

# KANSAS CITY DISTRICT

## MISSOURI REGULATORY PROGRAM

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Regulatory Program Manager

Kansas City, MO

12 July 2012



US Army Corps of Engineers  
**BUILDING STRONG®**



# Regulatory Program Goal

- Protect the chemical, physical, and biological integrity of the nations aquatic resources; while allowing reasonable development through fair, flexible and balanced permit decisions.



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# Regulatory Authority

- Section 10 of the Rivers and Harbors Act of 1899 – regulates structures in navigable waterways
- Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (CWA) – regulates discharge of dredged or fill material in waters of the United States



# Waters of the United States

- All waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide
- All interstate waters including wetlands
- All other waters such as intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds

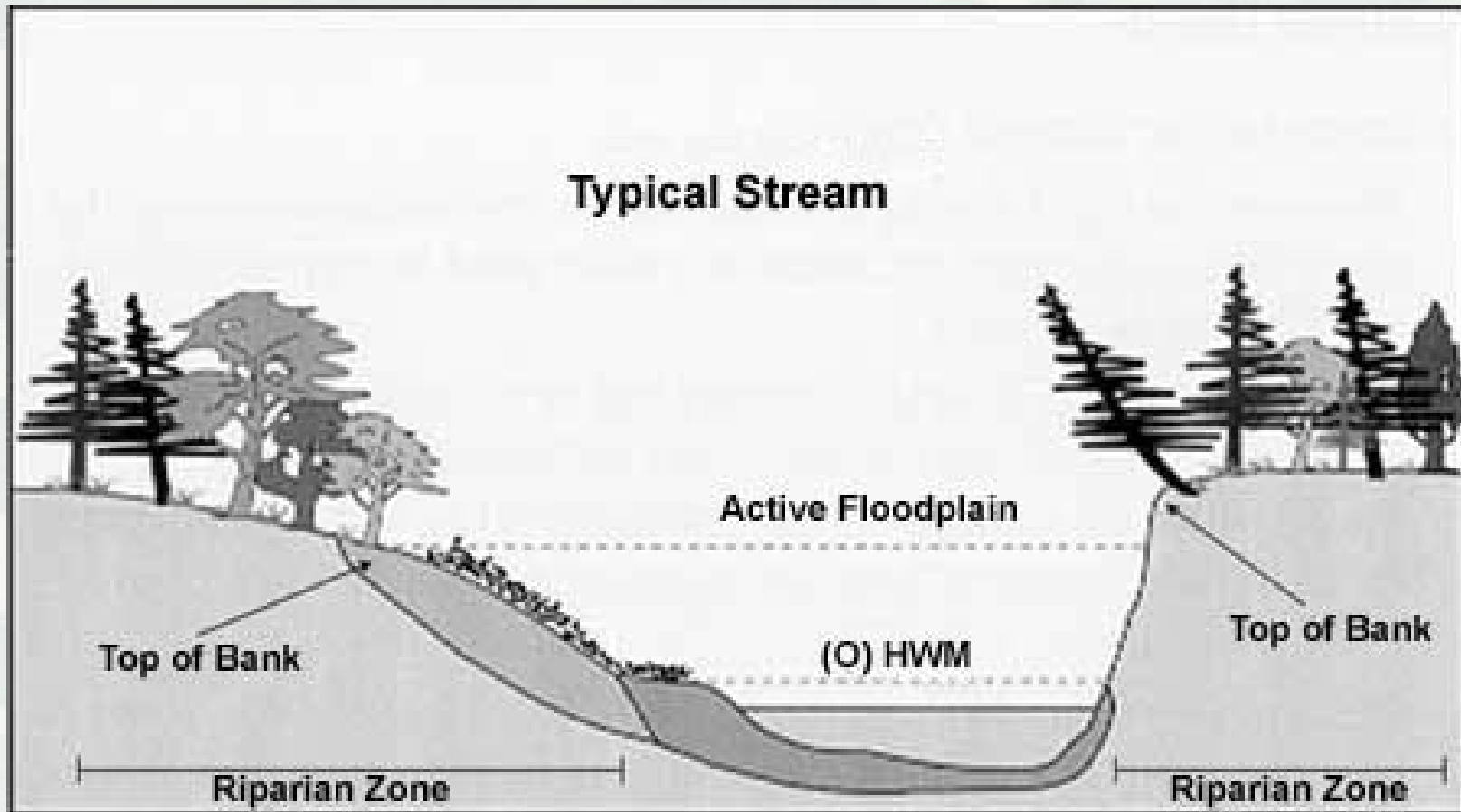


# Regulate Rivers and Small Streams



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# Ordinary High Water Mark (OHW)





# **JURISDICTIONAL ASSESSMENT**

**Wetland 1: 0.06 acres**

**TOTAL WETLAND AREA: 0.06 ACRES**

**Ephemeral 1: 262 LF, OHWM: 3 FT**

**Ephemeral 2: 425 LF, OHWM: 3 FT**

**TOTAL EPHEMERAL LENGTH: 687 LF**

**Intermittent 1: 1912 LF, OHWM: 10 FT**

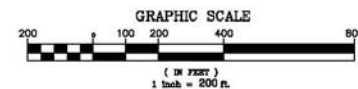
**Intermittent 2: 3108 LF, OHWM: 10 FT**

**Intermittent 3: 493 LF, OHWM: 12 FT**

**TOTAL INTERMITTENT LENGTH: 5513 LF**



**Site Location**  
**T18-R23E-834**  
**Shawnee, Johnson County, Kansas**  
**132 Acres**



**FIGURE 4**

**JURISDICTIONAL ASSESSMENT**  
**T18-R23E-834**  
**SHAWNEE, JOHNSON COUNTY, KANSAS**  
**132 ACRES**

**DATE** 07/01/08  
**REVISION** BY JAG  
**SCALE** 1 inch = 200 ft.  
**JA**  
**FILE NO.** XXX

**Terra Technologies**  
 4707 W. 135th St., Ste. 280  
 Lenexa, Kansas  
 66224  
 TM 913.385.5566 FAX 913.385.5295



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# Permitting Mechanisms

- **Nationwide Permits**
  - Reissued every 5 years by HQ, accounts for 90% of Workload, minimal impacts allowed.
- **General/Regional Permits**
  - Issued by Districts for Regional or General Use
- **Standard Individual Permits**
  - Larger impacts, NEPA analysis, public hearings, controversial



# Other Federal Laws and Regulations

- DA Permits must comply with:
  - ▶ Endangered Species Act
  - ▶ National Historic Preservation Act
  - ▶ National Environmental Policy Act
  
- DA Permits must be coordinated with:
  - ▶ Environmental Protection Agency,
  - ▶ U.S. Fish and Wildlife Service,
  - ▶ Kansas Department of Health and Environment
  - ▶ Kansas Department of Wildlife, Parks, and Tourism



# Compensatory Mitigation

- NWP General Condition 23: Compensatory mitigation must be considered for all impacts at or above the notification threshold
- Compensatory mitigation must be in conformance with the “Mitigation Rule” 40 CFR Part 230: Compensatory Mitigation for Losses of Aquatic Resources; Final Rule. April 10, 2008
- The “Mitigation Rule” identifies banks as the preferred source of compensatory mitigation



# What is Compensatory Mitigation?

Compensatory mitigation is the restoration, establishment, enhancement, or preservation of aquatic resources for the purpose of offsetting losses of aquatic resources resulting from activities authorized by Corps of Engineers' permits.



# What are the Sources of Compensatory Mitigation?

- **Mitigation bank:** One or more sites where aquatic resources such as wetlands or streams are restored, established, enhanced and/or preserved for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.
- **In-lieu fee program:** A program that involves the restoration, establishment, enhancement, and/or preservation of aquatic and terrestrial resources through funds paid to a governmental or nongovernmental natural resource management organization.
- **Permittee-responsible mitigation:** Individual projects constructed by permittees to provide compensatory mitigation for activities authorized by Corps of Engineers' permits.



# Who Oversees Mitigation Banks?

The Corps of Engineers establishes an Interagency Review Team to review and manage proposed mitigation banks or in-lieu fee programs. The team may consist of the Corps and representatives from the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, and other federal agencies, as well as representatives from tribal, state and local regulatory and resource agencies. The Corps of Engineers makes the final decision on whether or not to approve a proposed mitigation bank or in-lieu fee program.



# Mitigation Bank Instrument Requirements

- Introduction of the Mitigation Bank Site
- Watershed Approach to Mitigation Bank.
- Service Area
- Mitigation Plan
- Credit Release Schedule
- Accounting Procedures
- Reporting Procedures
- Default and Closure Provisions
- Incorporation of the IRT's Comments
- Approval of the Final Instrument



# Mitigation Plan Requirements

- Objectives
- Site Selection
- Site Protection Instrument
- Baseline Information
- Determination of Credits
- Mitigation Work Plan
- Operations and Maintenance Plan
- Ecological Performance Standards
- Monitoring Requirements
- Long-term Management Plan
- Adaptive Management Plan
- Financial Assurances



# What Is Part Of The Proposed Bank?

- Restoration of 7.36 acres of riparian corridor (removal of non-native vegetation and replanting in 51-100% of the area).
- Enhancement of 7.15 acres of riparian corridor (removal of non-native vegetation and replanting in 10-50% of the area).
- Restore 5,458 linear feet of intermittent stream channel and 262 feet of ephemeral stream channel.
  - ▶ Remove 400 feet of abandoned sewer pipes and encasements
  - ▶ Install 10 grade-control structures
  - ▶ Install bank stabilization
  - ▶ Armor seven non-jurisdictional drainage ditches







SECTION V-P (PROFILE)  
NEWBURY RIFFLE

NEWBURY RIFFLE AT CONCRETE-ENCASED  
UTILITY CROSSING  
N.T.S.

**Bank Stabilization Detail**  
N.Y.S.

TYPICAL DETAIL (PLAN)  
NEWBURY RIFFLE

**Storm Water Outfall Armoring**  
N.Y.S.

TYPICAL SECTION V-S  
NEWBURY RIFLE

IN-STREAM IMPROVEMENT DETAILS	
SWAT AREA	NEWSROOM
PROJECT	CLIENT
CRIMSON RIDGE MITIGATION BANK	HABITAT-KANSAS LLC
DATE: 02/08/2017	
DISCREPANCY BY: JMC	
SHEET NO. 2	
JOB NO. 1017	

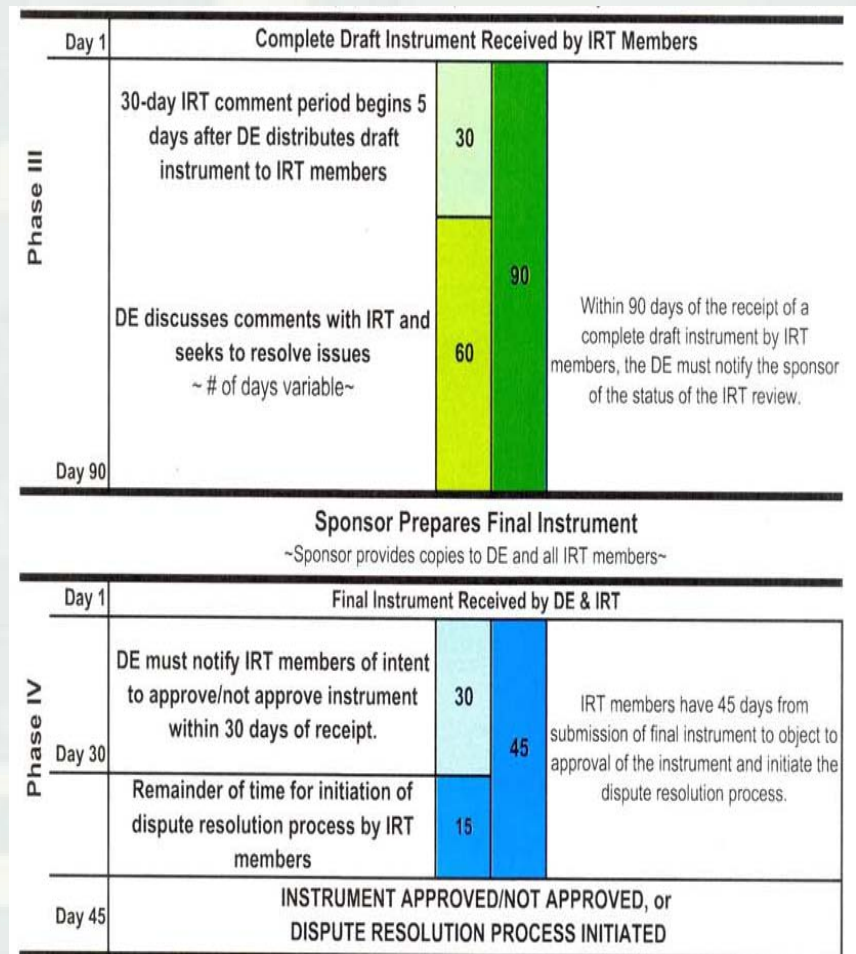
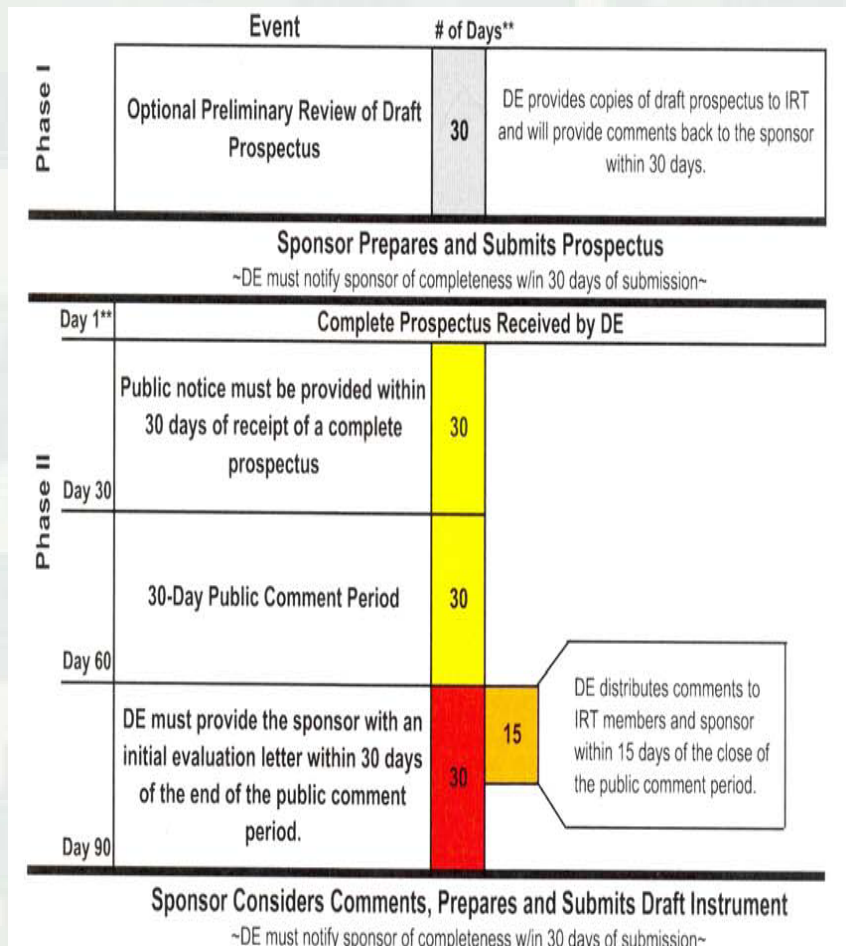


# What Is **NOT** Part Of The Proposed Bank?

- Wide spread clearing native vegetation within the site.
- Enhancement of upland habitat for the state listed Redbelly and Smooth Earth Snakes is NOT part of the proposed bank.
- Impacts to and mitigation for these species are regulated by the Kansas Department of Wildlife, Parks, and Tourism.
- Any work proposed by the proponent in the upland habitat does not require any authorization by the Corps of Engineers



# Timeline for Bank Approval



# What are the Criteria for Approval or Denial of a Proposed Bank?

- Can the proponent legally and physically accomplish the improvements he proposes?
- Does the proposed bank have the potential for providing appropriate compensatory mitigation for activities authorized by DA permits?
- Can the proponent adequately protect the mitigation site from future negative impacts?



# What Activities Would Be Prohibited By A Typical Conservation Easement?

- Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboards etc.) without written approval from the Corps of Engineers prior to construction
- Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials
- Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permit, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantee
- Planting of nuisance, exotic, or non-native plants as listed by the State of KANSAS; e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance, except as may be permitted or required by the Permit
- Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep, or as otherwise may be permitted or required by the Permit
- Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing, except as permitted or required by the Permit
- The extraction of water from the Property or adjacent properties owned by Grantor, or the impoundment of water on the Property or on adjacent properties owned by Grantor, so as to affect the hydrology of the Property
- Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.



# Will Public Access Be Allowed?

- A typical Conservation Easement states:

*No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement, and Grantor further covenants not to hold any portion of the Property open to general use by the public except with the written permission of the Corps [and Grantee].*

- The Easement does not force public access on the Banker, but Banker could seek permission from the Corps and Easement Holder for such.
- The Corps may agree with the Banker allowing public access when it is not contrary to the objectives of the bank.



# Will There Be More Snakes And Animals?

- The proposed in-stream and riparian buffer improvements are focused on restoring geomorphic stability and water quality of the stream.
- The site of the proposed bank already provides habitat for various wildlife species common in riparian woodlands of Kansas.
- The proposed in-stream and riparian buffer improvements may increase the number of some less common species that depend specifically on those habitats but will not likely increase the numbers of the common generalist species such as deer, raccoons, turkeys, possums, foxes, and coyotes that already inhabit the area.
- The wildlife in the area will probably become more diverse and more in balance.



# How Would The Bank Affect Property Values?

- Property values are generally increased by proximity to natural streams and green space.
- Degradation of streams and invasion of green space by noxious and invasive plants can cause problems that are expensive to prevent or repair.
- The bank proponent is proposing to assume the cost of repairing the degraded stream and green space in Crimson Ridge if the bank is approved.
- The Johnson County Mitigation Bank has coexisted with adjacent high value homes in “The Wilderness” residential development.

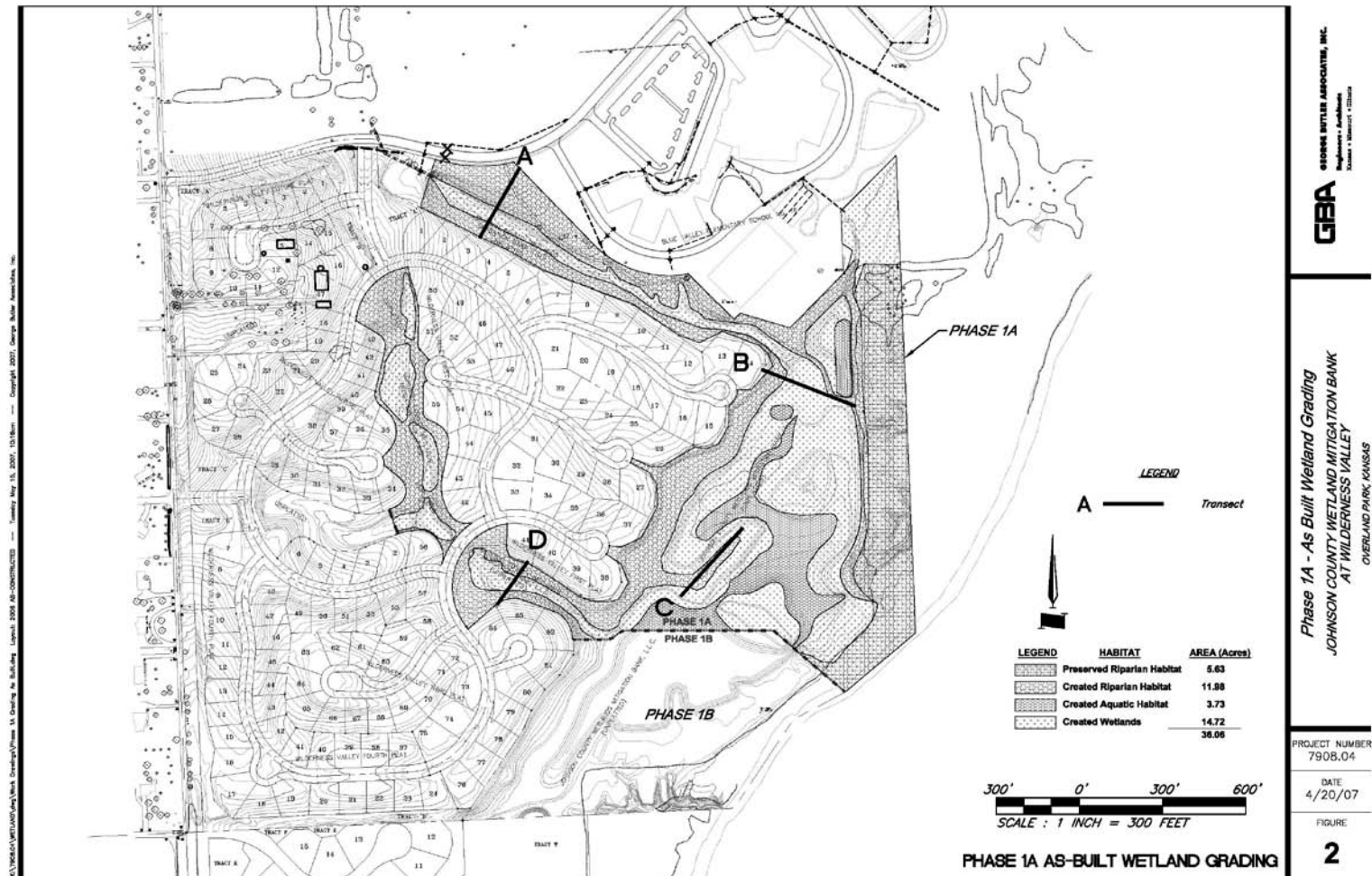


# Johnson County Mitigation Bank and “The Wilderness”



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# Johnson County Mitigation Bank



# Contact Information

**Cody Wheeler, Regulatory Project Manager**

**Kansas City Regulatory Branch**

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**Kansas City District Website:**

**<http://www.nwk.usace.army.mil/regulatory/regulatory.htm>**



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# QUESTIONS



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