



July 1, 2003

Donald R. Curtis, Jr.
Colonel, Corps of Engineers
Kansas City District, Corps of Engineers
700 Federal Building
Kansas City, MS

RE: South Lawrence Trafficway - Kansas Highway 10 Bypass.

Dear Colonel Curtis:

The enclosed agreement regarding the above referenced project has been executed by ACHP. This action constitutes the comments of ACHP required by Section 106 of the National Historic Preservation Act and the Council's regulations. Please provide a copy of the fully-executed agreement to the other signatories and your Federal Preservation Officer.

The Council appreciates your cooperation in reaching a satisfactory resolution of this matter.

Sincerely,

Nancy Kochan
Office Administrator
Western Office of Federal
Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

12136 West Bayaud Avenue, Suite 330 • Lakewood, Colorado 80228
Phone: 303-969-5110 • Fax: 303-969-5115 • achp@achp.gov • www.achp.gov

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

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

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

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

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

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

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

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

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

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

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

STIPULATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


SIGNATORIES:

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



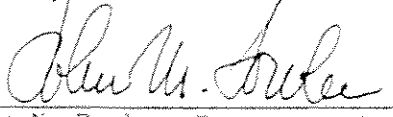
Donald R. Curtis, Jr., Commander Date 5-1-03

Kansas State Historical Society



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

Advisory Council on Historic Preservation


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

INVITED SIGNATORIES:

Douglas County, Kansas

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

Baker University

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

Kansas Department of Transportation

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