mission options, and available funding, the BOP proposes to keep the Kansas State Historic Preservation Office apprised on the BOP's Transition Plan status. Based upon your letter dated December 4, 2020, BOP considers the portion of this project involving the development and construction of the new FCI and FPC in Leavenworth, Kansas as having satisfied the section 106 consultation process.

The BOP appreciates your continued assistance and support as we continue to advance the consultation process. Please feel free to contact me with questions or comments at Tel: 202-616-2574 or Email:kshudson@bop.gov.

Sincerely,

Kimberly S. Hudson, Site Selection Specialist
Construction and Environmental Review Branch

Cc: T. Weston, P. Zollner, KHS
C. McDonald, S. Hoffman, R. Nardi, WSP
C. Ciccone, T. Sheldrake, S. Peacock, J. Limjoco, S. Keller, BOP

Cultural Resources Division
State Historic Preservation Office
6425 SW 6th Avenue
Topeka KS 66615-1099

Kansas Historical Society

785-272-8681, ext. 240
kshs.shpo@ks.gov
kshs.org

Jennie Chinn, Executive Director

Laura Kelly, Governor

KSR&C No. 20-09-146
January 22, 2021

Kimberly Hudson
Federal Bureau of Prisons
Via E-mail

RE: Updated Redevelopment Plans
Proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC)
1300 Metropolitan Avenue, Leavenworth
Leavenworth County

The Kansas State Historic Preservation Office acknowledges receipt of your letter dated December 23, 2020 describing plans for the existing historic penitentiary as part of designing and construction new FCI and FPC facilities. Our office reviewed the project during its initial stages, from 2011 until 2015 (KSR&C No. 11-01-198).

As noted in earlier correspondence, archeological investigations (survey and testing) have been completed. None of the recorded archeological sites were determined to be eligible for National Register listing. Our remaining concerns at the time involved potential impacts to the historic staff housing east of the main facility. But it remains our understanding that those structures will be avoided by the current project configuration and that existing overhead transmission lines and buried gas pipelines will be relocated.

As to the new project configuration, it is our understanding that the existing penitentiary will be deactivated once the new facilities have been constructed and all inmates and staff have been transferred. As previously indicated, our office does have concerns regarding the long-term future of the historic federal prison complex. It remains our understanding that the Bureau of Prisons (BOP) has no plans to alter or demolish the existing facility and will conduct a transition plan study focused on steps necessary to avoid deterioration and to explore options for new uses. We will await further information as that process proceeds. With that stipulation, our office concurs that the Section 106 requirements for development and construction of the new FCI and FPC facilities have been met.

This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Tim Weston at 785-272-8681 (ex. 214) or Lauren Jones at 785-272-8681 ext. 225. Please refer to the Kansas Review & Compliance number (KSR&C#) above on all future correspondence relating to this project.

Sincerely,
Jennie Chinn
State Historic Preservation Officer

Patrick Zollner
Deputy State Historic Preservation Officer

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

January 26, 2021

Laura Mendenhall
U.S. Fish and Wildlife Service
Kansas Ecological Services Field Office
2609 Anderson Avenue
Manhattan, Kansas 66502

Subject: **ESA Section 7 Consultation for U.S. Department of Justice, Federal Bureau of Prisons Proposed Federal Correctional Institution & Federal Prison Camp, Leavenworth, Kansas**

Dear Ms. Mendenhall:

On January 4, 2021, the U.S. Fish and Wildlife Service (USFWS) Kansas Ecological Services Field Office provided comments on the U.S. Department of Justice, Federal Bureau of Prisons (BOP) Draft Supplemental Environmental Impact Statement (Draft SEIS) for a proposed Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) to be developed in Leavenworth, Kansas. In its comment letter, the USFWS noted the presence of three federally listed species that may occur in the project area and requested that the BOP confirm with the Kansas Biological Survey or other credible entity, the likelihood of one species, Mead's milkweed (*Asclepias meadii*), occurring in the project area. This letter provides a summary of the BOP's proposed action, information regarding the likelihood of federally listed species including Mead's milkweed occurring in the project area, a description of potential project-related impacts, and the BOP's preliminary determination of effects. We request your office's concurrence with the BOP's determinations under Section 7 of the Endangered Species Act (ESA).

Summary of Proposed Federal Agency Action

Below is a summary of the BOP's proposed action, which has been identified as the preferred alternative in the Draft SEIS.

The BOP proposes to construct and operate a new FCI and FPC on the grounds of the U.S. Penitentiary (USP) Leavenworth, located north of the City of Leavenworth, and southwest of the U.S. Army Garrison-Fort Leavenworth in Leavenworth County, Kansas. The FCI would be designed to house approximately 1,152 medium-security male inmates and the FPC would be designed to house 256 minimum-security male inmates for a total population of 1,408 inmates along with approximately 338 staff necessary for operation. Once development is completed and the new FCI/FPC are activated, inmates will be transferred from the existing correctional facilities to the new facilities along with the complement of correctional officers and other staff. At that time, the existing USP and FPC will permanently cease housing inmates while a Transition Study is conducted to determine a possible future USP and FPC use or mission. The result would be little to no change in the number of inmates and BOP staff or to the security levels of the inmate population to be housed at the new facilities.

Features of the proposed action are summarized below:

- The proposed action meets all critical BOP security and operational requirements involving security zones and setbacks from structures, property lines, etc. necessary for development and operation of a FCI and FPC.

- The FPC would be placed in close proximity to the FCI which relies upon camp inmates to carry out or help support various operation and maintenance activities.

- The proposed action requires relocation of an overhead electrical line easement containing two overhead power lines and placement of a planned new electrical substation (by Evergy) in the southeastern portion of the USP property, thereby avoiding conflicts with FCI/FPC development.

- The proposed action requires relocation of one high-pressure natural gas pipeline which follows a north-south alignment and abandonment of a second pipeline which follows an east-west alignment.

- The proposed action involves remediation of known waste disposal areas prior to FCI/FPC construction.

- The proposed FPC has been made more compact and its location has been adjusted to increase the distance from the historic staff housing units and includes an earthen berm extending the length of the housing units to provide a physical barrier between the units and the FPC.

- No historic staff housing units (contributing features to the NHRP-eligible USP Leavenworth Historic District) would be adversely impacted, and no NRHP-eligible archaeological sites would be impacted.

Description of Project Area

The project area was characterized using agency contacts, available database inventories and maps, previous studies, and direct field observations. Agency contacts included coordination with the Kansas Biological Survey (KBS), which has conducted extensive surveys and plant inventories throughout the state. The utilized maps included USGS topographic maps and USDA aerial photographic maps. Field observations of the project area were documented during site visits in 2011 and more recently in July 2020. Wetland delineations and habitat assessments were conducted during the 2011 and 2020 site visits (Draft SEIS, Appendix E).

The project area consists of a 227-acre site characterized by rolling terrain, a portion of which is moderately steep (adjacent to streams), with elevations ranging from 825 to 890 feet above mean sea level. Geological features include loess deposits and soils consist of clay and silt loams. The project area is within the Missouri River Basin and the Independence-Sugar Watershed. Surface waters that drain the area consist of drainages and/or storm water conveyances, ephemeral streams, intermittent streams, and a perennial stream.

The majority of the project area and the surrounding vicinity is dominated by maintained/mowed fields and retired cropland with vegetation consisting mainly of upland pastureland herbaceous species. Vegetation in these areas is dominated by mixed grasses and forbs including smooth brome (*Bromus inermis*), tall fescue (*Schedonorus phoenix*), yellow foxtail (*Setaria pumila*), white clover (*Trifolium repens*), little bluestem (*Schizachyrium scoparium*), and switchgrass (*Panicum virgatum*). Evidence of current land uses (mowing lines) can be seen in aerial imagery

of the project area (Figure 1). The remaining land includes riparian corridors along one perennial tributary and the non-perennial tributaries with four palustrine emergent wetlands and one palustrine forested wetland abutting and adjacent to the non-perennial tributaries. The palustrine emergent and forested wetlands include predominantly hydrophytic herbaceous and shrub vegetation. The riparian corridors are dominated by white oak (*Quercus alba*), American elm (*Ulmus americana*), hackberry (*Celtis occidentalis*), honey locust (*Gleditsia triacanthos*), sycamore (*Platanus occidentalis*), Osage orange (*Maclura pomifera*), grape species (*Vitis* spp.), and buckbrush (*Symphoricarpos orbiculatus*). The understory is mostly dominated by non-native shrub species including bush honeysuckle (*Lonicera mackii*) and multiflora rose (*Rosa multiflora*). The most significant riparian corridor is on the northern portion of the project area adjacent to Corral Creek.

Wildlife observed during July 2020 field surveys were mostly common species typical of the region. Observed mammals include white-tailed deer (*Odocoileus virginiana*), and eastern gray squirrel (*Sciurus carolinensis*). Avian species included wild turkey (*Meleagris gallopavo*), red-tailed hawk (*Buteo jamaicensis*), great blue heron (*Ardea herodias*), ducks and geese, woodpeckers, and a variety of common passerine species. Bullfrog (*Lithobates catesbeiana*) was the only documented amphibian species during 2020 field visits. Other common wildlife, especially birds and small mammals, are likely to be at least occasionally present in the project area.

Figure 1. Aerial Image of the Project Area

Source: Google Earth.

Potential Effects on Federally Listed Species and Agency Determinations

As noted by the USFWS letter dated January 4, 2021, three federally listed species could occur in the project area: northern long-eared bat *(Myotis septentrionalis)* (NLEB), western prairie fringed orchid (*Platanthera praeclara*), and Mead's milkweed (*Asclepias meadii*). All three species are listed as threatened under the ESA. The project area does not contain critical habitat for any listed species.

Below is a brief discussion of the likelihood of each species occurring in the project area, potential effects of the proposed

action, proposed measures to avoid or minimize potential impacts, and the BOP's determinations. Although federally listed plants are not protected from take under the ESA, Section 7 of the ESA requires federal agencies to use their legal authorities to promote the conservation purposes of the ESA and to consult with USFWS, as appropriate, to ensure that effects of actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species.

Northern Long-eared Bat

Northern long-eared bats (NLEB) are found in Leavenworth County. The NLEB uses snag or den trees 9-36 inches in diameter at breast height with loose bark in deciduous upland and riparian forests during the spring and summer for roosting and foraging. The project area lies within the range of NLEB and contains suitable roosting and foraging habitat. Potential adverse effects on NLEB would consist of loss and degradation of forested habitat if tree clearing is required. If tree clearing is required, the BOP would adhere to seasonal clearing restrictions in accordance with the USFWS' 4(d) Rule for NLEB. If necessary, tree clearing would be conducted between November 15 and March 31, when bats are in hibernation, minimizing the potential for take. Therefore, the proposed action *may affect, but is not likely to adversely affect* NLEB.

Western Prairie Fringed Orchid

Suitable western prairie fringed orchid habitat includes warm season, native grasslands, or hay meadows. Based on known habitat requirements, the project area does not appear to provide suitable habitat for western prairie fringed orchid given the absence of warm season, native grasslands due to the occurrence of past disturbance on the project area. Additionally, the mowed/maintained hay meadows located throughout the project area consist mostly of cultivated nonnative species, which would decrease the potential for occurrence of western prairie fringed orchid. Western prairie fringed orchid was not observed in the project area during field visits in 2011 and July 2020. However, the optimal time to detect the western prairie fringed orchid is in early June.

The KBS was contacted to determine the necessity of plant surveys on the project area. Information provided by the KBS on October 20, 2011 indicated that a review of the Kansas Natural Heritage Inventory was performed for records of the western prairie fringed orchid and its habitat in the project area. There were no records located and a survey performed in 2005 in

Leavenworth County did not identify any potential habitat in the vicinity of the project area (Kindscher et al. 2005). Additionally, due to the absence of any untilled, native prairie and presence of hay meadows, it was concluded that the western prairie fringed orchid is unlikely to occur in the project area. Based on the lack of suitable habitat and probable absence of this species from the project area, the proposed action would have *no effect* on western prairie fringed orchid.

Mead's Milkweed

Habitat requirements for Mead's milkweed are similar to those of western prairie fringed orchid. Therefore, the BOP concluded in the Daft SEIS that this species is unlikely to occur in the project area due to the lack of suitable habitat. Mead's milkweed was not observed during the 2011 or 2020 field visits. However, the optimal time to detect Mead's milkweed is mid-May through early June.

In response to the USFWS Kansas Ecological Services Field Office's request in its January 4, 2021 comment letter, the BOP contacted the KBS on January 8, 2021 to confirm the likelihood of Mead's milkweed occurring in the project area. The KBS has conducted extensive surveys for federally listed plant species throughout Leavenworth County, but past surveys did not include lands that comprise the project area (Freeman et al. 1997, 2003; Kindscher et al. 2005). Plant surveys were conducted on Fort Leavenworth Military Reservation in 1995, 1996, and 2002 (Freeman et al. 1997, 2003). Fort Leavenworth Military Reservation encompasses nearly 6,000 acres adjacent to the project area and contains habitats and land use types similar to those in the project area. Mead's milkweed was not identified during field inventories and it was concluded that the species was unlikely to occur at Fort Leavenworth Military Reservation (Freeman et al. 2003). Similarly, neither Mead's milkweed nor its habitat was identified in the 2011 EIS.

The KBS noted, based on hundreds of surveys for Mead's milkweed in eastern Kansas, this species is almost never found on grazed prairie, on cool-season hay meadows or pastureland, or on formerly or currently cultivated ground. Information provided by the KBS indicates that Mead's milkweed is found almost exclusively on native grasslands. The KBS recommended that surveys be conducted only if native prairie habitat is present in the project area. Native prairie habitat is not present in the project area, thus a survey was not conducted. Because the project area does not contain native grasslands or historic

prairie, and because all open habitats are regularly mowed and maintained, this species is unlikely to occur in the project area. Therefore, the BOP does not believe that field surveys are necessary and has determined that the proposed action would have *no effect* on Mead's milkweed.

Conclusion

Based on the information provided above, the BOP has concluded that the proposed federal agency action would not be likely to adversely affect any federally listed species. The BOP requests USFWS's concurrence with the determinations presented above. Please contact Kimberly S. Hudson (Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Room 901-5, Washington, D.C. 20534, Tel: 202-616-2574/Fax: 202-260-0702/Email: kshudson@bop.gov) if you have any further questions or require additional information.

Sincerely,

Kimberly S Hudson

Kimberly S. Hudson
Site Selection Specialist

Cc: C. Ciccone , J. Organic, J. Limjoco, BOP
C. Hanlon, R. Nardi, WSP
J. Luginbill, USFWS

References

Freeman, C. C., W. H. Busby, C. L. Lauver, K. Kindscher, J. Elliott, and D. A. Eifler. 1997. A natural areas inventory of the Ft. Leavenworth Military Reservation, Leavenworth County, Kansas. Rept. State Biol. Surv. Kansas 77. 257 pp. + appendix.

Freeman, C. C, W. H. Busby, J. Delisle, W. D. Kettle, K. Kindscher, H. Loring, C. A. Morse, and V. B. Salisbury. 2003. A natural areas inventory of the Ft. Leavenworth Military Reservation, Leavenworth County, Kansas. II. Open-file Report No. 117. Kansas Biological Survey. Lawrence, KS. 199 pp.

Kindscher, K, W. H. Busby, J. M. Delisle, J. A. Dropkin, and C. C. Freeman. A Natural Areas Inventory of Douglas, Johnson, Leavenworth, Miami, and Wyandotte Counties in Northeast Kansas. Open-File Report No. 124. Kansas Biological Survey. Lawrence, KS. iii+74 pp.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
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In Reply Refer To: January 29, 2021
Consultation code: 06E21000-2021-TA-0443
Event Code: 06E21000-2021-E-00928
Project Name: Southern Star XS/XSA

Subject: Verification letter for the 'Southern Star XS/XSA' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Darren Mitchell:

The U.S. Fish and Wildlife Service (Service) received on January 29, 2021 your effects determination for the 'Southern Star XS/XSA' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"[1] prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The Action may affect the northern long-eared bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- Mead's Milkweed Asclepias meadii Threatened
- Pallid Sturgeon Scaphirhynchus albus Endangered
- Western Prairie Fringed Orchid Platanthera praeclara Threatened

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

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[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

Action Description
You provided to IPaC the following name and description for the subject Action.

1. Name

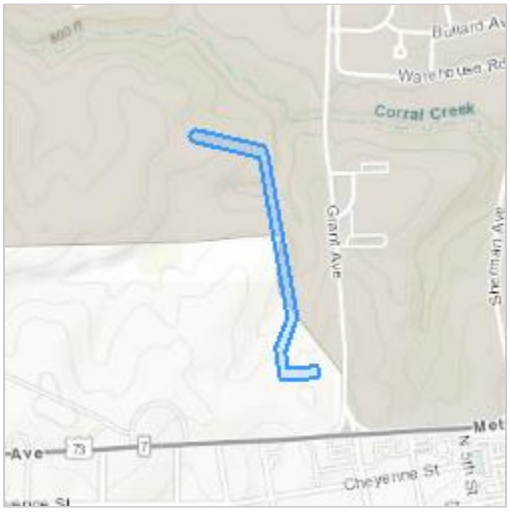
Southern Star XS/XSA

2. Description

The following description was provided for the project 'Southern Star XS/XSA':

> Relocation of existing pipeline as part of BOP project

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@39.3324437,-94.92292007733491,14z



Determination Key Result

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may

affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

Qualification Interview

1. Is the action authorized, funded, or being carried out by a Federal agency?

   Yes

2. Have you determined that the proposed action will have "no effect" on the northern long-eared bat? (If you are unsure select "No")

   No

3. Will your activity purposefully **Take** northern long-eared bats?

   No

4. [Semantic] Is the project action area located wholly outside the White-nose Syndrome Zone?

   Automatically answered
   No

5. Have you contacted the appropriate agency to determine if your project is near a known hibernaculum or maternity roost tree?

   Location information for northern long-eared bat hibernacula is generally kept in state Natural Heritage Inventory databases – the availability of this data varies state-by-state. Many states provide online access to their data, either directly by providing maps or by providing the opportunity to make a data request. In some cases, to protect those resources, access to the information may be limited. A web page with links to state Natural Heritage Inventory databases and other sources of information on the locations of northern long-eared bat roost trees and hibernacula is available at www.fws.gov/midwest/endangered/mammals/nleb/nhisites.html.

   Yes

6. Will the action affect a cave or mine where northern long-eared bats are known to hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?

   No

7. Will the action involve Tree Removal?

   Yes

8. Will the action only remove hazardous trees for the protection of human life or property?

   No

9. Will the action remove trees within 0.25 miles of a known northern long-eared bat hibernaculum at any time of year?

   No

10. Will the action remove a known occupied northern long-eared bat maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31?

    No

Project Questionnaire

If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.

1. Estimated total acres of forest conversion:

2.07

2. If known, estimated acres of forest conversion from April 1 to October 31

2.07

3. If known, estimated acres of forest conversion from June 1 to July 31

0

If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0