

# **BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS**

Amended Agenda

## **WEDNESDAY, SEPTEMBER 16, 2009**

6:35 p.m. – County Commission Meeting

-Convene

-Consider the approval of the minutes of August 17, August 19, August 24, and September 2, 2009.

## **CONSENT AGENDA**

(1)(a) Consider approval of Commission Orders;

## **REGULAR AGENDA**

(2) Consider and adopt Resolution relating to the County's issuance of General Obligation Refunding and Improvement Bonds, Series 2009-A. (Evan Ice)

(3) Consider adopting special rules for special music event at Lone Star Lake (Keith Browning)

(4) The following Agenda Items deal with Mid-States Materials' Big Springs Quarry, generally located at 2 N 1700 Road:

a. Consider request of Mid-States Materials to amend the Consent Decree it entered into with the Board of County Commissioners to permit a rock wall along the north edge of the water feature in Phase 1A of the Quarry.

b. Consider detailed reclamation plans of Mid-States Material for reclamation of Phase 1A, 2, 3 and 4 of the Quarry.

The requested amendment to the Consent Decree and the detailed reclamation plans are intertwined and, as a result, Items a. and b. will be considered together.

(5) Other Business

(a) Consider approval of Accounts Payable (if necessary)

(b) Appointments

(c) Miscellaneous

(d) Public Comment

(6) Adjourn

## **TUESDAY, SEPTEMBER 22, 2009**

-4:00 – 6:00 p.m. - Joint City/School District/County Commission meeting Last night, the City Commission confirmed that Tuesday, September 22, 4 to 6 p.m., at City Hall

1) Call to Order

2) Discussion of school issues, including:

A) Presentation of USD goals

B) Presentation and discussion of plans for land being purchased by USD 497 that is located in SE corner of the district

C) Discussion of possible reconfiguration of school boundaries

D) Progress report on new stadium facilities,

E) Discussion of 2010 budget cuts

3) Presentation of City of Lawrence Goals

4) Discussion of economic development issues, including:

A) Discussion of development efforts on the 87acre site owned by DCDI located east of East Hills Business park

- B) Bio-Science Incubator plans
- C) Other incubator plans

**WEDNESDAY, SEPTEMBER 23, 2009**

- Douglas County Community Corrections Year End Quarterly Report for FY2009 (Ron Stegall)
- Rockwell Farms..... (Mary Miller)
- Consider approval of funding for local Food Policy Council (Emily Jackson)
- Executive Session for the purpose of consultation with County Counselor on matters, which would be deemed, privileged under the attorney-client relationship. The justification is to maintain attorney client privilege on a matter involving Douglas County.

**WEDNESDAY, SEPTEMBER 30, 2009**

- Road Issue (Solbach)

**TUESDAY, OCTOBER 6, 2009**

- 4:30 p.m. Study Session with City Commission regarding KDOT projects in Lawrence and Douglas County. Two or more County Commissioners may attend. No County Commission meeting will be held.

**WEDNESDAY, OCTOBER 7, 2009**

- Swearing in of County Treasurer, Paula Gilchrist for a 2<sup>nd</sup> term (Judge Robert Fairchild)
- Proclamation -October 10, 2009 as "Put the Brakes on Fatalities Day."

**WEDNESDAY, NOVEMBER 4, 2009**

- Lone Star Weed Discussion

**FRIDAY, NOVEMBER 6, 2009**

- 9:00 a.m. -Canvass for Baldwin Special Election

*Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*

**DOUGLAS COUNTY, KANSAS  
GENERAL OBLIGATION BONDS  
SERIES 2009**

**DISTRIBUTION LIST**

| <b>ISSUER</b>   | <b>BOND COUNSEL</b>   |
|---|---|
| <p>Douglas County, Kansas<br/>Douglas County Courthouse<br/>1100 Massachusetts<br/>Lawrence, Kansas 66044<br/>Telephone: (785) 832-5329<br/>Fax: (785) 832-5320</p> <p><b>Mr. G. Craig Weinaug, County Administrator</b><br/>Extension 5328<br/>E-mail: <a href="mailto:cweinaug@douglas-county.com">cweinaug@douglas-county.com</a></p> <p><b>Ms. Pamela J. Madl, Assistant County Administrator</b><br/>Extension 5329<br/>E-mail: <a href="mailto:pmadl@douglas-county.com">pmadl@douglas-county.com</a></p> <p><b>Mr. Jamie Shew, County Clerk</b><br/>Extension 5267<br/>E-mail: <a href="mailto:jshew@douglas-county.com">jshew@douglas-county.com</a></p> <p><b>Mr. Keith Browning, Director of Public Works</b><br/>E-mail: <a href="mailto:kbrowning@douglas-county.com">kbrowning@douglas-county.com</a></p> <p><b>Ms. Robin Crabtree, Exec Secretary</b><br/>Extension 5268<br/>E-mail: <a href="mailto:rcrabtree@douglas-county.com">rcrabtree@douglas-county.com</a></p> | <p>GILMORE &amp; BELL, P.C.<br/>100 N. Main, Suite 800<br/>Wichita, Kansas 67202<br/>Telephone: (316) 267-2091<br/>Fax: (316) 262-6523</p> <p><b>Joe L. Norton, Esq.</b><br/>E-mail: <a href="mailto:jnorton@gilmorebell.com">jnorton@gilmorebell.com</a></p> <p><b>Garth J. Herrmann, Esq.</b><br/>E-mail: <a href="mailto:gherrmann@gilmorebell.com">gherrmann@gilmorebell.com</a></p> <p><b>Ms. Robyn R. Busenitz, Legal Assistant</b><br/>E-mail: <a href="mailto:rbusenitz@gilmorebell.com">rbusenitz@gilmorebell.com</a></p> <p><b>Ms. Katherine B. Daniels, Legal Secretary</b><br/>E-mail: <a href="mailto:kdaniels@gilmorebell.com">kdaniels@gilmorebell.com</a></p> |
| <b>ISSUER'S COUNSEL</b>   | <b>PAYING AGENT</b>   |
| <p>STEVENS &amp; BRAND, L.L.P.<br/>900 Massachusetts, Suite 500<br/>P.O. Box 189<br/>Lawrence, Kansas 66044-0189<br/>Telephone: (785) 843-0811<br/>Fax: (785) 843-0341</p> <p><b>Evan H. Ice, Esq.</b><br/>E-mail: <a href="mailto:ELIce@stevensbrand.com">ELIce@stevensbrand.com</a></p>   | <p>TREASURER OF THE STATE OF KANSAS<br/>Landon State Office Building<br/>900 Southwest Jackson, Suite 201<br/>Topeka, Kansas 66612-1235<br/>Telephone: (785) 296-4148<br/>Fax: (785) 296-7950</p> <p><b>Ms. Carmen J. Klopping, Director of Bond Services</b><br/>E-mail: <a href="mailto:carmen@treasurer.state.ks.us">carmen@treasurer.state.ks.us</a></p>  |
| <b>FINANCIAL ADVISOR</b>  |   |
| <p>PIPER JAFFRAY &amp; CO.<br/>11150 Overbrook, Suite 310<br/>Leawood, Kansas 66211<br/>Telephone: (913) 345-3374<br/>Fax: (913) 345-3393</p> <p><b>Mr. Greg Vahrenberg, Managing Director</b><br/>E-mail: <a href="mailto:gregory.m.vahrenberg@pjc.com">gregory.m.vahrenberg@pjc.com</a></p> <p><b>Mr. Dustin J. Avey, Senior Vice President</b><br/>E-mail: <a href="mailto:dustin.j.avey@pjc.com">dustin.j.avey@pjc.com</a></p>  |   |

*All documents shall be transmitted in Word 2000, unless otherwise indicated. If you are unable to open any attached document or prefer to receive the document in a different word processing format, please contact Ms. Katherine B. Daniels (316) 267-2091 or [kdaniels@gilmorebell.com](mailto:kdaniels@gilmorebell.com) to make other arrangements for distribution of the documents.*

Gilmore & Bell, P.C.  
09/08/2009

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**BOND PURCHASE AGREEMENT**

**BETWEEN**

**DOUGLAS COUNTY, KANSAS**

**AND**

**PIPER JAFFRAY & CO.  
LEAWOOD, KANSAS**

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**\$2,450,000\***

**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**

**SERIES 2009-A**

**DATED AS OF OCTOBER 1, 2009**

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**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**

September 16, 2009

Chairman and  
Governing Body  
Douglas County, Kansas

**BOND PURCHASE AGREEMENT**

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Piper Jaffray & Co., Leawood, Kansas (the "Purchaser"), hereby offers to purchase the above-described bonds (the "Bonds") to be issued by Douglas County, Kansas (the "Issuer"), under and pursuant to a Resolution to be adopted by the governing body of the Issuer on this date (the "Bond Resolution"). All capitalized terms not specifically defined herein shall have the same meaning as defined in the Bond Resolution, unless some other meaning is plainly indicated.

This offer is made subject to acceptance of this Bond Purchase Agreement by or on behalf of the governing body of the Issuer on or before 10:00 p.m., applicable Central time, on this date.

**SECTION 1. PURCHASE, SALE AND DELIVERY OF THE BONDS**

On the basis of the representations, warranties and covenants contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, the Purchaser agrees to purchase from the Issuer and the Issuer agrees to sell to the Purchaser the Bonds not later than 12:00 Noon, applicable Central time on October 1, 2009, or such other place, time or date as shall be mutually agreed upon by the Issuer and the Purchaser at the purchase price set forth on *Exhibit A* attached hereto, plus accrued interest from the date of the Bonds to the Closing Time. The Bonds shall be issued under and secured as provided in the Bond Resolution and the Bonds shall have the maturities and interest rates as set forth therein and on *Exhibit A* attached hereto which also contains a summary of the redemption provisions of the Bonds.

Payment for the Bonds shall be made by federal wire transfer or certified or official bank check or draft in immediately available federal funds payable to the order of the Escrow Agent for the account of the Issuer. Upon such payment, the Bonds shall be delivered and released upon the instructions of the Purchaser to The Depository Trust Company, New York, New York ("DTC"). The date of such delivery and payment is herein called the "Closing Date," the hour and date of such delivery and payment is herein called the "Closing Time" and the transactions to be accomplished for delivery of the Bonds on the Closing Date shall be herein called the Closing.

The delivery of the Bonds shall be made in "book-entry-only" fully registered form duly executed and authenticated and bearing CUSIP numbers (provided neither the printing of a wrong number on any Bond nor the failure to print a number thereon shall constitute cause to refuse delivery of any Bond);

provided, however, that the Bonds may be delivered in temporary form. The Bonds shall be available at DTC for examination and packaging by the Purchaser at least 24 hours prior to the Closing Time.

The Purchaser agrees to offer the Bonds to the public initially at the offering prices or yields set forth in *Exhibit A* attached hereto and incorporated herein by reference, but may subsequently change such offering price; the Purchaser agrees to notify the Issuer of such changes, if such changes occur prior to the Closing Time, but failure so to notify shall not invalidate such changes. The Purchaser may offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts) at prices lower than the public offering prices.

## **SECTION 2. USE OF OFFICIAL STATEMENT**

The Issuer has previously furnished to the Purchaser the Preliminary Official Statement, dated September 3, 2009, relating to the Bonds, including all appendices thereto and maps and pictorial information included therein (the "Preliminary Official Statement"). The Issuer hereby ratifies and confirms the Purchaser's use of the Preliminary Official Statement. The Issuer will cause the Preliminary Official Statement to be amended and supplemented into a final official statement (the "Official Statement"). The Issuer will make available to the Purchaser the Official Statement, and hereby authorizes its use by the Purchaser in connection with the sale of the Bonds.

## **SECTION 3. ISSUER'S REPRESENTATIONS AND WARRANTIES**

By the Issuer's acceptance hereof the Issuer hereby represents and warrants to, and agrees with, the Purchaser that as of the date hereof and at the Closing Time:

- (a) The Issuer is a political subdivision duly organized under the laws of the State of Kansas.
- (b) The Issuer has complied with all provisions of the Constitution and laws of the State of Kansas and has full power and authority to consummate all transactions contemplated by the Bond Resolution and this Bond Purchase Agreement, and all other agreements relating thereto.
- (c) The Issuer has duly authorized by all necessary action to be taken by the Issuer: (1) the adoption and performance of the Bond Resolution; (2) the execution, delivery and performance of this Bond Purchase Agreement; (3) the execution and performance of the Escrow Trust Agreement between the Issuer and the Escrow Agent; (4) the approval of the Official Statement; (5) the execution and performance of any and all such other agreements and documents as may be required to be executed, delivered and performed by the Issuer in order to carry out, give effect to and consummate the transactions contemplated by the Bond Resolution and this Bond Purchase Agreement; and (6) the carrying out, giving effect to and consummation of the transactions contemplated by the Bond Resolution and this Bond Purchase Agreement. Executed counterparts of the Bond Resolution and all such other agreements and documents specified herein will be delivered to the Purchaser by the Issuer at the Closing Time.
- (d) The Bond Resolution, the Escrow Trust Agreement and this Bond Purchase Agreement, when executed and delivered by the Issuer, will be the legal, valid and binding obligations of the Issuer enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the Issuer and further subject to the availability of equitable remedies.

(e) The Bonds have been duly authorized by the Issuer, and when issued, delivered and paid for as provided for herein and in the Bond Resolution, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding general obligations of the Issuer enforceable in accordance with their terms and entitled to the benefits and security of the Bond Resolution (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the Issuer and further subject to the availability of equitable remedies). The Bonds are general obligations of the Issuer, payable as to both principal and interest, if necessary, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer.

(f) The execution and delivery of the Bond Resolution, this Bond Purchase Agreement, the Bonds, the Escrow Trust Agreement and the Official Statement, and compliance with the provisions thereof, will not conflict with or constitute on the part of the Issuer a violation or breach of, or a default under, any existing law, regulation, court or administrative decree or order, or any agreement, resolution, mortgage, lease or other instrument to which it is subject or by which it is or may be bound.

(g) The Issuer is not, or with the giving of notice or lapse of time or both would not be, in violation of or in default under its organizational documents or any indenture, mortgage, deed of trust, loan agreement, bonds or other agreement or instrument to which the Issuer is a party or by which it is or may be bound, except for violations and defaults which individually and in the aggregate are not material to the Issuer and will not be material to the beneficial owners of the Bonds. As of the Closing Time, no event will have occurred and be continuing which with the lapse of time or the giving of notice, or both, would constitute an event of default under the Bond Resolution, the Escrow Trust Agreement or the Bonds.

(h) The information contained in the Preliminary Official Statement as amended and supplemented by the Official Statement and in any amendment or supplement thereto that may be authorized for use by the Issuer with respect to the Bonds (collectively, the "Official Statement"), relating to: (1) the Issuer, including the organization, operations, structure, and financial and other affairs of the foregoing; (2) the financial statements including income statements and balance sheets referred to in **subsection (j)** hereof; (3) application by the Issuer of the proceeds to be received by it from the sale of the Bonds and other funds, if any, of the Issuer to be applied in accordance with the Bond Resolution; and (4) the Issuer's participation in the transactions contemplated by the Bond Resolution, the Escrow Trust Agreement and this Bond Purchase Agreement is, and as of the Closing Time will be, true, correct and complete in all material respects and does not omit and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(i) The financial statements of the Issuer contained in or attached to the Official Statement, except as noted therein, present fairly and accurately the financial condition of the Issuer as of the dates indicated and the results of its operations for the periods specified, and such financial statements are prepared in conformity with generally accepted accounting principles consistently applied in all material respects for the periods involved.

(j) The Issuer has not, since the date of such financial statements, incurred any material liabilities and there has been no material adverse change in the condition of the Issuer, financial or otherwise, other than as set forth in the Official Statement.

(k) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer (or, to its knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Bond Resolution or the validity of the Bonds, the Bond Resolution, the Escrow Trust Agreement, this Bond Purchase Agreement or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Bond Resolution.

(l) For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, promulgated under the Securities Exchange Act of 1934, as amended (the "1934 Act"), the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

(m) The Bond Resolution requires the Issuer to provide the annual financial information, operating data and event notices to information repositories and the Municipal Securities Rulemaking Board in the manner and to the extent required by Rule 15c2-12 adopted by the Securities and Exchange Commission under the 1934 Act, in a manner and to the extent acceptable to the Purchaser and its counsel, if any. The specific nature of the undertaking to comply with such rule shall be contained in the Continuing Disclosure Instructions attached to the Issuer's closing certificate. Except to the extent disclosed in the Official Statement, at no time in the last five years has the Issuer failed to comply in any material respect with any of the informational reporting undertakings contained in Rule 15c2-12.

(n) The Purchaser has previously acted as financial advisor to the Issuer and does hereby: (1) terminate its financial advisory relationship with the Issuer with regard to the proposed issuance of the Bonds; (2) confirm to the Issuer its prior advice in writing to the Issuer that a conflict of interest may exist by virtue of the Purchaser changing from the capacity of financial advisor to that of purchaser of the Bonds; and (3) confirm to the Issuer that, no fee for financial advisory services rendered prior to the date hereof will be charged, and the source and amount of remuneration to the Purchaser with respect to the purchase of the Bonds is as set forth in this Bond Purchase Agreement. The Issuer does hereby consent to the participation in the purchase of the Bonds by the Purchaser and acknowledges the receipt of the foregoing disclosures in accordance with Rule G-23 of the Municipal Securities Rulemaking Board.

Any certificate signed by any of the authorized officials of the Issuer and delivered to the Purchaser in connection with the Closing shall be deemed a representation and warranty by the Issuer to the Purchaser as to the statements made therein.

#### **SECTION 4. COVENANTS AND AGREEMENTS OF THE ISSUER**

The Issuer covenants and agrees with the Purchaser for the time period specified, and if no period is specified, for so long as any of the Bonds remain Outstanding, as follows:

(a) The proceeds of the Bonds will be used as provided in the Bond Resolution for purposes authorized by the Act. The proceeds of the Bonds shall not be used in a manner which would jeopardize the tax exempt status of interest on the Bonds under the provisions of Section 103 of the Code, as long as any of the Bonds are Outstanding.



(b) To cooperate with the Purchaser and its counsel in any reasonable endeavor to qualify the Bonds for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States as the Purchaser may reasonably request; and the Issuer shall, if so requested by the Purchaser, with respect to the offer or sale of the Bonds, file written consents to suit and file written consents to service of process in any jurisdiction in which such consent may be required by law or regulation so that the Bonds may be offered or sold. The Issuer consents to the use of drafts of the Preliminary Official Statement, the Preliminary Official Statement and drafts of the Official Statement prior to the availability of the Official Statement by the Purchaser in obtaining such qualification. The Purchaser shall pay all expenses and costs (including legal, registration and filing fees) incurred in connection therewith.

(c) If, prior to the earlier of (1) 90 days after the "end of the underwriting period" (as defined in Rule 15c2-12 under the 1934 Act) or (2) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case earlier than 25 days after the end of the underwriting period, any event shall occur relating to or affecting the Issuer, as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein, in the light of the circumstances existing when the Official Statement is delivered to a purchaser, not materially misleading, or the Official Statement is required to be amended or supplemented to comply with law, the Issuer shall promptly prepare and furnish, at the expense of the Issuer, to the Purchaser and to the dealers (whose names and addresses the Purchaser will furnish to the Issuer) to which Bonds may have been sold by the Purchaser and to any other dealers upon request, such amendments or supplements to the Official Statement as may be necessary so that the statements in the Official Statement as so amended or supplemented will not, in the light of the circumstances existing when the Official Statement is delivered to a purchaser of the Bonds, be misleading or so that the Official Statement will comply with law.

(d) Within seven business days after the date of this Bond Purchase Agreement or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, the Issuer shall provide to the Purchaser sufficient copies of the Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(b)(4) under the 1934 Act, and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

(e) From the date hereof until the Closing Time, the Issuer shall furnish the Purchaser with a copy of any proposed amendment or supplement to the Official Statement for review and shall not use any such proposed amendment or supplement to which the Purchaser reasonably objects.

## **SECTION 5. CONDITIONS TO THE PURCHASER'S OBLIGATIONS**

The Purchaser's obligations hereunder shall be subject to the due performance by the Issuer of the Issuer's obligations and agreements to be performed hereunder at or prior to the Closing Time and to the accuracy of and compliance with the Issuer's representations and warranties contained herein, as of the date hereof and as of the Closing Time, and are also subject to the following conditions:

(a) The Bond Resolution, the Escrow Trust Agreement and the Bonds shall have been duly authorized, executed and delivered in the form heretofore approved by the Purchaser with only such changes therein as shall be mutually agreed upon by the Issuer and the Purchaser.

(b) At the Closing Time, the Purchaser shall receive:

(1) Opinions dated as of the Closing Date of Messrs. Gilmore & Bell, P.C., Bond Counsel substantially in the form attached hereto as *Exhibits B-1* and *B-2*.

(2) A completed form 8038-G (Information Return for Tax-Exempt Governmental Bond Issuers).

(3) A certificate of the Issuer, satisfactory in form and substance to the Purchaser, dated as of the Closing Date, to the effect that (i) since the date of the Official Statement there has not been any material adverse change in the business, properties, financial condition or results of operations of the Issuer, whether or not arising from transactions in the ordinary course of business, from that set forth in the Official Statement, and except in the ordinary course of business or as set forth in the Official Statement, the Issuer has not incurred any material liability; (ii) there is no action, suit, proceeding or, to the knowledge of the Issuer, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer, its officers or its property or, to the best of the knowledge of the Issuer, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the Issuer, the transactions contemplated hereby or by the Bond Resolution, the Escrow Trust Agreement or the Official Statement or the validity or enforceability of the Bonds, the Escrow Trust Agreement or the Bond Purchase Agreement, which are not disclosed in the Official Statement; (iii) to the knowledge of the Issuer, the information contained in the Official Statement, other than the sections entitled "The Depository Trust Company," "Bond Ratings," "Legal Matters," and *Appendices B* and *C*, for which the Issuer expresses no opinion, is true in all material respects and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; (iv) the Issuer has duly authorized, by all necessary action, the execution, delivery and due performance by the Issuer of the Escrow Trust Agreement and this Bond Purchase Agreement; and (v) the representations and warranties of the Issuer set forth herein were accurate and complete as of the date hereof and are accurate and complete as of the Closing Time.

(4) An executed copy of the Continuing Disclosure Instructions attached to the Issuer's closing certificate.

(5) Receipt of municipal bond ratings by Moody's of at least "A1" (underlying).

(6) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Purchaser, as the Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Bond Resolution, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Purchaser.

## **SECTION 6. CONDITIONS TO THE ISSUER'S OBLIGATIONS**

The obligations of the Issuer hereunder are subject to: (a) the Purchaser's performance of its obligations hereunder; and (b) and the receipt of a letter, in form and substance satisfactory to the Issuer and the Purchaser, from an Independent Accountant verifying the mathematical accuracy of the computations relating to a payment of the Bonds and arbitrage calculations, for the sufficiency of funds

and Government Obligations deposited to and held under the Escrow Trust Agreement to provide for payment of the Refunded Bonds in accordance with the Bond Resolution and the Escrow Agreement.

## **SECTION 7. THE PURCHASER'S RIGHT TO CANCEL**

The Purchaser shall have the right to cancel the obligation hereunder to purchase the Bonds (such cancellation shall not constitute a default for purposes of *Section 1* hereof) by notifying the Issuer in writing or by facsimile of their election to make such cancellation prior to the Closing Time, if at any time hereafter and prior to the Closing Time:

(a) A committee of the House of Representatives or the Senate of the Congress of the United States shall have pending before it legislation which, if enacted in its form as introduced or as amended, would have the purpose or effect of imposing federal income taxation upon revenues or other income of the general character to be derived by the Issuer or by any similar body or upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds.

(b) A tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation shall be favorably reported by such a committee or be introduced, by amendment or otherwise, in or be passed by the House of Representatives or the Senate, or be recommended to the Congress of the United States for passage by the President of the United States, or be enacted by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon revenues or other income of the general character to be derived by the Issuer or by any similar body or upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Purchaser's opinion, materially and adversely affects the market price of the Bonds.

(c) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the Legislature of the State or by any other governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State shall be rendered which, in the Purchaser's opinion, materially and adversely affects the market price of the Bonds, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State.

(d) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the Securities Act of 1933, as amended (the "1933 Act"), the 1934 Act or the Trust Indenture Act of 1939, as amended.

(e) Legislation shall be enacted by the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act.

(f) Additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange.

(g) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Purchaser.

(h) Any general banking moratorium shall have been established by federal, New York or Kansas authorities.

(i) A material default has occurred with respect to the obligations of, or proceedings have been instituted under the Federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a city or state which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds.

(j) Any proceeding shall be pending or threatened by the Securities and Exchange Commission against the Issuer.

(k) A war involving the United States shall have been declared, or any conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred, which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds.

(l) Any event shall have occurred, or information become known, which, in the Purchaser's opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement as originally circulated, or has the effect that the Preliminary Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(m) The Preliminary Official Statement deemed by the Issuer to be "final" is thereafter amended or supplemented in a manner that may, in the reasonable judgment of the Purchaser, have a material adverse effect on the marketability of the Bonds.

(n) Any financial rating assigned to the Bonds shall have been downgraded or withdrawn and such action, in the opinion of the Purchaser, materially affects the market for the Bonds.

(o) Investment agreements or similar instruments relating to the investment of moneys in various funds and accounts created under the Escrow Trust Agreement in form and substance satisfactory to the Purchaser, have not been executed by the parties thereto and received by the Purchaser as of the Closing Time, or the Government Obligations contemplated thereby have not been issued to or received by the Escrow Agent prior to the Closing Time or any opinions with respect to the investments contemplated by such instruments and the nature of the transaction contemplated thereby, in form and substance satisfactory to the Purchaser and its counsel, have not been received by the Purchaser as of the Closing Time.

## **SECTION 8. PAYMENT OF EXPENSES**

(a) Whether or not the Bonds are sold by the Issuer to the Purchaser (unless such sale be prevented at the Closing Time by the Purchaser's default), the Purchaser, unless otherwise contracted for, shall be under no obligation to pay any expenses incident to the performance of the obligations of the Issuer hereunder; nor shall the Issuer, unless otherwise contracted for, be under any obligation to pay any expenses incident to the performance of the obligations of the Purchaser hereunder (unless such sale be prevented at the Closing Time by the Issuer's default).

(b) If the Bonds are sold by the Issuer to the Purchaser, all expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds, other than the fees and expenses of the Purchaser, shall be paid by the Issuer out of the proceeds of the Bonds. Such expenses and costs shall include, but not be limited to: (1) the fees and disbursements of Gilmore & Bell, P.C., bond counsel; (2) the fees and disbursements of the Issuer's legal counsel; (3) costs associated with obtaining municipal bond insurance or municipal bond ratings relating to the Bonds, if any; (4) the expenses and costs for the preparation, printing, photocopying, execution and delivery of the Bonds, the Official Statement, this Bond Purchase Agreement and all other agreements and documents contemplated hereby; (5) fees of the Bond Registrar and Paying Agent designated by the Issuer pursuant to the Bond Resolution; (6) all costs and expenses of the Issuer relating to the issuance of the Bonds; and (7) the fees and disbursements of the Escrow Agent and any accountants and of any other experts or consultants retained in connection with verification of the cash flow projections made in connection with the Bonds and the refunding of the Refunded Bonds.

## **SECTION 9. NOTICE**

Any notice or other communication to be given under this Bond Purchase Agreement may be given by mailing or delivering the same in writing to the applicable person, as follows:

(a) If to the Issuer at: Douglas County, Kansas, Douglas County Courthouse, 1100 Massachusetts, Lawrence, Kansas 66044, Attention: Clerk; and

(b) If to the Purchaser at: Piper Jaffray & Co., 11150 Overbrook, Suite 310, Leawood, Kansas 66211, Attention: Manager, Public Finance Department.

## **SECTION 10. INDEMNIFICATION**

(a) The Issuer agrees, to the extent legally permitted, to indemnify and hold harmless the Purchaser, any member, officer, official or employee of the Purchaser within the meaning of Section 15 of the 1933 Act (collectively, the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statements or misleading statement or allegedly misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided that the Issuer shall have no indemnification obligation with respect to any statement or omission in the information contained in the Official Statement under the heading "Underwriting."

In case any action shall be brought against one or more of the Indemnified Parties based upon the Official Statement and in respect of which indemnity may be sought against the Issuer, the Indemnified Parties shall promptly notify the Issuer in writing and the Issuer shall promptly assume the defense

thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Issuer. The Issuer shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Issuer or if there be a final judgment for the plaintiff in any such action against the Issuer or any of the Indemnified Parties, with or without the consent of the Issuer, the Issuer agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

(b) The Purchaser agrees, to the extent legally permitted, to indemnify and hold harmless the Issuer and any governing body member, officer, official or employee of the Issuer, against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statements or misleading statement or allegedly misleading statement of a material fact made by the Purchaser, or any agent, employee or official of the Purchaser, made in conjunction with the sale of the Bonds; provided that the Purchaser shall have no indemnification obligation with respect to any statement or omission in the information contained supplied by the Issuer or the Issuer's representatives that are contained in the Official Statement.

In case any action shall be brought against one or more of the persons or entities identified in the preceding paragraph and in respect of which indemnity may be sought against the Purchaser, such parties shall promptly notify the Purchaser in writing and the Purchaser shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of such parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such party unless employment of such counsel has been specifically authorized by the Purchaser. The Purchaser shall not be liable for any settlement of any such action effected without its consent by any of such parties, but if settled with the consent of the Purchaser or if there be a final judgment for the plaintiff in any such action against the Purchaser or any of such parties, with or without the consent of the Purchaser, the Purchaser agrees to indemnify and hold harmless such parties to the extent provided herein.

## **SECTION 11. MISCELLANEOUS**

(a) This Bond Purchase Agreement shall be binding upon the Purchaser, the Issuer, and their respective successors. This Bond Purchase Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that the representations, warranties, indemnities and agreements of the Issuer contained in this Bond Purchase Agreement shall also be deemed to be for the benefit of the person or persons, if any, who control the Purchaser within the meaning of Section 15 of the Securities Act of 1933 or Section 20 of the Securities Exchange Act of 1934. Nothing in this Bond Purchase Agreement is intended or shall be construed to give any person, other than the persons referred to in this Paragraph, any legal or equitable right, remedy or claim under or in respect of this Bond Purchase Agreement or any provision contained herein. All of the representations, warranties and agreements of the Issuer contained herein shall remain in full force and effect, regardless of (i) any investigation made by or on behalf of the Purchaser, (ii) delivery of and payment for the Bonds of (iii) any termination of this Bond Purchase Agreement.

(b) For purposes of this Bond Purchase Agreement, "business day" means any day on which the New York Stock Exchange is open for trading.

(c) This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(d) This Bond Purchase Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the executed counterparts shall together constitute a single instrument.

(e) This Bond Purchase Agreement may not be assigned by either party without the express written consent of the other party.

**SECTION 12. EFFECTIVE DATE**

This Bond Purchase Agreement shall become effective upon acceptance hereof by the Issuer.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Purchaser. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement prior to the date and time specified on page 1 hereof and returning it to the undersigned.

**PIPER JAFFRAY & CO.  
LEAWOOD, KANSAS**

By: \_\_\_\_\_  
Managing Director

Accepted and agreed to as of  
the date first above written.

**DOUGLAS COUNTY, KANSAS**

By: \_\_\_\_\_  
Chairman

ATTEST: (Seal)

By: \_\_\_\_\_  
Clerk



**EXHIBIT A**

**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**

**CALCULATION OF PURCHASE PRICE**

|                              |                 |
|------------------------------|-----------------|
| Principal Amount             | \$2,450,000*.00 |
| Less Underwriter's Discount  | -               |
| Plus Original Issue Premium  |                 |
| Less Original Issue Discount | -               |
| <b>Total Purchase Price</b>  |                 |

**MATURITY SCHEDULE**

**[SERIAL BONDS]**

| <u>Stated</u><br><u>Maturity</u><br><u>September 1</u> | <u>Principal</u><br><u>Amount</u> | <u>Annual</u><br><u>Rate of</u><br><u>Interest</u> | <u>Price</u> | <u>Stated</u><br><u>Maturity</u><br><u>September 1</u> | <u>Principal</u><br><u>Amount</u> | <u>Annual</u><br><u>Rate of</u><br><u>Interest</u> | <u>Price</u> |
|--|-----------------------------------|--|--------------|--|-----------------------------------|--|--------------|
| 2011   | \$[ ]                             | [ ]%   | [ ]%         | 2021   | \$[ ]                             | [ ]%   | [ ]%         |
| 2012   |                                   |  |              | 2022   |                                   |  |              |
| 2013   |                                   |  |              | 2023   |                                   |  |              |
| 2014   |                                   |  |              | 2024   |                                   |  |              |
| 2015   |                                   |  |              | 2025   |                                   |  |              |
| 2016   |                                   |  |              | 2026   |                                   |  |              |
| 2017   |                                   |  |              | 2027   |                                   |  |              |
| 2018   |                                   |  |              | 2028   |                                   |  |              |
| 2019   |                                   |  |              | 2029   |                                   |  |              |
| 2020   |                                   |  |              | 2030   |                                   |  |              |

**[TERM BONDS]**

| <u>Stated</u><br><u>Maturity</u><br><u>September 1</u> | <u>Principal</u><br><u>Amount</u> | <u>Annual</u><br><u>Rate of</u><br><u>Interest</u> | <u>Price</u> |
|--|-----------------------------------|--|--------------|
|  | \$[ ]                             | [ ]%   | [ ]%         |
| 2030   |                                   |  | ]            |

(Plus accrued interest from October 1, 2009)

## REDEMPTION OF BONDS

### Redemption by Issuer.

**Optional Redemption.** At the option of the Issuer, Bonds or portions thereof maturing in the years 2020 and thereafter may be called for redemption and payment prior to their Stated Maturity on September 1, 2019, and thereafter as a whole or in part (selection of maturities and the amount of Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

[ **Mandatory Redemption.** The Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements hereinafter set forth a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The Issuer shall redeem on September 1 in each year, the following principal amounts of such Term Bonds:

| <u>Principal<br/>Amount</u><br>\$ | <u>Year</u> |
|-----------------------------------|-------------|
|                                   | 2030*       |

\_\_\_\_\_  
\*Final Maturity]

**EXHIBIT B-1**

**FORM OF BOND COUNSEL OPINION**

**GILMORE & BELL, P.C.**  
**Attorneys at Law**  
**100 N. Main Suite 800**  
**Wichita, Kansas 67202**

[October 1, 2009]

Governing Body  
Douglas County, Kansas

Piper Jaffray & Co.  
Leawood, Kansas

Re: \$2,450,000\* General Obligation Refunding and Improvement Bonds,  
Series 2009-A, of Douglas County, Kansas, Dated October 1, 2009

We have acted as Bond Counsel in connection with the issuance by Douglas County, Kansas (the "Issuer") of the above-captioned bonds (the "Bonds"). In this capacity, we have examined the law and the certified proceedings, certifications and other documents that we deem necessary to render this opinion. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the resolution adopted by the governing body of the Issuer authorizing the issuance and prescribing the details of the Bonds.

Regarding questions of fact material to our opinion, we have relied on the certified proceedings and other certifications of public officials and others furnished to us without undertaking to verify them by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and legally binding general obligations of the Issuer.

2. The Bonds are payable as to both principal and interest in part from special assessments levied upon the property benefited by the construction of certain improvements and, if not so paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The balance of the principal and interest on the Bonds is payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The Issuer is required by law to include in its annual tax levy the principal and interest coming due on the Bonds to the extent that necessary funds are not provided from other sources.

3. The interest on the Bonds [(including any original issue discount properly allocable to an owner of a Bond)] is excluded from gross income for federal income tax purposes. Interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and is not taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set

forth in this paragraph are subject to the condition that the Issuer comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the issuance of the Bonds in order to preserve the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Issuer has covenanted to comply with all of these requirements. Failure to comply with certain of these requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. The Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, and, in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction is allowed for 80 percent of that portion of such financial institution's interest expense allocable to interest on the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

4. The interest on the Bonds is excluded from computation of Kansas adjusted gross income.

We express no opinion regarding the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds (except to the extent, if any, stated in the Official Statement). Further, we express no opinion regarding tax consequences arising with respect to the Bonds other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

**GILMORE & BELL, P.C.**

JLN/GJH:rrb

**EXHIBIT B-2**

**FORM OF DEFEASANCE OPINION**

**GILMORE & BELL, P.C.**  
**Attorneys at Law**  
**100 N. Main Suite 800**  
**Wichita, Kansas 67202**

[October 1, 2009]

Governing Body  
Douglas County, Kansas

Piper Jaffray & Co.  
Leawood, Kansas

Security Bank of Kansas City  
Kansas City, Kansas

Re: Douglas County, Kansas, General Obligation Bonds Bonds, Series 2006-A

This opinion is delivered to you in connection with the satisfaction, discharge and defeasance of the following described bonds originally issued by Douglas County, Kansas (the "Issuer") (the "Defeased Bonds"):

| <i>Series</i> | <i>Dated Date</i> | <i>Defeased Amount</i> | <i>Year</i> |
|---------------|-------------------|------------------------|-------------|
| Series 2006-A | August 15, 2006   | \$25,000               | 2011        |

The Defeased Bonds were issued pursuant to a resolution adopted by the governing body of the Issuer (the "Bond Resolution"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Bond Resolution.

Provision has been made for the payment of the principal, redemption price, if any, and interest due or to become due on the Defeased Bonds at the times and in the manner specified in the Bond Resolution by the irrevocable deposit in trust with Security Bank of Kansas City, Kansas City, Kansas, as escrow agent (the "Escrow Agent"), pursuant to the Escrow Trust Agreement dated as of October 1, 2009 (the "Escrow Trust Agreement"), between the Issuer and the Escrow Agent, of cash and government securities that, according to the Verification Report mentioned below, will mature as to principal and will pay interest in amounts and at times that will provide sufficient moneys to make such payments.

We have examined the law, the Bond Resolution, the Escrow Trust Agreement and the other documents and certified proceedings that we deem necessary to render this opinion. Regarding questions of fact material to our opinion, we have relied on the certified proceedings and other certifications of public officials and others furnished to us without undertaking to verify them by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The Escrow Trust Agreement has been duly authorized, executed and delivered by the Issuer and constitutes a valid and binding agreement of the Issuer, enforceable against the Issuer except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and by equitable principles whether considered at law or in equity.

2. Provision has been made for payment of the Defeased Bonds in accordance with K.S.A. 10-427 *et seq.* All conditions precedent to the satisfaction, discharge and defeasance of the Defeased Bonds contained in the Bond Resolution, have been complied with, and the Defeased Bonds are deemed to be paid and discharged under the Bond Resolution.

3. Provision for the payment, discharge and defeasance of the Defeased Bonds will not, in and of itself, cause the interest on the Defeased Bonds to become included in gross income for federal income tax purposes.

In rendering the opinions set forth herein, we have relied upon the calculations and conclusions contained in the Verification Report of dated October 1, 2009, of Robert Thomas CPA, LLC, certified public accountants, relating to the sufficiency of the Escrow Fund established under the Escrow Trust Agreement and certain yield calculations relating to the Issuer's General Obligation Refunding and Improvement Bonds, Series 2009-A, Dated October 1, 2009, and the Defeased Bonds, without undertaking to verify the same.

We express no opinion with respect to the effect on the original status of the interest on the Defeased Bonds for federal income tax purposes of any actions taken or omitted to be taken by the Issuer or its affiliates with respect to the ownership, use or operation of the facilities financed or refinanced with the proceeds of the Defeased Bonds other than as stated in this opinion.

This opinion is delivered to you for your use only and may not be used or relied on by any third party for any purpose without our prior written approval in each instance.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

**GILMORE & BELL, P.C.**

JLN/GJH:rrb

**TRANSCRIPT OF PROCEEDINGS**

**AUTHORIZING THE ISSUANCE**

**OF**

**\$2,450,000\***

**DOUGLAS COUNTY, KANSAS**

**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS  
SERIES 2009-A**

**DATED OCTOBER 1, 2009**

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**Legal Opinion**

**Gilmore & Bell, P.C.  
Wichita, Kansas**

**DOUGLAS COUNTY, KANSAS**

**\$2,450,000\***  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**

**DATED OCTOBER 1, 2009**

**CLOSING LIST**

Copies of the transcript of proceedings for the above referenced issue (the "Bonds"), will be prepared and distributed as follows:

1. Douglas County, Kansas (the "Issuer")
2. Evan H. Ice, Esq., Lawrence, Kansas ("Issuer's Counsel")
3. Attorney General of the State of Kansas
4. Piper Jaffray & Co., Leawood, Kansas (the "Original Purchaser")
5. Security Bank of Kansas City, Kansas City, Kansas ("Escrow Agent")
6. Gilmore & Bell, P.C., Wichita, Kansas ("Bond Counsel")

Document  
Number

**PROCEEDINGS AUTHORIZING THE IMPROVEMENTS**

1. **Southeast Lawrence Sanitary Sewer Main District No. 1**
  - Engineer's Estimate
  - Map of Improvement District
  - Petition
  - Excerpt of Minutes of the governing body meeting evidencing adoption of Resolution No. 06-30
  - Resolution No. 06-30 authorizing sanitary sewer improvements (recorded)
  - Affidavit of Publication of Resolution No. 06-30
2. **Southeast Lawrence Sanitary Sewer Main District No. 2**
  - Engineer's Estimate
  - Map of Improvement District
  - Petition
  - Excerpt of Minutes of the governing body meeting evidencing adoption of Resolution No. 06-31
  - Resolution No. 06-31 authorizing sanitary sewer improvements (recorded)
  - Affidavit of Publication of Resolution No. 06-31



3. **Southeast Lawrence Sanitary Sewer Main District No. 3**
  - Engineer's Estimate
  - Map of Improvement District
  - Petition
  - Excerpt of Minutes of the governing body meeting evidencing adoption of Resolution No. 06-32
  - Resolution No. 06-32 authorizing sanitary sewer improvements (recorded)
  - Affidavit of Publication of Resolution No. 06-32

#### **SPECIAL ASSESSMENT PROCEEDINGS**

4. Excerpt of Minutes of the governing body meeting accepting the following documents:
  - Statement of Final Costs
  - Assessment Roll Certification
  - Notice of Public Hearing
  - Form of Notice of Hearing and Statement of Cost Proposed to be Assessed
5. Affidavit of Publication of Notice of Public Hearing
6. Certificate of Mailing – Notice of Public Hearing
7. Excerpt of Minutes of the governing body meeting evidencing passage of Resolution No. 09-[ ]
8. Resolution No. 09-[ ] levying special assessments
9. Affidavit of Publication of Resolution No. 09-[ ]
10. Certificate of Mailing – Notice of Assessment
11. Certificate of Treasurer – Assessments Paid in Cash

#### **PROCEEDINGS AUTHORIZING THE SALE AND ISSUANCE OF THE BONDS**

12. Excerpt of minutes of the governing body meeting evidencing adoption of Resolution No. 09-24
13. Resolution No. 09-24 authorizing the offering for sale of the Bonds
14. Preliminary Official Statement and Certificate Deeming Preliminary Official Statement Final
15. Official Statement
16. Bond Purchase Agreement

17. Excerpt of minutes evidencing adoption of Resolution No. 09-[ ]
18. Resolution No. 09-[ ] authorizing the issuance and prescribing the form and details of the Bonds
19. Escrow Trust Agreement  
*Schedule I* – Verification Report
20. Resolution No. 06-26 authorizing Refunded Bonds
21. Subscriptions/Confirmations for the purchase of United States Government Obligations

### **CLOSING DOCUMENTS**

22. Transcript Certificate with attached Statement of Costs
23. Uniform Facsimile of Signature Certificate
24. Authorization of State Treasurer to use facsimile signature and seal
25. Specimen Bond and Bond Printer's Certificate
26. Agreement Between Issuer and Agent
27. DTC Blanket Letter of Representations
28. Rating Letter – Moody's
29. Closing Certificate  
*Exhibit A* – Continuing Disclosure Instructions
30. Federal Tax Certificate with attachments as follows:  
*Exhibit A* – Internal Revenue Service Form 8038-G and evidence of filing  
*Exhibit B* – Receipt for Purchase Price  
*Exhibit C* – Receipt and Representation  
*Exhibit D* – Description of Property Comprising the Financed Improvements
31. Escrow Agent's Closing Certificate

### **LEGAL OPINIONS**

32. Approving legal opinion of Gilmore & Bell, P.C.
33. Defeasance Opinion of Gilmore & Bell, P.C.
34. Approval letter of Attorney General

**MISCELLANEOUS DOCUMENTS**

35. Closing Letter

\* \* \* \* \*

## TRANSCRIPT CERTIFICATE

**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**  
**DATED OCTOBER 1, 2009**

The undersigned Chairman and Clerk of Douglas County, Kansas (the "Issuer"), do hereby make this certificate for inclusion in the transcript of and as a part of the proceedings authorizing and providing for the issuance of the above described bonds (the "Bonds"); and do hereby certify as of September 16, 2009, as follows:

1. **Meaning of Words and Terms.** Capitalized words and terms used herein, unless otherwise defined herein or the context requires otherwise, shall have the same meanings ascribed to such words and terms in the hereinafter defined Resolution authorizing the Bonds.

2. **Organization.** The Issuer is a legally constituted political subdivision organized and existing under the laws of the State of Kansas.

3. **Transcript of Proceedings.** The transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds is to the best of our knowledge, information and belief full and complete; none of such proceedings have been modified, amended or repealed, except as might be shown in the Transcript, and the facts stated in the Transcript still exist. In each and every instance where copies appear in the Transcript, such copies are true and correct duplicates of the original instruments now on file with the Clerk.

4. **Newspaper.** *The Lawrence Daily Journal-World* was the official newspaper of the Issuer at all times during these proceedings.

5. **Meetings.** All of the meetings of the governing body of the Issuer at which action was taken as shown in the Transcript were either regular meetings or duly adjourned regular meetings or special meetings duly called and held in accordance with law and the rules of the Issuer.

6. **Incumbency of Officers.** The following named persons were and are the duly qualified and acting officers of the Issuer at and during all the times when action was taken as indicated in the Transcript as follows:

| <u>Name</u>    | <u>Title</u> | <u>Term of Office</u> |
|----------------|--------------|-----------------------|
| Nancy Thellman | Chairman     | 01/09 to 01/10        |
|                | Commissioner | 01/09 to 01/13        |
| Bob Johnson    | Chairman     | 01/06 to 01/09        |
|                | Commissioner | 01/01 to 01/09        |
| Jim Flory      | Commissioner | 01/09 to 01/13        |
| Mike Gaughan   | Commissioner | 04/09 to 01/11        |
| Charles Jones  | Commissioner | 01/99 to 04/09        |

Jere McElhaney  
Jameson D. Shew  
Paula Gilchrist

Commissioner  
Clerk  
Treasurer

01/01 to 01/09  
01/05 to 01/13  
10/05 to 01/13

**7. Execution of Bonds.** The Bonds have been executed with facsimile signatures; and the facsimile signatures appearing on the face of the Bonds are facsimiles of the true and genuine signatures of the Chairman and Clerk of the Issuer; which facsimiles are ratified as a proper execution of said Bonds. Each signature has been duly filed in the office of the Secretary of State of Kansas pursuant to K.S.A. 75-4001 *et seq.* A facsimile of the seal of the Issuer is affixed to or imprinted on each of the Bonds and on the reverse side of each of the Bonds at the place where the Clerk has executed by facsimile signature the Certificate of Registration; and each Bond bears a Certificate of Registration evidencing the fact that it has been registered in the office of the Clerk. A true impression of the seal is set forth adjacent to the signature of the Clerk below. The specimen bond included in the Transcript is in the form adopted by the governing body of the Issuer for the Bonds.

**8. Authorization of Bonds.** The Bonds are being issued pursuant to Resolution No. 09- (the "Resolution") of the Issuer for the purpose of paying a portion of the costs of certain sewer improvements (the "Improvements"). The Improvements have been duly authorized by the Issuer pursuant to K.S.A. 19-27a01 *et seq.*, as amended, and all other applicable provisions of the laws of the State of Kansas. Estimates of the cost of the Improvements have been presented to and approved by the governing body of the Issuer, and said estimates of cost are on file in the office of the Clerk, and the total principal amount of the Bonds does not exceed the cost of the Improvements for which the Bonds are issued. A Statement of Cost is attached hereto as *Exhibit A* and made a part hereof by reference as though fully set out herein.

The Bonds are also being issued pursuant to the Resolution for the purpose of providing funds to refund the following bonds of the Issuer:

| <i>Series</i> | <i>Dated Date</i> | <i>Year</i> | <i>Amount</i> | <i>Maturity Date</i> |
|---------------|-------------------|-------------|---------------|----------------------|
| Series 2006-A | August 15, 2006   | 2011        | \$25,000      | September 1, 2011    |

The Bonds have been duly authorized by the Issuer pursuant to K.S.A. 10-427 *et seq.*, as amended and supplemented, and all other applicable provisions of the laws of the State of Kansas.

The interest rates on the Bonds on the date of the sale of the Bonds were within the maximum legal limit for interest rates under K.S.A. 10-1009, as amended.

**9. Bonded Indebtedness.** The currently outstanding applicable indebtedness of the Issuer, including the Bonds, does not exceed any applicable constitutional or statutory limitations. A Schedule of Bonded Indebtedness, which sets forth all currently outstanding general obligation indebtedness of the Issuer, is attached hereto as *Exhibit B* and made a part hereof by reference as though fully set out herein.

**10. Valuation.** The total assessed valuation of the taxable tangible property within the Issuer for the year 2009 is as follows:

|   |                    |
|---|--------------------|
| Equalized Assessed Valuation of                   |                    |
| Taxable Tangible Property .....                   | \$1,134,950,348    |
| Tangible Valuation of Motor Vehicles (2008) ..... | <u>101,612,592</u> |

Equalized Assessed Tangible Valuation

for Computation of Bonded Debt Limitations..... \$1,236,562,940

**11. Non-litigation.** There is no controversy, suit or other proceedings of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (a) the legal organization of the Issuer or its boundaries; (b) the right or title of any of its officers to their respective offices; (c) the legality of any official act shown to have been done in the Transcript; (d) the constitutionality or validity of the indebtedness represented by the Bonds shown to be authorized in the Transcript; (e) the validity of the Bonds, or any of the proceedings had in relation to the authorization, issuance or sale thereof; or (f) the levy and collection of a tax to pay the principal of and interest on the Bonds.

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**WITNESS** our true and genuine manual signatures and the seal of the Issuer.

(SEAL)

---

Chairman

---

Clerk

**EXHIBIT A**

**STATEMENT OF COST**

Re: \$2,450,000\* General Obligation Refunding and Improvement Bonds,  
Series 2009-A, Dated October 1, 2009, of Douglas County, Kansas

**Sources of Funds:**

|                                |                 |
|--------------------------------|-----------------|
| Principal Amount of the Bonds  | \$2,450,000*.00 |
| [Available funds of the Issuer |                 |
| [Original Issue Premium        |                 |
| [Original Issue Discount       |                 |

**Total** \$[\_\_\_\_\_]

**Uses of Funds:**

|   |                |
|---|----------------|
| Deposit to Improvement Fund   | \$2,983,030.95 |
| <i>SE Lawrence San. Sewer Main Dist. No. 1</i>                                  | 1,848,488.44   |
| <i>SE Lawrence San. Sewer Main Dist. No. 2</i>                                  | 543,316.51     |
| <i>SE Lawrence San. Sewer Main Dist. No. 3</i>                                  | 591,226.00     |
| Escrow Fund Deposit   |                |
| Legal, financial, printing, registration<br>and miscellaneous costs of issuance |                |
| Underwriter's discount  |                |

**Total** \$



**EXHIBIT B**

**DOUGLAS COUNTY, KANSAS**

**SCHEDULE OF OUTSTANDING GENERAL OBLIGATION INDEBTEDNESS  
(as of October 1, 2009)**

**GENERAL OBLIGATION BONDS**

| <b>Category of<br/>Indebtedness</b>                                 | <b>Date of<br/>Indebtedness</b> | <b>Final<br/>Maturity</b> | <b>Original<br/>Principal<br/>Amount</b> | <b>Amount<br/>Outstanding</b> | <b>Exempt<br/>From<br/>Debt Limit</b> |
|---|---------------------------------|---------------------------|--|-------------------------------|---------------------------------------|
| G.O. Taxable Bonds, Series A, 2001                                  | 03/01/2001                      | 08/01/2021                | \$ 345,000                               | \$ 260,000                    | \$ 260,000<br>(100%)                  |
| G.O. Sales Tax Refunding Bonds, Series<br>2003-A                    | 05/1/2003                       | 08/01/2016                | 8,175,000                                | 6,330,000                     | 5,136,162<br>(81.14%)                 |
| G.O. Refunding Bonds, Series 2003-B                                 | 05/01/2003                      | 09/01/2014                | 1,325,000                                | 695,000                       | 636,272<br>(91.55%)                   |
| G.O. Sales Tax Refunding Bonds, Series<br>2004-A                    | 02/01/2004                      | 08/01/2019                | 13,650,000                               | 13,210,000                    | 11,495,342<br>(87.02%)                |
| G.O. Bonds, Series 2005-A   | 03/01/2005                      | 09/01/2015                | 737,000                                  | 485,000                       | 485,000<br>(100%)                     |
| G.O. Bonds, Series 2006-A   | 08/15/2006                      | 09/01/2016                | 255,000                                  | 165,000                       | 0<br>(0%)                             |
| G.O. Bonds, Series 2008-A   | 09/15/2008                      | 09/01/2028                | 285,000                                  | 270,000                       | 0<br>(0%)                             |
| G.O. Refunding and Improvement Bonds,<br>Series 2009-A (THIS ISSUE) | 10/01/2009                      | 09/01/2030                | 2,450,000                                | <u>2,450,000*</u>             | <u>2,450,000*</u><br>(100%)           |
|   |                                 | <b>Total</b>              |  | <b><u>\$23,865,000</u></b>    |                                       |

**TEMPORARY NOTES**

As of the issuance of the Bonds, there are no Temporary Notes outstanding.

**CERTIFICATE OF MANUAL SIGNATURE  
OF THE CHAIRMAN OF DOUGLAS COUNTY, KANSAS**

**IN THE OFFICE OF THE SECRETARY OF STATE OF THE STATE OF KANSAS**

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF DOUGLAS        )

I, the undersigned, **Nancy Thellman**, being duly sworn on oath certify that I am the duly qualified **Chairman** of Douglas County, Kansas, and that the signature appearing below is my signature and I file herewith this certificate pursuant to K.S.A. 75-4001 to 75-4007, inclusive.

\_\_\_\_\_  
Nancy Thellman

Subscribed and sworn to before me as of September 16, 2009.

\_\_\_\_\_  
Notary Public in and for said County and State

(SEAL)

My commission expires: \_\_\_\_\_.

**SAMPLE SIGNATURE**

ISSUER: Douglas County, Kansas

BOND ISSUE: \$2,450,000\* General Obligation Refunding and Improvement Bonds, Series 2009-A, Dated October 1, 2009

Three specimens of the signatures of the Chairman are needed for facsimile printing on the above-referenced bond issue.

**DIRECTIONS:**

1. Sign with your official signature.
2. If possible use a fountain, ball-point or felt tip (fine point) pen with black or dark blue ink. Light blue ink is difficult to reproduce properly.
3. Try to stay within the brackets.

---

Chairman

[    ]                  [    ]                  [    ]

---

**AGREEMENT BETWEEN ISSUER AND AGENT**

**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**  
**DATED OCTOBER 1, 2009**

**THIS AGREEMENT**, dated as of October 1, 2009, between Douglas County, Kansas, a political subdivision (the "Issuer"), and the State Treasurer of Kansas, as Agent (the "Agent").

**WHEREAS**, for its lawful purposes, the Issuer has duly authorized the issue of the above-captioned bonds (the "Securities"), and the Issuer wishes the Agent to act as its Paying Agent, Bond Registrar, and Transfer Agent for the Securities:

Now, therefore, it is hereby agreed as follows:

**I. APPOINTMENT**

Issuer hereby appoints or has heretofore appointed the State Treasurer of Kansas to act as Paying Agent, Bond Registrar and Transfer Agent for the Securities. The State Treasurer of Kansas hereby accepts its appointment as the Paying Agent, Bond Registrar and Transfer Agent.

**II. BASIC DUTIES**

- A. Issuer or its duly authorized representative agrees to furnish Agent the name(s) and address(es) of the initial registered owner(s) of the Securities together with such registered owners' tax identification (social security) number(s), the maturity date(s), denomination(s) and interest rate(s) for each Security.
- B. Agent shall manually authenticate the originally issued Securities upon the written order of one or more authorized officers of Issuer. Thereafter, Agent shall manually authenticate all Securities resulting from transfer or exchange of Securities.
- C. Agent shall maintain an office in the City of Topeka, Kansas, where Securities may be presented for registration, transfer and exchange; and shall also maintain an office in the City of Topeka, Kansas, where Securities may be presented for payment. Agent shall keep a register of the Securities and their transfer and exchange.
- D. Agent may rely upon any document believed by it to be genuine and to have been signed or presented by the proper person. Agent need not investigate any fact or matter stated in the document. Agent undertakes to perform such duties and only such duties set forth in K.S.A. 10-620 *et seq.*, except as specifically provided in this Agreement.

Agent shall notify the owners of the Securities upon default in payment of principal or interest on the Securities and the Agent shall have no duties or responsibilities thereafter.

### III. COMPENSATION

Issuer covenants and agrees to pay to Agent, as reasonable compensation for the services provided as Agent, an initial setup fee of \$300, a registration fee of \$30, plus a fee of \$3,062.50, based on a percentage of the aggregate principal amount of the Securities as follows:

1/8 of 1% (.125%) of the first \$10,000,000  
1/16 of 1% (.0625%) of the next \$15,000,000  
1/32 of 1% (.03125%) of the next \$25,000,000  
1/64 of 1% (.015625%) of the next \$50,000,000  
1/128 of 1% (.0078125%) over \$100,000,000.

This amount will be due at the time of registration unless such fee is to be paid from the proceeds of the bond issue in which case Issuer agrees to pay such fee within two (2) business days of the closing of the bond issue. In addition to the aforementioned fee, Issuer covenants and agrees to pay to Agent the fee as stated and required by K.S.A. 10-505 for performing the duties of paying the principal of the Securities.

### IV. STANDARD OF PERFORMANCE

Issuer shall provide, or shall cause to be provided to Agent, a designation of whether its Securities are to be issued in certificated or uncertificated form, or both.

#### A. *STATEMENTS OF OWNERSHIP*

Agent agrees to provide Statements of Ownership to the owner of uncertificated Securities. Such Statements shall be in accordance with the standards set forth by the Attorney General. All Statements shall be issued in the denominations of \$1,000 or \$5,000 or integral multiples thereof except for one additional Security in another denomination, which additional Security shall mature in the initial maturity year of the series of the Securities. Interest is computed on the basis of \$1,000 or \$5,000 units and in all transactions involving the payment of interest, fractions of a cent equalling or exceeding five mills shall be regarded as one cent; fractions of a cent less than five mills shall be disregarded. Agent shall at all times maintain an adequate supply of Statements of Ownership for any anticipated transfers or exchanges of the Statements.

#### B. *CERTIFICATED SECURITIES*

All certificated Securities issued by Issuer under this Agreement shall be in accordance with the standards set forth by the Attorney General and unless otherwise authorized by Agent, the principal thereof shall be payable only upon surrender of the Security to Agent. All certificates shall be issued in the denomination of \$1,000 or \$5,000 or integral multiples thereof except one authorized Security in another denomination which additional Security shall mature in the initial maturity year of the series of Securities. Interest is computed on the basis of \$1,000 or \$5,000 units and in all transactions involving the payment of interest, fractions of a cent equalling or exceeding five mills shall be regarded as one cent; fractions of a cent less than five mills shall be disregarded. Issuer shall at Issuer's cost provide Agent with an adequate supply of certificates for any

anticipated transfers or exchanges of the certificates. Issuer shall be responsible for the payment of the printing or other expenses for such certificates. Issuer shall be responsible for obtaining appropriate "CUSIP" number(s) and shall notify Agent of each number(s) prior to the issuance of the applicable Securities.

C. ***INTEREST CALCULATIONS***

Agent shall calculate interest on the basis of \$1,000 and \$5,000 *units*, or in the case of one odd denomination, calculate the *unit* separately. Each *intermediate unit* calculation is first determined, then rounded to the sixth decimal position; *i.e.* whenever the seventh decimal place is equal to or greater than five the sixth decimal place is increased by one. The final per unit calculation is subsequently rounded to two decimal positions. (See *Attachment "A"* for sample calculation.)

D. ***SURRENDER***

Securities surrendered for payment, cancellation or partial redemption shall be cancelled by Agent and returned to Issuer in accordance with K.S.A. 10-111.

E. ***TRANSFERS AND EXCHANGES***

1. When Securities are presented to Agent for transfer or exchange, Agent shall so transfer or exchange such Securities if the requirements of *Section 8-401(1)* of the Uniform Commercial Code are met.
2. In accordance with the authorizing Resolution or Ordinance of the Issuer (the "Resolution"), payments of interest shall be made to the owner of record of each Security as of the close of business on the fifteenth day of the month preceding each interest payment date. The Agent shall make such payments to the record owner of each Security as set forth on the registration books maintained by Agent as of such date.
3. Agent shall not be required to transfer or exchange any Security during a period beginning on the day following the fifteenth day of the month preceding any interest payment date for such Securities and ending at the close of business on the interest payment date, or to transfer or exchange any Security selected or called for redemption in whole or in part subsequent to the date notice of such redemption is given in accordance with the Resolution authorizing the Securities.

F. ***REGISTRATION DATES AND FUNDS FOR PAYMENTS***

Date of Registration shall be affixed on the initial Securities. Subsequent transfers or exchanges shall bear a Date of Registration as of the date that all the required documentation is received at the Agent's official place of business. Issuer will provide funds to make any interest or principal payments in accordance with K.S.A. 10-130 and amendments thereto. Agent is hereby authorized to effect any semiannual payment of interest or any principal by charging the Issuer's Fiscal Agency account with Agent.

G. **REPLACEMENT OF SECURITIES**

If the owner of a Security claims that a Security has been lost, destroyed or wrongfully taken, Issuer shall issue and Agent shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met. Only Agent shall perform this function. An indemnity bond and affidavit of loss shall be provided to Agent and Issuer at the expense of the owner of the Security. Such indemnity bond and affidavit of loss must be sufficient in the judgment of Issuer and Agent to protect Issuer and Agent from any loss which any of them may suffer if the Security is replaced. Issuer may charge the Security owner for its expenses in the replacement of a Security.

H. **REDEMPTIONS**

**Optional Redemption.** If any Securities are to be redeemed pursuant to an optional redemption in accordance with their terms, Issuer agrees to give Agent at least fifteen (15) days written notice thereof prior to the notice to be given the Security owners. If there is no provision for notice to the Security owners, Issuer agrees to give at least thirty (30) days written notice to Agent.

**[Mandatory Redemption.** If any Securities are subject to mandatory redemption in accordance with their terms and the Ordinance or Resolution authorizing the Securities, no additional notice is required to be given to the Agent to exercise the mandatory redemption. The Agent will provide notice of such redemption utilizing substantially the form of Notice of Mandatory Redemption attached hereto as *Appendix I.*]

**Notice of Redemption.** Agent shall then notify, by ordinary mail, the owner of such Securities to be so redeemed. Agent shall select the Securities to be so redeemed. Agent shall not be required to exchange or register a transfer of any Security for a period of fifteen (15) days preceding the date notice is to be provided to the Security owners for the purpose of selecting Securities on a partial redemption. Further, in the event notice is given to Agent for a complete redemption of the Issue according to the terms of the authorizing Resolution or Ordinance, Agent shall not be required to transfer or exchange any Security beginning on the day following the 15th day preceding the date set for redemption.

I. **MISCELLANEOUS**

Agent hereby acknowledges receipt of numbered Securities of Issuer (in a number equal to one Security for each maturity) for registration and exchange, and shall safeguard any "blank" Securities held for purpose of exchange or transfer.

J. **REPORTS**

Agent shall provide Issuer an annual report of the activity with respect to the issuance of Securities upon written request of Issuer.

K. ***CONSTRUCTION***

This Agreement shall be construed in accordance with the laws of the State of Kansas and also the Resolution authorizing the issuance of the Securities.

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**DOUGLAS COUNTY, KANSAS**

(SEAL)

By \_\_\_\_\_  
Chairman

ATTEST:

By \_\_\_\_\_  
Clerk

**OFFICE OF THE TREASURER  
OF THE STATE OF KANSAS**

(SEAL)

By \_\_\_\_\_

*ATTACHMENT "A"*

SAMPLE

$$\begin{array}{rll} & \$5,000.00000 & \text{Bond Unit} \\ \times & \underline{.06875} & \text{Interest Rate} \\ = & 343.750000 & \text{Rounded to six decimal places} \\ \\ / & \underline{360} & \text{Days per year} \\ = & .954861 & \text{Rounded to six decimal places} \\ \\ \times & \underline{180} & \text{Day in interest period} \\ = & 171.874980 & \text{(Rounded to second decimal = \$171.87)} \end{array}$$

Unit interest is then multiplied by the number of units in the maturity.

**[APPENDIX I**

**NOTICE OF CALL FOR MANDATORY REDEMPTION  
TO THE OWNERS OF  
DOUGLAS COUNTY, KANSAS  
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS  
SERIES 2009-A, DATED OCTOBER 1, 2009**

Notice is hereby given that pursuant to the provisions of *Article III* of Resolution No. 09-[ ] (the "Bond Resolution") of Douglas County, Kansas (the "Issuer") that a portion of the above-mentioned bonds (the "Bonds") scheduled to mature on September 1, 2030 (the "Called Bonds"), have been called for mandatory redemption and payment on September 1, \_\_\_\_\_ (the "Redemption Date"), at the principal office of the Treasurer of the State of Kansas (the "Bond Registrar and Paying Agent").

| <u>[Nos.]</u> | <u>Maturity Date</u><br><u>(September 1)</u><br>2030 | <u>Principal</u><br><u>Amount</u> | <u>Interest</u><br><u>Rate</u> | <u>CUSIP</u><br><u>Number</u> |
|---------------|--|-----------------------------------|--------------------------------|-------------------------------|
|---------------|--|-----------------------------------|--------------------------------|-------------------------------|

On the Redemption Date there shall become due and payable, upon the presentation and surrender of each such Called Bond, the redemption price thereof equal to 100% of the principal amount thereof together with interest accrued to the Redemption Date. Bonds issued in denominations of greater than \$5,000 may be subject to partial redemption. In such event, a new certificate or certificates will be issued to the Owner in the principal amount to remain Outstanding. Interest shall cease to accrue on the Called Bonds so called for redemption from and after the Redemption Date provided such funds for redemption are on deposit with the Paying Agent.

**DOUGLAS COUNTY, KANSAS**

By \_\_\_\_\_  
Treasurer of the State of  
Kansas, Topeka, Kansas]

**UNDERWRITING SAFEKEEPING AGREEMENT  
BY AND BETWEEN  
DEPOSITORY TRUST COMPANY  
AND  
DOUGLAS COUNTY, KANSAS  
AND  
THE OFFICE OF THE KANSAS STATE TREASURER**

**\$2,450,000\*  
DOUGLAS COUNTY, KANSAS  
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS  
SERIES 2009-A  
DATED OCTOBER 1, 2009**

In order to induce the Depository Trust Company (the "DTC") to accept delivery of the above captioned bonds (the "Bonds") for safekeeping prior to the delivery of the Bonds on October 1, 2009 (the "Closing Date"), Douglas County, Kansas (the "Issuer"), and the Treasurer of the State of Kansas (the "Agent") hereby agree to place the entire principal amount of the Bonds, in the custody, control and possession of DTC at least one day prior to the Closing Date. The Issuer further agrees that by copy of this letter appropriately executed, it will notify DTC to follow the instructions of Piper Jaffray & Co., Leawood, Kansas, as the Underwriter (the "Underwriter") in distributing the Bonds.

By executing this agreement in the appropriate place DTC acknowledges receipt from the Agent of possession, custody and control of the Bonds, and agrees to safekeep and hold in escrow the Bonds until it shall have received notification from one of the following authorized representatives of the Issuer to release or return the Bonds: Jameson D. Shew, Clerk or Gilmore & Bell, P.C., Bond Counsel. Notification may be made by telephone or by receipt of an executed notice, delivered or telecopied to DTC; provided, however, that if the notification is made by telephone, written notice must be sent within 24 hours of the original notification. In the event the Issuer executes the release of the Bonds, DTC will distribute the Bonds pursuant to written instructions provided by the Underwriter; however, in the event a demand for the return of the Bonds is received, DTC shall return the Bonds as soon as practicable, but in any event, no later than the following business day.

DTC agrees to hold the Issuer and the Agent, as their interests may appear, and any of their officers or employees, harmless from any liability, loss, damage or reasonable expense in connection with the loss, theft, destruction or other disappearance of the Bonds while they are in the possession, custody or control of DTC, prior to concluding the Closing with respect to the Bonds and prior to distributing the Bonds in accordance with the instructions furnished by the Underwriter.

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**DOUGLAS COUNTY, KANSAS**

Dated: September 16, 2009

By: \_\_\_\_\_  
Clerk

**OFFICE OF THE TREASURER OF  
THE STATE OF KANSAS, As Agent**

Dated: September \_\_, 2009

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEPOSITORY TRUST COMPANY**

Dated: September \_\_, 2009

By: \_\_\_\_\_  
Title: \_\_\_\_\_

DTC hereby acknowledges receipt from  
the Agent of custody, control  
and possession of the Bonds.

Dated: September \_\_, 2009

**DEPOSITORY TRUST COMPANY**

By \_\_\_\_\_  
Title \_\_\_\_\_

Re: \$2,450,000\* General Obligation Refunding and Improvement Bonds, Series 2009-A, dated October 1, 2009, of Douglas County, Kansas

Dated: October 1, 2009.

The formal Closing of the above-referenced Bonds has occurred, and DTC is hereby authorized to distribute the Bonds as previously agreed:

By: \_\_\_\_\_  
GILMORE & BELL, P.C.,  
as Bond Counsel for the Issuer

The Closing of the above-referenced Bonds did not occur and DTC is requested to return the Bonds to the custody, control and possession of the Agent:

By: \_\_\_\_\_  
GILMORE & BELL, P.C.,  
as Bond Counsel for the Issuer

**ESCROW AGENT'S CLOSING CERTIFICATE**

**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**  
**DATED OCTOBER 1, 2009**

Security Bank of Kansas City, Kansas City, Kansas, as escrow agent (the "Escrow Agent") under the Escrow Trust Agreement dated as of October 1, 2009 (the "Escrow Agreement"), between the Escrow Agent and Douglas County, Kansas, in connection with the issuance of the above described bonds (the "Bonds"), does hereby certify as follows:

**1. Power and Authority of Escrow Agent.** The Escrow Agent is a state banking corporation duly organized and existing under the laws of the State of Kansas, is authorized and empowered to execute and deliver the Escrow Agreement and has full power and authority to act as Escrow Agent as provided in the Escrow Agreement.

**2. Execution of Escrow Agreement.** The Escrow Agreement has been duly executed on behalf of the Escrow Agent, by a duly authorized officer, who was at the time of the execution of the Escrow Agreement, and is now, the duly elected or appointed, qualified and acting incumbent of his or her respective office, and duly authorized to perform the acts referred to in this paragraph.

**3. Deposit of Cash and Escrowed Securities.** The Escrow Agent, in accordance with the requirements of the Escrow Agreement, has received the cash and Escrowed Securities as described in the Escrow Agreement, and deposited said cash and Escrowed Securities in the Escrow Fund created by the Escrow Agreement.

DATED: October 1, 2009.

**SECURITY BANK OF KANSAS CITY**  
**KANSAS CITY, KANSAS,**  
as Escrow Agent

By: \_\_\_\_\_  
Title: Vice President & Trust Manager



**ESCROW TRUST AGREEMENT**

**BETWEEN**

**DOUGLAS COUNTY, KANSAS**

**AND**

**SECURITY BANK OF KANSAS CITY  
KANSAS CITY, KANSAS  
as Escrow Agent**

**DATED AS OF OCTOBER 1, 2009**

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**Entered in Connection with the Issuance of**

**\$2,450,000\***

**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**

**SERIES 2009-A**

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## ESCROW TRUST AGREEMENT

**THIS ESCROW TRUST AGREEMENT**, dated as of October 1, 2009, by and between Douglas County, Kansas, a political subdivision organized and existing under the laws of the State of Kansas (the "Issuer"), and Security Bank of Kansas City, a state banking corporation with an office located in Kansas City, Kansas, and having full trust powers, as Escrow Agent (the "Escrow Agent").

**WITNESSETH:**

**WHEREAS**, the Issuer has heretofore duly authorized and issued the Refunded Bonds; and

**WHEREAS**, the Refunded Bonds will mature (or will be subject to redemption prior to maturity) and will have interest payable in the amounts and at the times shown in the Verification Report; and

**WHEREAS**, pursuant to the Bond Resolution, the Issuer authorized the issuance and delivery of the Bonds for the purpose of providing funds and investment earnings thereon, to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds, including the purchase of non-callable direct obligations of the United States of America described in the Verification Report.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Definitions.** In addition to the definitions contained in the Bond Resolution, the following words and terms used in this Escrow Agreement shall have the following meanings, unless the context or use indicates another or different meaning:

"**Agreement**" means this Escrow Trust Agreement.

"**Bond Payment Date**" means any date on which any principal of, or interest on, any of the Refunded Bonds is due and payable.

"**Bond Counsel**" means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Issuer.

"**Bond Resolution**" means Resolution No. 09-[ ] of the Issuer authorizing issuance of the Bonds.

"**Bonds**" means the \$2,450,000\* aggregate principal amount of General Obligation Refunding and Improvement Bonds, Series 2009-A, of the Issuer authorized by the Bond Resolution.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Escrow Agent**" means Security Bank of Kansas City, Kansas City, Kansas and its successor or successors at the time acting as the Escrow Agent under this Agreement.

**“Escrow Fund”** means the fund by that name created in *Section 3* of this Agreement.

**“Escrowed Securities”** means the direct non-callable obligations of the United States of America listed in the Verification Report, and any Substitute Escrowed Securities.

**“Issuer”** means Douglas County, Kansas.

**“Paying Agent”** means the State Treasurer, the paying agent for the Refunded Bonds as designated in the Refunded Bond Resolution, and any successor or successors at the time acting as paying agent for the Refunded Bonds.

**“Purchaser”** means Piper Jaffray & Co., Leawood, Kansas, the original purchaser of the Series 2009-A Bonds, and any successor and assigns.

**“Refunded Bond Resolution”** means the Issuer's Resolution No. 06-26 which authorized the Series 2006-A Bonds.

**“Refunded Bonds”** means the Series 2006-A Bonds maturing in the year 2011 in the aggregate principal amount of \$25,000, as more fully described in the Verification Report.

**“Redemption Date”** means September 1, 2011.

**“Series 2006-A Bonds”** means the Issuer's General Obligation Bonds, Series 2006-A, dated August 15, 2006.

**“Substitute Escrowed Securities”** means non-callable direct obligations of the United States of America, which have been acquired by the Escrow Agent and substituted for Escrowed Securities in accordance with *Section 8* of this Agreement.

**“SLGS”** means United States Treasury Obligations - State and Local Government Series.

**“Verification Report”** means the verification report referenced in *Section 4* hereof, a copy of which is attached hereto as *Schedule 1*.

**2. Receipt of Bond Resolutions.** Receipt of an executed counterpart of the Bond Resolution and copy of the Refunded Bond Resolution, certified as true and correct by the Clerk of the Issuer, is hereby acknowledged by the Escrow Agent, and reference herein to, or citation herein of, any provision of said documents shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if they were fully set forth herein.

**3. Creation of the Escrow Fund.** There is hereby created and established with the Escrow Agent the following special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the “Escrow Fund for General Obligation Bonds, Series 2006-A.”

**4. Verification Report.** Robert Thomas CPA, LLC, Certified Public Accountants, have verified the mathematical computations performed by the Purchaser which demonstrate that the cash held in the Escrow Fund, together with the maturing Escrowed Securities and interest to accrue thereon, will be sufficient to pay all principal of, redemption premium, if any, and interest on the Refunded Bonds on the Bond Payment Dates. A copy of such report is attached hereto as *Schedule 1*.

**5. Deposits to the Escrow Fund.** Concurrently with the execution and delivery of this Agreement, and pursuant to the provisions of the Bond Resolution, the Issuer herewith deposits with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of, proceeds of the Bonds in the amount of \$[\_\_\_\_\_]. The Escrow Agent shall apply such amount as follows:

(a) \$[\_\_\_\_\_] shall be used to purchase the Escrowed Securities described in the Verification Report, which shall be delivered to and deposited in the Escrow Fund.

(b) \$[\_\_\_\_\_] shall be held uninvested in the Escrow Fund as a beginning balance.

**6. Creation of Lien.** The Escrow Fund shall be irrevocable. The owners of the Refunded Bonds are hereby granted an express lien on, and security interest in, the Escrowed Securities and the cash in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement. The matured principal of, and earnings on, the Escrowed Securities and any cash in the Escrow Fund are hereby pledged and assigned, and shall be applied solely for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds.

**7. Application of Cash and Escrowed Securities in the Escrow Fund.**

(a) Except as otherwise expressly provided in this Section or in **Section 8** hereof, the Escrow Agent shall have no power or duty to invest any money held hereunder or to sell transfer or otherwise dispose of any Escrowed Securities.

(b) On or prior to the Business Day preceding each Bond Payment Date, the Escrow Agent shall withdraw from the Escrow Fund an amount equal to the principal of, redemption premium, if any, and interest on the Refunded Bonds becoming due and payable on such Bond Payment Date or the Redemption Date, as set forth in the Verification Report, and shall forward such amount to the offices of the respective Paying Agent, so that immediately available funds will reach the offices of the Paying Agent on or before 12:00 Noon, Central time, on the Business Day preceding such Bond Payment Date and the Redemption Date. In order to make the payments required by this **subsection (b)**, the Escrow Agent is hereby authorized to redeem or otherwise dispose of Escrowed Securities in accordance with the maturity schedules in the Verification Report. The liability of the Escrow Agent to make the payments required by this **subsection (b)** shall be limited to the money and Escrowed Securities in the Escrow Fund.

(c) Notwithstanding any other provisions of this Agreement, the Issuer and the Escrow Agent hereby covenant that no part of the proceeds of the Bonds or of the money or funds in the Escrow Fund shall be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Bonds would have caused any of the Bonds to be an "arbitrage bond" under Section 148 of the Code.

(d) Upon the payment in full of the principal of, redemption premium, if any, and interest on the Refunded Bonds, all remaining money and Escrowed Securities in the Escrow Fund, together with any interest thereon, shall be transferred to the Issuer to be applied by the Issuer in accordance with law.

(e) After the transfers described in **subsection (b)** above, cash balances in excess of \$1,000 remaining in the Escrow Fund from redemption of SLGS shall, to the extent required or permitted by

applicable Treasury Regulations and to the extent that such securities are then available for purchase, be invested by the Escrow Agent in SLGS, maturing on or prior to the next interest Bond Payment Date on the Refunded Bonds, at the rate of 0.00%, in accordance with the provisions of the Verification Report.

#### **8. Substitute Escrowed Securities.**

(a) In the event that any of the Escrowed Securities are not available for delivery on the date of the issuance of the Bonds, the Escrow Agent is directed to accept substitute securities in lieu thereof, provided: (1) the substitute securities are non-callable direct obligations of the United States of America, (2) the maturing principal of and interest on such substitute securities (excluding any interest after any optional call date) is equal to or greater than the maturity value of such unavailable Escrowed Securities, (3) principal of and interest on the substitute securities is payable on or before the maturity date of the unavailable Escrowed Securities, and (4) the Issuer and Bond Counsel in writing approve such substitution. If the original Escrowed Securities become available and are tendered to the Escrow Agent by or on behalf of the Purchaser, the Escrow Agent shall accept such Escrowed Securities, shall return the substitute securities as directed by such Purchaser and shall notify Bond Counsel and the Issuer of the transaction.

(b) At the written request of the Issuer and upon compliance with the conditions hereinafter stated, the Escrow Agent shall have the power to sell, transfer, request the redemption of or otherwise dispose of the Escrowed Securities and to substitute for the Escrowed Securities solely cash or Substitute Escrowed Securities. The Escrow Agent shall purchase such Substitute Escrowed Securities with the proceeds derived from the sale, transfer, disposition or redemption of the Escrowed Securities together with any other funds available for such purpose. The substitution may be effected only if: (1) the substitution of the Substitute Escrowed Securities for the original Escrowed Securities occurs simultaneously; (2) the Escrow Agent shall receive from an independent certified public accountant acceptable to the Escrow Agent in its reasonable judgment a certification, satisfactory in form and substance to the Escrow Agent, to the effect that after such substitution, (A) the principal of and interest on the Escrowed Securities to be held in the Escrow Fund after the substitution (including Substitute Escrowed Securities to be acquired), together with any other money to be held in the Escrow Fund after such transaction, will be sufficient to pay all remaining principal of, redemption premium, if any, and interest on the Refunded Bonds pursuant to the Verification Report, and (B) the amounts and dates of the anticipated transfers from the Escrow Fund to the Paying Agent for the Refunded Bonds will not be diminished or postponed thereby; and (3) the Escrow Agent shall receive a written opinion of Bond Counsel to the effect that such substitution is permitted under this Agreement and would not cause the interest on either the Bonds or the Refunded Bonds to become included in gross income for purposes of federal income taxation under then existing law. In the event that any such substitution results in cash held in the Escrow Fund in excess of the cash required for the certification of an independent certified public accountant referred to in this subsection (b) (as evidenced by such certification), the Escrow Agent shall, at the request of the Issuer, withdraw such excess from the Escrow Fund and pay such excess to the Issuer, and the Issuer shall apply such excess as provided by law; provided that, in the written opinion of Bond Counsel delivered to the Escrow Agent, such withdrawal and application will not be contrary to State law and will not cause the interest on the Bonds or the Refunded Bonds to become included in gross income for purposes of federal income taxation.

**9. Redemption of Refunded Bonds.** The Refunded Bonds are not subject to redemption prior to maturity. The Escrow Agent is directed by the Issuer to give notice of defeasance in substantially the form of *Exhibit A* attached hereto, to the Paying Agent and to UMB Bank, n.a., the original purchaser of the Series 2006-A Bonds not more than 60 days after October 1, 2009. Notice shall also be given to

certain repositories in order to comply with the provisions of Rule 15c2-12 of the Securities and Exchange Commission in substantially the form of *Exhibit B* attached hereto. Additional notice is for convenience in facilitating said defeasance; failure to give such notice as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the defeasance of the Refunded Bonds.

**10. Reports of the Escrow Agent.** As long as any of the Refunded Bonds, together with the interest thereon, have not been paid in full, the Escrow Agent shall, at least sixty (60) days prior to each Bond Payment Date, determine the amount of money which will be available in the Escrow Fund to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds on the next Bond Payment Date or Redemption Date. In the event that funds are not sufficient to make the required payments on such Bond Payment Date or Redemption Date, the Escrow Agent shall certify in writing to the Issuer (a) the amount so determined and (b) a list of the moneys and Escrowed Securities held by the Escrow Agent in the Escrow Fund on the date of such certification, including all moneys held by it which were received as interest or profit from Escrowed Securities. On or prior to the Redemption Date, the Escrow Agent shall provide to the Issuer a certificate verifying dissemination of notice to the Paying Agent as required in *Section 9* hereof.

**11. Liability of Escrow Agent.**

(a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer or other disposition made pursuant to this Agreement in compliance with the provisions hereof. The Escrow Agent shall have no lien whatsoever on, or right of set-off with respect to, any of the moneys or Escrowed Securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the Escrowed Securities and moneys to pay the Refunded Bonds. So long as the Escrow Agent applies the Escrowed Securities and moneys held in the Escrow Fund as provided herein, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds.

(c) In the event of the Escrow Agent's failure to account for any of the Escrowed Securities or moneys received by it, said Escrowed Securities or moneys shall be and remain the property of the Issuer in trust for the Owners of the Refunded Bonds and if, for any reason, such Escrowed Securities or moneys are not applied as herein provided, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof until the required application shall be made.

(d) The Escrow Agent shall not be responsible for any action or failure to take action on the part of the Paying Agent. In event of the Escrow Agent's failure to give notice to the Paying Agent to give notice of redemption as required in *Section 9* hereof, the Escrow Agent shall be liable for any loss, expense or cost to the Issuer, including the payment of additional interest on the Refunded Bonds. Notwithstanding the foregoing subsections the Escrow Agent shall not be relieved of liability arising from, and proximate to, its failure to comply fully with the terms of this Agreement.

**12. Fees and Costs.** The aggregate amount of the costs, fees and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms or provisions of this Agreement is a one-time fee in the amount of \$[\_\_\_\_\_], which amount shall be paid from money on deposit in the Costs of Issuance Account established by the Bond Resolution concurrently with the issuance and delivery of the Bonds.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from the Issuer of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Agreement. Claims for such reimbursement may be made to the Issuer and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement.

In addition to the amount set forth in **Section 5** hereof, the Escrow Agent shall receive the sum of \$[ ] for deposit into the Costs of Issuance Account hereby created with the Escrow Agent. The Escrow Agent shall pay Costs of Issuance in an aggregate sum not to exceed said amount. An estimated schedule of such expenses is attached hereto as **Schedule 2**. The Escrow Agent is authorized to pay such costs based on receipt of invoices or statements in amounts not in excess of those estimated on **Schedule 2**. In the event invoices are received in excess of the estimated amounts set forth on **Schedule 2**, such amounts shall not be paid without written approval of the Issuer. Any Costs of Issuance funds on deposit which the Issuer shall certify to the Escrow Agent are not needed to pay such expenses shall be returned to the Issuer following receipt of such certification, but in any case not later than 30 days prior to March 1, 2011.

**13. Resignation or Removal of Escrow Agent; Successor Escrow Agent.** The Escrow Agent at the time acting hereunder may at any time resign and be discharged from its duties and responsibilities hereby created by giving written notice by registered or certified mail to the Issuer and the Paying Agent (who shall cause notice to be given to the Owners of the Refunded Bonds by first-class mail) not less than 60 days prior to the date when the resignation is to take effect. Such resignation shall take effect immediately upon the acceptance of the Issuer of the resignation, the appointment of a successor Escrow Agent (which may be a temporary Escrow Agent) by the Issuer, the acceptance of such successor Escrow Agent of the terms, covenants and conditions of this Agreement, the transfer of the Escrow Fund, including the money and Escrowed Securities held therein, to such successor Escrow Agent and the completion of any other actions required for the principal of and interest on the Escrowed Securities to be made payable to such successor Escrow Agent rather than the resigning Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and the Issuer and signed by the owners of a majority in principal amount of the Refunded Bonds then outstanding; provided that written notice thereof is mailed on or before the date of such removal by first-class mail, postage prepaid, to all Owners of such Refunded Bonds, who are not parties to such instruments. The Escrow Agent may also be removed by the Issuer if the Escrow Agent fails to make timely payment of available moneys on any Bond Payment Date to the Paying Agent of the amounts required to be paid by it on such Bond Payment Date by **Section 7(b)** of this Agreement; provided that written notice thereof is mailed on or before the date of such removal by first-class mail, postage prepaid, to the Paying Agent and to all Owners of such Refunded Bonds, who are not parties to such instruments. Any removal pursuant to this paragraph shall become effective upon the appointment of a successor Escrow Agent (which may be a temporary successor Escrow Agent) by the Issuer, the acceptance of such successor Escrow Agent of the terms, covenants and conditions of this Agreement, the transfer of the Escrow Fund, including the money and Escrowed Securities held therein, to such successor Escrow Agent and the completion of any other actions required for the principal of and interest on the Escrowed Securities to be made payable to such successor Escrow Agent rather than the Escrow Agent being removed.

If the Escrow Agent shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a

court, the Issuer shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the Issuer in the manner above provided, and any such temporary Escrow Agent so appointed by the Issuer shall immediately and without further act be superseded by the successor Escrow Agent so appointed.

If no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the Issuer pursuant to the foregoing provisions of this Section within 60 days after written notice of resignation of the Escrow Agent has been given to the Issuer or instrument of removal has been delivered to the Escrow Agent, the Owner of any of the Refunded Bonds or any retiring or removed Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers authorized to do business in the State of Kansas (as required by K.S.A. 10-427 *et seq.*, as amended), and organized under the banking laws of the United States or the State of Kansas and shall have at the time of appointment capital and surplus of not less than \$10,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor Escrow Agent without any further act, deed or conveyance shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Issuer, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall deliver all securities and money held by it to its successor. Should any transfer, assignment or instrument in writing from the Issuer be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Any corporation into which the Escrow Agent, or any successor to it of the duties and responsibilities created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it may be a party, shall, if satisfactory to the Issuer, be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of the parties hereto, anything herein to the contrary notwithstanding.

The Issuer shall immediately notify the Rating Agency upon receipt of written notice in accordance with this Section which would result in the resignation, removal, dissolution, liquidation or the incapability of action hereunder of the Escrow Agent and appointment of any successor Escrow Agent.

In the event of resignation or removal of the Escrow Agent, a portion of the amount paid to the Escrow Agent pursuant to the preceding section shall be returned to the Issuer, such portion to be computed by multiplying the fee specified in the preceding section by the ratio of the number of months which the trust created by this Agreement will continue from the effective date of such resignation or removal to the entire term of such trust. Of the amount paid to the Escrow Agent, one-fourth of the one-time fee shall be treated as the initial set up fee and is not refundable.



**14. Amendments to this Agreement.** This Agreement is made for the benefit of the Issuer and the Owners from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such Owners, the Escrow Agent and the Issuer; provided, however, that the Issuer and the Escrow Agent may, without the consent of, or notice to, such Owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such Owners and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant to, or confer upon, the Escrow Agent for the benefit of the Owners of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such Owners or the Escrow Agent; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified written opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the Owners of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

The Escrow Agent shall notify the Rating Agency in writing prior to the execution of any amendment to this Agreement.

**15. Indemnification.** The Issuer hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and hold harmless the Escrow Agent and its respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees, expenses and disbursements, without limitation) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Agent (whether or not also indemnified against the same by the Issuer or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Escrow Fund or the Costs of Issuance Account established hereunder, the acceptance of the moneys and securities deposited therein, the purchase of the Escrowed Securities, the retention of the Escrowed Securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Agreement; provided however, that the Issuer shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct. In no event shall the Issuer be liable to any person by reason of the transactions contemplated hereby other than to the Escrow Agent as set forth in this *Section 15*. The indemnities contained in this *Section 15* shall survive the termination of this Agreement.

The Escrow Agent and its respective successors, assigns, agents, directors, officers, employees and servants shall not be held to any personal liability whatsoever, in tort, contract or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Escrow Fund or the Costs of Issuance Account, the acceptance of the moneys deposited therein, the purchase of the Escrowed Securities, the retention of the Escrowed Securities or the proceeds thereof or any payment, transfer or other application of the moneys or securities held by the Escrow Agent in accordance with the

provisions of this Agreement or by reason of any non-negligent act, omission or error of the Escrow Agent made in good faith in the conduct of its duties. The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel who may or may not be counsel to the Issuer, and in reliance upon the opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Issuer.

**16. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by the Bond Resolution or this Agreement to be given to or filed with the parties hereto or any entity referenced herein if the same shall be duly mailed by certified mail, postage prepaid, return receipt requested, addressed to the Notice Representative at the Notice Address (as said terms are defined in the Bond Resolution).

**17. Termination.** This Agreement shall terminate when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

**18. Severability.** If any one or more of the covenants or agreements provided in this Agreement on the part of the Issuer or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained, and shall in no way affect the validity of the remaining provisions of this Agreement.

**19. Successors and Assigns.** All of the covenants, promises and agreements in this Agreement contained by or on behalf of the Issuer or by or on behalf of the Escrow Agent shall be binding upon, and inure to the benefit of, their respective successors and assigns, whether or not so expressed.

**20. Governing Law.** This Agreement shall be governed by, and be construed in accordance with, the laws of the State of Kansas.

**21. Headings.** Any headings preceding the text of the several Sections hereof or marginal notes appended to copies hereof, shall be solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**22. Counterparts.** This Agreement may be executed in several counterparts, all or any of which shall be regarded, for all purposes, as one original, and shall constitute and be but one and the same instrument.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have each caused this Agreement to be executed by their duly authorized officers or elected officials, and their corporate seals to be hereunder affixed and attested as of the date first above written.

**DOUGLAS COUNTY, KANSAS**

By \_\_\_\_\_  
Title: Chairman

**ATTEST:**

By \_\_\_\_\_  
Title: Clerk

**SECURITY BANK OF KANSAS CITY  
KANSAS CITY, KANSAS,  
as Escrow Agent**

By \_\_\_\_\_  
Title: Vice President & Trust Manager

***SCHEDULE 1***  
**TO ESCROW TRUST AGREEMENT**

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**VERIFICATION REPORT**

**SCHEDULE 2  
TO ESCROW TRUST AGREEMENT**

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**ESTIMATED COSTS OF ISSUANCE**

| <i>Recipient</i>             | <i>Purpose</i>              | <i>Amount</i> |
|------------------------------|-----------------------------|---------------|
| Midwest Single Source        | Bond Printing               | \$ [ ]        |
| Standard & Poor's            | Ratings                     |               |
| FPR                          | Official Statement Printing |               |
| Kansas State Treasurer       | Paying Agent Fees           |               |
| Security Bank of Kansas City | Escrow Agent                |               |
| Robert Thomas CPA, LLC       | CPA Verification Fees       |               |
| Stevens & Brand, LLP         | Issuer's Legal Fees         |               |
| Gilmore & Bell, P.C.         | Legal Fees                  |               |
| CUSIP Service Bureau         | CUSIP Bureau Fee            |               |
| Kansas Attorney General      | Attorney General Fee        |               |
|                              | TOTAL                       |               |

***EXHIBIT A***

**NOTICE OF DEFEASANCE OF BONDS**

**DOUGLAS COUNTY, KANSAS  
GENERAL OBLIGATION BONDS  
SERIES 2006-A, DATED AUGUST 15, 2006**

Notice is hereby given that Douglas County, Kansas, and Security Bank of Kansas City, Kansas City, Kansas, have entered into a certain Escrow Trust Agreement dated as of October 1, 2009, which provides for payment of the principal of and interest thereon to maturity of that portion of the above-mentioned bonds maturing September 1, 2011. Payment will be made at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the "Bond Registrar and Paying Agent").

**DOUGLAS COUNTY, KANSAS**

By: Security Bank of Kansas City  
Kansas City, Kansas, as Escrow Agent

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This Notice of Defeasance shall be mailed by first class mail to the Treasurer of the State of Kansas, Topeka, Kansas, and to UMB Bank, n.a., Kansas City, Missouri, the original purchaser of the Series 2006-A Bonds not more than 60 days after October 1, 2009. Notice shall also be given to certain repositories in order to comply with the provisions of Rule 15c2-12 of the Securities and Exchange Commission. Notice may also be given in accordance with guidelines set forth in Securities and Exchange Commission Release No. 34-23856, but such notice is not required by law.

**EVENT NOTICE PURSUANT TO SEC RULE 15C2-12(B)(5)(C)**

TO: Nationally Recognized Municipal Securities Information Repositories on the Attached Distribution List

**Issuer/Obligated Person:** Douglas County, Kansas (the "Obligated Person")

**Issue(s) to which this Report  
Relates and CUSIP Base  
Numbers for said Issues:**

| Description              | Series | Dated Date      | Maturity | Base CUSIP No. |
|--------------------------|--------|-----------------|----------|----------------|
| General Obligation Bonds | 2006-A | August 15, 2006 | 2011     | 259039         |

**Event Reported:** Defeasance of above-referenced Bonds to maturity; see attached *Exhibit A*.

The information contained in this Notice has been submitted by the Obligated Person pursuant to contractual undertakings the Obligated Person made in accordance with SEC Rule 15c2-12. Nothing contained in the undertaking or this Notice is, or should be construed as, a representation by the Obligated Person that the information included in this Notice constitutes all of the information that may be material to a decision to invest in, hold or dispose of any of the securities listed above, or any other securities of the Obligated Person.

**For additional information, contact:**

Douglas County, Kansas  
Douglas County Courthouse  
1100 Massachusetts  
Lawrence, Kansas 66044  
Attention: Clerk  
Phone No. (785) 832-5329  
Fax No. (785) 832-5320

**DOUGLAS COUNTY, KANSAS**

Date Submitted: \_\_\_\_\_

By: Security Bank of Kansas City  
Kansas City, Kansas, as Escrow Agent

Enclosure

cc: Jameson D. Shew, Clerk  
UMB Bank, n.a., Kansas City, Missouri

**CLOSING CERTIFICATE**

**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**  
**DATED OCTOBER 1, 2009**

The undersigned Chairman and Clerk of Douglas County, Kansas (the "Issuer"), make this Certificate for inclusion in the transcript of and as a part of the proceedings authorizing and providing for the issuance of the above described bonds (the "Bonds"); and certify as of October 1, 2009 (the "Issue Date"), as follows:

**1. Meaning of Words and Terms.** Capitalized words and terms used in this Certificate, unless otherwise defined in this Certificate or the context requires otherwise, have the same meanings ascribed to such words and terms in the Bond Resolution (defined below) authorizing the Bonds.

**2. Transcript of Proceedings.** The transcript of proceedings relating to the authorization and issuance of the Bonds (the "Transcript"), furnished to the Purchaser of the Bonds, is to the best of our knowledge, information and belief full and complete; none of such proceedings have been modified, amended or repealed, except as might be shown in the Transcript; and the facts stated in the Transcript still exist. In each instance where copies appear in the Transcript, such copies are true and correct duplicates of the original instruments now on file with the Clerk. All certifications made by the Issuer in the Transcript Certificate dated September 16, 2009, are true and correct as of this date and are incorporated in this Certificate by reference.

**3. The Bond Resolution.** The Issuer is issuing and delivering the Bonds simultaneously with the delivery of this Certificate, pursuant to and in full compliance with the Constitution and statutes of the State, including particularly K.S.A. 10-427 *et seq.* and K.S.A. 19-27a01 *et seq.*, as amended, and Resolution No. 09-[ ] of the Issuer duly adopted by the governing body of the Issuer on September 16, 2009 (the "Bond Resolution").

**4. Purpose of the Bonds.** The Bonds are being issued for the purpose of providing funds to pay a portion of the costs of certain sewer improvements, as described in the Bond Resolution (the "Improvements") and to refund a portion of the outstanding General Obligation Bonds, Series 2006-A, of the Issuer, as described in the Bond Resolution (the "Refunded Bonds"). The purpose of the refunding is to restructure the debt payments on the Refunded Bonds and to provide an orderly plan of finance for the Issuer.

**5. Security for the Bonds.** The Bonds are general obligations of the Issuer payable in part from special assessments levied upon the property benefited by the Improvements and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are pledged under the Bond Resolution to the payment of the principal of and interest on the



Bonds. In the Bond Resolution, the governing body of the Issuer has covenanted to annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by, to the extent necessary, by levying and collecting the necessary taxes and/or assessments upon all of the taxable tangible property within the Issuer in the manner provided by law.

**6. Sale of Bonds.** The Bonds have been sold at rates not in excess of the limitations set forth in K.S.A. 10-1009.

**7. Official Statement.** The Official Statement contained in the Transcript constitutes a full, true and correct copy of the Official Statement relating to the Bonds. To the best of our knowledge, the Official Statement, other than the sections entitled "The Depository Trust Company," "Bond Ratings," "Legal Matters," and *Appendices B and C*, about which the Issuer expresses no opinion, is true in all material respects, and does not contain any untrue statement of a material fact or does not omit to state a material fact, necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. As of this date there has been no material adverse change in the financial condition or the financial affairs of the Issuer since the date of the Official Statement. No other event has occurred which is necessary to be disclosed in the Official Statement in order to make the statements therein not misleading in any material respect as of the date of this Certificate. The Issuer has previously caused to be delivered to the Purchaser copies of the Official Statement.

**8. Continuing Disclosure Instructions.** The Issuer, in the Bond Resolution, has covenanted to disseminate such information as is required in accordance with the provisions of the SEC Rule and the Continuing Disclosure Instructions, which are attached to this Certificate as *Exhibit A*, and incorporated in this Certificate by reference.

**9. Non-Litigation.** There is no controversy, action, suit, proceeding, or to the best of our knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the best of our knowledge, threatened against or affecting the Issuer, its officers or its property, or, to the best of our knowledge, any basis therefor questioning, disputing or affecting in any way: (a) the legal organization of the Issuer or its boundaries; (b) the right or title of any of its officers to their respective offices; (c) the legality of any official act shown to have been done in the Transcript; (d) the constitutionality or validity of the indebtedness represented by the Bonds shown to be authorized in the Transcript; (e) the validity of the Bonds, or any of the proceedings had in relation to the authorization, issuance or sale thereof; (f) the levy and collection of an ad valorem property tax to pay the principal of and interest on the Bonds; or (g) the federal or state tax-exempt status of the interest on the Bonds; wherein any unfavorable decision, ruling or finding would adversely affect the Issuer, the transactions contemplated by the Bond Purchase Agreement, the Bond Resolution or the Official Statement, or the validity or enforceability of the Bonds or the Bond Purchase Agreement, which are not disclosed in the final Official Statement.

**10. Representations and Warranties Required by the Bond Purchase Agreement.** The Issuer has duly performed all of its obligations required to be performed at or prior to the date of this Closing Certificate by the Bond Purchase Agreement and each of the Issuer's representations and warranties contained in the Bond Purchase Agreement are true as of the Issue Date.

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WITNESS our hands and the seal of the Issuer.

Signature

Official Title

(SEAL)

Chairman

Clerk

**EXHIBIT A**

**CONTINUING DISCLOSURE INSTRUCTIONS**

**\$2,450,000\***  
**DOUGLAS COUNTY, KANSAS**  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**  
**DATED OCTOBER 1, 2009**

**THESE CONTINUING DISCLOSURE INSTRUCTIONS** (the “Disclosure Instructions”) are executed and delivered by the Issuer in connection with the issuance of the above-described bonds (the “Bonds”) which are being issued simultaneously herewith as of October 1, 2009, pursuant to the Bond Resolution, in which the Issuer covenants to enter into this undertaking to provide certain financial and other information with respect to the Bonds in order to assist the Participating Underwriter in complying with the provisions of the SEC Rule. The Issuer is the only “obligated person” with responsibility for continuing disclosure with respect to the Bonds.

**Section 1. Definitions.** In addition to the definitions set forth in the Bond Resolution, which apply to any capitalized term used in these Disclosure Instructions, unless otherwise defined herein, the following capitalized terms shall have the following meanings:

“**Annual Report**” means any Annual Report provided by the Issuer pursuant to, and as described in, **Section 2** of these Disclosure Instructions.

“**Beneficial Owner**” means any registered owner of any Bonds and any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“**Bond Resolution**” means the resolution of the governing body of the Issuer authorizing the issuance of the Bonds.

“**CAFR**” means the Issuer's Comprehensive Annual Financial Report.

“**Designated Agent**” means Gilmore & Bell, P.C. or one or more other entities designated in writing by the Issuer to serve as a designated agent of the Issuer for purposes of these Disclosure Instructions.

“**Dissemination Agent**” means any entity designated in writing by the Issuer to serve as dissemination agent pursuant to these Disclosure Instructions and which has filed with the Issuer a written acceptance of such designation substantially in the form attached hereto as **Exhibit B**.

“**EMMA**” means the Electronic Municipal Market Access system for municipal securities disclosures ([www.emma.msrb.org](http://www.emma.msrb.org)).

**“Financial Information”** means the financial information of the Issuer described in *Section 2(a)(1)* hereof.

**“Fiscal Year”** means the one year period ending December 31, or such other date or dates as may be adopted by the Issuer for its general accounting purposes.

**“GAAP”** means generally accepted accounting principles, as applied to governmental units, as in effect at the time of the preparation of the Financial Information.

**“Issuer”** means Douglas County, Kansas, and any successors or assigns.

**“Material Events”** means any of the events listed in *Section 3(a)* hereof.

**“MSRB”** means the Municipal Securities Rulemaking Board.

**“Official Statement”** means the Issuer's Official Statement for the Bonds.

**“Operating Data”** means the operating data of the Issuer described in *Section 2(a)(2)* hereof.

**“Participating Underwriter”** means any of the original underwriters of the Bonds required to comply with the SEC Rule in connection with offering of the Bonds.

**“Repository”** means the MSRB via EMMA.

**“SEC”** means the Securities and Exchange Commission of the United States.

**“SEC Rule”** means Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

## **Section 2. Provision of Annual Reports.**

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the Issuer's Fiscal Year, commencing with the Fiscal Year ended in 2009, provide to the Repository, the Issuer's CAFR, which will contain the Financial Information and Operating Data (the “Annual Report”), as follows:

(1) **Financial Information.** The financial statements of the Issuer for such prior Fiscal Year, accompanied by an audit report resulting from an audit conducted by an Independent Accountant in conformity with generally accepted auditing standards. Such financial statements will be prepared in accordance with GAAP all governmental funds, expendable trust and agency funds. A more detailed explanation of the accounting basis is contained in *Appendix B* to the Official Statement. If such audit report is not available by the time the Annual Report is required to be filed pursuant to this Section, the Annual Report shall contain unaudited financial statements and the audit report and accompanying financial statements shall be filed in the same manner as the Annual Report promptly after they become available. In the event that GAAP has changed since the submission of the last CAFR, and if such changes are material to the Issuer, a narrative explanation describing the impact of such changes shall be contained in the CAFR. The method of preparation and basis of accounting of the Financial Information may not be changed to a basis less comprehensive than contained in the Official Statement, unless the Issuer provides notice of such change in the same manner as for a Material Event under *Section 3(b)* hereof.

(2) **Operating Data.** Updates as of the end of the Fiscal Year of substantially all of the information and data contained in those sections of *Appendix A* to the Official Statement entitled “Economic Information,” “Financial Information” and “Debt Structure.”

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Issuer is an “obligated person” (as defined by the SEC Rule), which have been filed with the Repository, the MSRB or the SEC. If the document included by reference is a final official statement, it must be available from the MSRB via EMMA. The Issuer shall clearly identify each such other document so included by reference. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in this Section; *provided* that the audit report and accompanying financial statements may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Issuer's Fiscal Year changes, it shall give notice of such change in the same manner as for a Material Event under *Section 3(b)*.

(b) If no Dissemination Agent has been appointed, the Issuer shall file the Annual Report as specified by *Section 2(a)* hereof; or if the Annual Report is not filed within the time period specified in *Section 2(a)* hereof, the Issuer shall send a notice to each Repository in substantially the form attached as *Exhibit A*.

### **Section 3. Reporting of Material Events.**

(a) Pursuant to the provisions of this Section, the Issuer shall give, or cause the Dissemination Agent, if any, to give, notice of the occurrence of any of the following events with respect to the Bonds, if the Issuer deems such events to be material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- (7) modifications to rights of bondowners;
- (8) optional, contingent or unscheduled bond calls;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Bonds; or
- (11) rating changes.

(b) Such notice shall be given by promptly filing a notice of such occurrence with the Repository. Notwithstanding the foregoing, notice of Material Events described in *subsections (a)(8) and (9)* need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Owners of affected Bonds pursuant to the Bond Resolution.

#### **Section 4. Dissemination Agent.**

(a) **General.** The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under these Disclosure Instructions, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

(b) **Annual Reports.** If a Dissemination Agent is appointed, not later than 15 Business Days prior to the date specified in *Section 2(a)* for providing the Annual Report to the Repository, the Issuer shall provide the Annual Report to the Dissemination Agent or the Repository. The Dissemination Agent shall file a report with the Issuer certifying that the Annual Report has been provided pursuant to these Disclosure Instructions, stating the date it was provided, or that the Issuer has certified to the Dissemination Agent that the Issuer has provided the Annual Report to the Repository. If the Dissemination Agent has not received an Annual Report or has not received a written notice from the Issuer that it has provided an Annual Report to the Repository, by the date required in *Section 2(a)*, the Dissemination Agent shall send a notice to the Repository in substantially the form attached as *Exhibit A*.

#### (c) **Material Event Notices.**

(1) The Dissemination Agent shall, promptly after obtaining actual knowledge of the occurrence of any event that it believes may constitute a Material Event, contact the chief financial officer of the Issuer or his or her designee, or such other person as the Issuer shall designate in writing to the Dissemination Agent from time to time, inform such person of the event, and request that the Issuer promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to *Section 4(c)(3)*.

(2) The Issuer will promptly respond in writing to any such request. Whenever the Issuer obtains knowledge of the occurrence of a Material Event, because of a notice from the Dissemination Agent pursuant to this *subsection (c)* or otherwise, the Issuer shall promptly determine if such event would be material under applicable federal securities law. If the Issuer has determined that knowledge of the occurrence of a Material Event would be material under applicable federal securities law, the Issuer shall promptly so notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to *Section 4(c)(3)*. If the Issuer has determined that knowledge of a Material Event would not be material under federal securities law, the Issuer shall promptly so notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent not to report the occurrence pursuant to *Section 4(c)(3)*.

(3) If the Dissemination Agent has been given written instructions by the Issuer to report the occurrence of a Material Event, the Dissemination Agent shall promptly file a notice of such occurrence with the Repository, with copies to the Issuer. Notwithstanding the foregoing, notice of Material Events described in *Sections 3(a)(8) and (9)* need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Owners of affected Bonds pursuant to the Bond Resolution.

(d) **Duties, Immunities and Liabilities of Dissemination Agent.** The Dissemination Agent shall have only such duties as are specifically set forth in these Disclosure Instructions, and the Issuer agrees

to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to these Disclosure Instructions.

(e) **Other Designated Agents.** The Issuer may, from time to time, appoint or designate a Designated Agent to submit Annual Reports, Material Event notices, and other notices or reports pursuant to these Disclosure Instructions. The Issuer hereby appoints the Dissemination Agent and the Designated Agent(s) solely for the purpose of submitting Issuer-approved Annual Reports, Material Event notices, and other notices or reports pursuant to these Disclosure Instructions. The Issuer may revoke this designation at any time upon written notice to the Designated Agent.

**Section 5. Termination of Reporting Obligation.** The Issuer's obligations under these Disclosure Instructions shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the Issuer's obligations hereunder are assumed in full by some other entity as permitted in the Bond Resolution, such person shall be responsible for compliance with under these Disclosure Instructions in the same manner as if it were the Issuer, and the Issuer shall have no further responsibility hereunder. If such termination or substitution occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination or substitution in the same manner as for a Material Event under **Section 3(b)**.

**Section 6. Amendment; Waiver.** Notwithstanding any other provision of these Disclosure Instructions, the Issuer and the Dissemination Agent, if any, may amend of these Disclosure Instructions (and the Dissemination Agent shall not unreasonably refuse to execute any amendment so requested by the Issuer) and any provision of these Disclosure Instructions may be waived, provided that: (a) Bond Counsel or other counsel experienced in federal securities law matters provides the Issuer and the Dissemination Agent, if any, with its opinion that the undertaking of the Issuer contained herein, as so amended or after giving effect to such waiver, is in compliance with the SEC Rule and all current amendments thereto and interpretations thereof that are applicable to these Disclosure Instructions; (b) if the amendment or waiver relates to **Sections 2(a)** or **3(a)**, it may only be made in connection with a change in circumstances that arises from a change in law or legal requirements, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted; and (c) the amendment or waiver is either (1) approved by the Owners of the Bonds in the same manner as provided in the Bond Resolution with consent of the Owners, or (2) does not in the opinion of Bond Counsel materially impair the interests of the Owners or Beneficial Owners of the Bonds.

If there is an amendment or waiver of a provision of these Disclosure Instructions, the Issuer shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of Financial Information or Operating Data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements: (a) notice of such change shall be given in the same manner as for a Material Event under **Section 3(b)**, and (b) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 7. Additional Information.** Nothing in these Disclosure Instructions shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in these Disclosure Instructions or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is required by these Disclosure Instructions. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is specifically required by these Disclosure Instructions, the Issuer shall have no obligation under these Disclosure Instructions to update such information or include it in any future Annual Report or notice of occurrence of a Material Event.

**Section 8. Noncompliance.** In the event of a failure of the Issuer or the Dissemination Agent, if any, to comply with any provision of these Disclosure Instructions, the Participating Underwriter or any Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer or the Dissemination Agent, if any, as the case may be, to comply with its obligations under these Disclosure Instructions. Noncompliance with the provisions of these Disclosure Instructions shall not be deemed an Event of Default under the Bond Resolution, and the sole remedy under these Disclosure Instructions in the event of any failure of the Issuer or the Dissemination Agent, if any, to comply with these Disclosure Instructions shall be an action to compel performance.

**Section 9. Notices.** Any notices or communications to or among any of the parties referenced in these Disclosure Instructions may be given as follows:

(a) To the Issuer at:

Douglas County Courthouse  
1100 Massachusetts  
Lawrence, Kansas 66044  
Attention: Clerk

(b) To the Participating Underwriter at:

Piper Jaffray & Co.  
11150 Overbrook, Suite 310  
Leawood, Kansas 66211  
Attention: Manager, Municipal Bond Department

or such other address as is furnished in writing to the other parties referenced herein.

(c) To the Dissemination Agent at the address set forth on **Exhibit B** attached hereto.

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

**Section 10. Electronic Transactions.** Actions taken hereunder and the arrangement described herein may be conducted and related documents may be stored by electronic means.

**Section 11. Beneficiaries.** These Disclosure Instructions shall inure solely to the benefit of the Issuer, the Dissemination Agent, if any, the Participating Underwriter and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.



**Section 12. Severability.** If any provision in these Disclosure Instructions, the Bond Resolution or the Bonds relating hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 13. Governing Law.** These Disclosure Instructions shall be governed by and construed in accordance with the laws of the State of Kansas.

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**DOUGLAS COUNTY, KANSAS**

(SEAL)

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Chairman

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Clerk

**EXHIBIT A**

**NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT**

**Name of Issuer:** Douglas County, Kansas

**Name of Bond Issue:** \$2,450,000\* General Obligation Refunding and Improvement Bonds, Series 2009-A, dated as of October 1, 2009

**Name of Obligated Person:** Douglas County, Kansas

**Date of Issuance:** October 1, 2009

**NOTICE IS GIVEN** that Douglas County, Kansas (the "Issuer") has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Instructions dated as of October 1, 2009. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

**Dated:** \_\_\_\_\_

**DOUGLAS COUNTY, KANSAS**

By \_\_\_\_\_

By \_\_\_\_\_, as  
Dissemination Agent

cc: Douglas County, Kansas

**EXHIBIT B**

**ACCEPTANCE OF DISSEMINATION AGENT**

**Name of Issuer:** Douglas County, Kansas

**Name of Bond Issue:** \$2,450,000\* General Obligation Refunding and Improvement Bonds,  
Series 2009-A, dated as of October 1, 2009

**Dissemination Agent:**

**Notice Address of Dissemination Agent:**

\_\_\_\_\_, having been duly appointed by Douglas County, Kansas to act in  
the capacity of Dissemination Agent pursuant to the Continuing Disclosure Instructions to which this  
acceptance is attached, accepts such duties and responsibilities set forth therein.

**Dated:** \_\_\_\_\_

Gilmore & Bell, P.C.  
09/10/2009

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**FEDERAL TAX CERTIFICATE**

**Dated as of October 1, 2009**

**OF**

**DOUGLAS COUNTY, KANSAS**

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**\$2,450,000\***  
**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**  
**SERIES 2009-A**

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**FEDERAL TAX CERTIFICATE**

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- A. IRS FORM 8038-G  
Evidence of filing
- B. RECEIPT FOR PURCHASE PRICE
- C. RECEIPT AND REPRESENTATION
- D. DESCRIPTION OF PROPERTY COMPRISING THE FINANCED IMPROVEMENTS

\* \* \*

## FEDERAL TAX CERTIFICATE

**THIS FEDERAL TAX CERTIFICATE** (the "Tax Certificate") is executed as of October 1, 2009 (the "Issue Date") by Douglas County, Kansas (the "Issuer").

### RECITALS

1. This Tax Certificate is being executed and delivered in connection with the issuance by the Issuer of \$2,450,000\* principal amount of General Obligation Refunding and Improvement Bonds, Series 2009-A (the "Bonds"), under Resolution No. 09-[ ] of the Issuer duly adopted by the governing body of the Issuer on September 16, 2009 (the "Bond Resolution"), for the purposes described in this Tax Certificate and in the Bond Resolution.

2. The Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the "Regulations"), impose certain limitations on the uses and Investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which the interest on the Bonds will be excluded from gross income for federal income tax purposes.

3. The Issuer is executing this Tax Certificate in order to set forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the property financed or refinanced with those proceeds and the Investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Certificate, the Issuer represents, covenants and agrees as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions of Words and Terms.** Except as otherwise provided in this Tax Certificate or unless the context otherwise requires, capitalized words and terms used in this Tax Certificate have the same meanings as set forth in the Bond Resolution, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Certificate have the following meanings:

**"Bona Fide Debt Service Fund"** means a fund, which may include Bond proceeds, that: (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and (b) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Bond Year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

**"Bond" or "Bonds"** means any Bond or Bonds described in the recitals, authenticated and delivered under the Bond Resolution.



**“Bond Counsel”** means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Issuer.

**“Bond Resolution”** means Resolution No. 09-[ ] as originally executed by the Issuer as amended and supplemented in accordance with the provisions of the Bond Resolution.

**“Bond Year”** means each one-year period (or shorter period for the first Bond Year) ending September 1 or another one-year period selected by the Issuer.

**“City”** means the City of Lawrence, Kansas.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Financed Improvements”** means any of the property financed or refinanced with the proceeds of the Bonds and the Original Obligations as described on *Exhibit D*.

**“Gross Proceeds”** means (a) sale proceeds (any amounts actually or constructively received by the Issuer from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds or other Investment proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, and (e) any other replacement proceeds. Specifically, Gross Proceeds includes (but is not limited) to amounts held in the following funds and accounts:

- (1) Improvement Fund.
- (2) Escrow Fund.
- (3) Debt Service Account.
- (4) Costs of Issuance Account.

**“Guaranteed Investment Contract”** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

**“Investment”** means any security, obligation, annuity contract or other Investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds, including the Investment element of an interest rate cap agreement. Such term does not include a tax-exempt bond, except for “specified private activity bonds” as such term is defined in Code § 57(a)(5)(C), but does include the Investment element of most interest rate caps.

**“IRS”** means the United States Internal Revenue Service.

**“Issue Date”** means October 1, 2009.

**“Issuer”** means Douglas County, Kansas, and its successors and assigns, or any body, agency or instrumentality of the State succeeding to or charged with the powers, duties and functions of the Issuer.

**“Management Agreement”** means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Improvements, such as a contract to manage the entire Financed

Improvements or a portion of the Financed Improvements. However, contracts for services that are solely incidental to the primary governmental function of the Financed Improvements (for example, contracts for janitorial, office equipment repair, billing, or similar services) are not treated as Management Agreements.

**“Measurement Period”** means, with respect to each item of property financed as part of the Financed Improvements with proceeds of the New Money Portion, the period beginning on the later of (i) the Issue Date or (ii) the date the property is placed on service and ending on or the earlier of (A) the final maturity date of the Bonds or (B) the expected economic useful life of the property. With respect to each item of property financed as part of the Financed Improvements with proceeds of the Original Obligations, the period beginning on the later of (i) the issue date of the Original Obligations or (ii) the date the property was or will be placed on service, and ending on the earlier of (A) the final maturity date of the Bonds or (B) the expected economic useful life of the property.

**“Minor Portion”** means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

**“Net Proceeds”** means the sale proceeds of the Bonds (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

**“New Money Portion”** means the portion of the Bonds described in *Section 3.06*.

**“Non-Qualified Use”** means use of Bond proceeds or the Financed Improvements in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Improvements are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Improvements, will constitute use under Regulations § 1.141-3.

**“Non-Qualified User”** means any person or entity other than a Qualified User.

**“Opinion of Bond Counsel”** means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**“Original Obligations”** means the Issuer’s Series 2006-A Bonds, which was the initial issue of tax-exempt governmental obligations that financed or refinanced a portion of the Financed Improvements.

**“Output Contract”** is defined in Regulations § 1.141-7 and generally includes any contract with a Non-Qualified User that provides for the purchase of the output of Financed Improvements.

**“Purchaser”** means Piper Jaffray & Co., Leawood, Kansas, the original purchaser of the Bonds, and any successor and assigns.

**“Qualified Use Agreement”** means any of the following:

(a) A lease or other short-term use by members of the general public who occupy the Financed Improvements on a short-term basis in the ordinary course of the Issuer’s governmental purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Improvements for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Improvements under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Improvements under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Improvements for a period up to 100 days in length pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Improvements was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Improvements under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Improvements for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Financed Improvements was not constructed for a principal purpose of providing the property for use by that person.

**“Qualified User”** means a state, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

**“Refunded Obligations”** means the Series 2006-A Bonds maturing in the year 2011 in the aggregate principal amount of \$25,000.

**“Refunding Portion”** means the sale proceeds of the Bonds identified in *Section 3.06* together with the remaining Gross Proceeds of the Bonds properly allocable to the refunding of the Refunded Obligations.

**“Regulations”** means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

**“Series 2006-A Bonds”** means the Issuer's General Obligation Bonds, Series 2006-A, dated August 15, 2006.

**“State”** means the State of Kansas.

**“Tax Certificate”** means this Federal Tax Certificate as it may from time to time be amended and supplemented in accordance with its terms.

**“Transcript”** means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

**“Verification Report”** means the verification report of Robert Thomas CPA, LLC, Certified Public Accountants, relating to the Bonds and the Refunded Obligations.

**“Yield”** means Yield on the Bonds, computed under Regulations § 1.148-4, and Yield on an Investment, computed under Regulations § 1.148-5.

## ARTICLE II

### GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.01 Representations and Covenants of the Issuer.** The Issuer represents and covenants as follows:

(a) **Organization and Authority.** The Issuer (1) is a political subdivision, duly created, organized and existing under the Constitution and laws of the State, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Bond Resolution, to enter into, execute and deliver the Bond Resolution, the Bonds, and this Tax Certificate and to carry out its obligations under this Tax Certificate and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Bond Resolution, the Bonds, and this Tax Certificate, acting by and through its duly authorized officials.

(b) **Tax-Exempt Status of Bonds—General Representation and Covenants.** In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Issuer (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Bond proceeds, other money held under the Bond Resolution, or other funds of the Issuer, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Improvements in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

(c) **Governmental Obligations—Use of Proceeds.** Throughout the Measurement Period all of the Financed Improvements are expected to be owned by the Issuer or another Governmental Person. Throughout the Measurement Period no portion of the Financed Improvements are expected to be used in a Non-Qualified Use. Throughout the Measurement Period the Issuer will not permit any Non-Qualified Use of the Financed Improvements without first obtaining an Opinion of Bond Counsel.

(d) **Governmental Obligations—Private Security or Payment.** As of the Issue Date the Issuer expects that none of the principal and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(1) secured by (i) any interest in property used or to be used for a private business use, or (ii) any interest in payments in respect of such property; or

(2) derived from payments (whether or not such payments are made to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use.

For purposes of the forgoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The Issuer will not permit any private security or payment with respect to the Bonds without first obtaining an Opinion of Bond Counsel.

(e) **No Private Loan, Special Assessments.** Not more than 5% of the proceeds of the Bonds will be loaned directly or indirectly to any person or entity that is not a state or local governmental unit. The payment of principal and interest on the Bonds will be funded, and the payment of principal of and interest on the Refunded Obligations was funded, in whole or in part from mandatory special assessments against the property benefiting from the Financed Improvements. The use of the proceeds of the Bonds and/or the Original Obligations is not treated as a loan of such proceeds because (1) the special assessment is an enforced contribution for the purpose of raising revenue for specific capital improvements; (2) the assessment does not include any fee for services; (3) the assessment and collection of the tax is not dependent upon, and does not vary, depending on whether the taxpayer engaged, or the property is used, in a trade or business; and (4) the tax is imposed to pay for an essential governmental function.

(f) **Management Agreements.** As of the Issue Date the Issuer has no Management Agreements with Non-Qualified Users. During the Measurement Period the Issuer will not enter into or renew any Management Agreement with any Non-Qualified User without first obtaining an Opinion of Bond Counsel.

(g) **Leases.** As of the Issue Date the Issuer has not entered into any leases of any portion of the Financed Improvements other than Qualified Use Agreements. During the Measurement Period the Issuer will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first obtaining an Opinion of Bond Counsel.

(h) **Output Contracts.** As of the Issue Date the Issuer does not have any Output Contract. During the Measurement Period the Issuer will not enter into any Output Contract without first obtaining an Opinion of Bond Counsel.

(i) **Limit on Maturity of Bonds.** A list of the assets included in the Financed Improvements and a computation of the "average reasonably expected economic life" is attached to this Tax Certificate as **Exhibit D**. Based on this computation, the "average maturity" of the Bonds of [ ] years, as computed by Bond Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Improvements (20.01 years). The "average reasonably expected economic life" of the Financed Improvements, as computed by Bond Counsel, was determined as follows: the average economic life of the Financed Improvements as of the issue date of the Original Obligations (20 years) was first multiplied by 120%, then reduced by the number of years elapsed from the issue date of the Original Obligations to the Issue Date (3.09 years), resulting in a value of 20.91 years, which was then factored into the average economic life of the Financed Improvements financed from the New Money Portion (20 years), resulting in an aggregate average economic life of 20.01 years.

(j) **Reimbursement of Expenditures.** The governing body of the Issuer adopted resolutions declaring the intent of the Issuer to finance the New Money Portion of the Financed Improvements with tax-exempt bonds and to reimburse the Issuer for expenditures made for the Financed Improvements prior to the issuance of such bonds. The resolutions are contained in Tabs 1 to 3, inclusive, of the Transcript. No portion of the Net Proceeds of the New Money Portion will be used to reimburse an expenditure paid by the Issuer more than 60 days prior to the date the respective resolution was adopted. The Issuer will evidence each allocation of the proceeds of the New Money Portion to an expenditure in writing. No reimbursement allocation will be made for an expenditure made more than three years prior to the date of

the reimbursement allocation. In addition no reimbursement allocation will be made more than three years following the later of (1) the date of the expenditure or (2) the date the Financed Improvements (financed with the New Money Portion) were placed in service.

(k) **Registered Bonds.** The Bond Resolution requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(l) **Bonds Not Federally Guaranteed.** The Issuer will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).

(m) **IRS Form 8038-G.** Attached as *Exhibit A* is a copy of IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) that is being executed by a representative of the Issuer and which is being filed with the Internal Revenue Service in connection with the issuance of the Bonds as required by Code § 149(e). Bond Counsel prepared Form 8038-G in connection with the issuance of the Bonds. The Issuer knows of no inaccuracies in the Form 8038-G prepared by Bond Counsel. The Issuer is the sole Qualified User of the proceeds of the Bonds listed on Lines 11-18 of Form 8038-G.

(n) **Hedge Bonds.** At least 85% of the net sale proceeds of the New Money Portion will be used to carry out the governmental purpose of the New Money Portion within three years after the Issue Date, and not more than 50% of the proceeds of the New Money Portion will be invested in Investments having a substantially guaranteed Yield for four years or more. At least 85% of the net sale proceeds of the Original Obligations were used to carry out the governmental purpose of the Original Obligations within three years after the issue date of the Original Obligations, and not more than 50% of the proceeds of the Original Obligations were invested in Investments having a substantially guaranteed Yield for four years or more.

(o) **Compliance with Future Tax Requirements.** The Issuer understands that the Code and the Regulations may impose new or different restrictions and requirements on the Issuer in the future. The Issuer will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(p) **Single Issue; No Other Issues.** The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the Issuer (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).

(q) **Interest Rate Swap.** As of the Issue Date the Issuer has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The Issuer will not enter into any such arrangement in the future without obtaining an Opinion of Bond Counsel.

(r) **Guaranteed Investment Contract.** As of the Issue Date of the Bonds, the Issuer does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The Issuer will be responsible for complying with *Section 4.02(d)* hereof if it decides to enter into a Guaranteed Investment Contract at a later date.

(s) **Bank Qualified Tax-Exempt Obligation.** The Issuer designates the Bonds as “qualified tax-exempt obligations” under Code § 265(b)(3), and with respect to said designation certifies as follows:

(1) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds”) which will be issued by or on behalf of the Issuer (and all subordinate entities of the Issuer) during calendar year that the Bonds are issued is not reasonably expected to exceed \$30,000,000; and

(2) the Issuer (including all subordinate entities of this Issuer) will not issue an aggregate principal amount of obligations designated by the Issuer to be “qualified tax-exempt obligations” during calendar year that the Bonds are issued, including the Bonds, in excess of \$30,000,000, without first obtaining an Opinion of Bond Counsel that the designation of the Bonds as “qualified tax-exempt obligations” will not be adversely affected.

**Section 2.02 Survival of Representations and Covenants.** All representations, covenants and certifications contained in this Tax Certificate or in any certificate or other instrument delivered by the Issuer under this Tax Certificate, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

### ARTICLE III

#### ARBITRAGE CERTIFICATIONS AND COVENANTS

**Section 3.01 General.** The purpose of this Article is to certify, under Regulations § 1.148-2(b), the Issuer’s expectations as to the sources, uses and Investment of Bond proceeds and other money, in order to support the Issuer’s conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Certificate on behalf of the Issuer is an officer of the Issuer responsible for issuing the Bonds.

**Section 3.02 Reasonable Expectations.** The facts, estimates and expectations set forth in this Article are based upon and in reliance upon the Issuer’s understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Issuer’s knowledge, the facts and estimates set forth in this Tax Certificate are accurate, and the expectations of the Issuer set forth in this Tax Certificate are reasonable. The Issuer has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Certificate are unreasonable or inaccurate or may not be relied upon.

**Section 3.03 Purpose of Financing.** The Bonds are being issued for the purpose of providing funds to: (a) pay a portion of the costs of certain sewer improvements, as described in the Bond Resolution, which unless otherwise noted herein, shall be referred to as the Financed Improvements; and (b) pay the costs of refunding the Refunded Obligations, as described in the Bond Resolution, unless otherwise noted herein. The purpose of the refunding is to restructure the debt payments on the Refunded Obligations and to provide an orderly plan of finance for the Issuer.

**Section 3.04 Funds and Accounts.** The following funds and accounts have been established under the Bond Resolution:

- (a) Improvement Fund; and
- (b) Debt Service Account.

In addition to the Funds and Accounts described above, the Escrow Agreement establishes the following Funds and Accounts to be held and administered by the Escrow Agent in accordance with the provisions of the Escrow Agreement:

- (a) Escrow Fund; and
- (b) Costs of Issuance Account.

**Section 3.05 Amount and Use of Bond Proceeds and Other Money.**

(a) **Amount of Bond Proceeds.** The total proceeds to be received by the Issuer from the sale of the Bonds are as evidenced in **Exhibit B** attached to this Tax Certificate.

(b) **Use of Bond Proceeds.** The Bond proceeds are expected to be allocated to expenditures as follows:

(1) [All excess proceeds (\$\_\_\_\_\_) will be deposited in the Debt Service Account and allocated to pay interest on the Bonds.

(2) [The sum of \$[\_\_\_\_\_] will be deposited in the Costs of Issuance Account and allocated to pay the Costs of Issuance of the Bonds.

([3]) The sum of \$[\_\_\_\_\_] will be transferred to the Escrow Agent for deposit in the Escrow Fund to be applied as provided in the Escrow Agreement to accomplish a defeasance of the Refunded Obligations, and to pay the principal of and interest on the Refunded Obligations on and prior to the maturity date of the Refunded Obligations. Any amount not so used on the redemption date will be transferred to the Debt Service Account.

([4]) The remaining Bond proceeds in the amount of \$[\_\_\_\_\_] will be deposited in the Improvement Fund. Said amount, together with funds provided by the Issuer in accordance with **section (c)** hereof, will be used to pay costs of the Financed Improvements.

(c) **Use of Other Moneys.** In addition to proceeds of the Bonds, the Issuer will allocate available moneys representing available funds of the Issuer received from the City in an amount of \$[\_\_\_\_\_] to pay a portion of the costs of the Financed Improvements.

**Section 3.06 Multipurpose Issue.** The Issuer is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i). Under Regulations § 1.148-9(h), the Bonds will be treated as two separate issues (a New Money Portion and a Refunding Portion for purposes of applying certain of the arbitrage restrictions under Code § 148. The sale proceeds of the Bonds allocable to the Refunding Portion is \$[\_\_\_\_\_]. The sale proceeds of the Bonds allocable to the New Money Portion is \$[\_\_\_\_\_].

**Section 3.07 Advance Refunding; Refunding Portion.**

(a) **Escrow Fund.** The remaining debt service requirements on the Refunded Obligations are set forth in the Verification Report. Money in the Escrow Fund aggregating \$[\_\_\_\_\_] will be used to purchase United States Treasury Securities (the "Escrowed Securities") as described in the Verification Report, and \$[\_\_\_\_\_] will be held uninvested as the initial cash balance in the Escrow Fund. The



maturing principal of and interest on the Escrowed Securities and the initial cash deposit in the Escrow Fund will be expended to pay the principal of and interest on the Refunded Obligations. Upon maturity of the Refunded Obligations, any excess cash remaining in the Escrow Fund not needed to pay debt service on the Refunded Obligations shall be transferred to the Issuer to be applied by the Issuer in accordance with law.

(b) **No Current Refunding.** No proceeds of the Refunding Portion will be used to pay principal or interest on any other debt obligation other than as described in *section (a)* above.

(c) **Limit on Number of Advance Refunding Issues.** The issuance of the Refunding Portion constitutes the first advance refunding of the Refunded Obligations.

(d) **Transferred Proceeds.** There are no unspent proceeds (sale proceeds, Investment proceeds or transferred proceeds) of the Refunded Obligations. Therefore there are no transferred proceeds of the Bonds.

(e) **Yield On The Escrowed Securities.** The Yield on the Escrowed Securities ([ ]%) as shown in the Verification Report) does not exceed the Yield on the Bonds (see section hereof entitled "Offering Prices and Yield on Bonds").

(f) **Excess Gross Proceeds.** There will be no excess gross proceeds of the Refunding Portion.

**Section 3.08 Completion of Financed Improvements; New Money Portion.** The Issuer has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the net sale proceeds of the New Money Portion on the Financed Improvements. The completion of the Financed Improvements and the allocation of the net sale proceeds of the New Money Portion to expenditures will proceed with due diligence. At least 85% of the net sale proceeds of the New Money Portion will be allocated to expenditures on the Financed Improvements within three years after the Issue Date.

**Section 3.09 Sinking Funds.** The Issuer is required to make periodic payments in amounts sufficient to pay the principal of and interest on the Bonds. Such payments will be deposited into the Debt Service Account. Except for the Debt Service Account, no sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds has been established or is expected to be established. The Debt Service Account is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Issuer expects that the Debt Service Account will qualify as a Bona Fide Debt Service Fund.

**Section 3.10 Reserve, Replacement and Pledged Funds.** No reserve fund has been or will be established for the Bonds. None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Improvements, and that instead has been or will be used to acquire higher Yielding Investments. Except for the Debt Service Account, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer encounters financial difficulty.

**Section 3.11 Purpose Investment Yield.** The proceeds of the Bonds will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

### **Section 3.12 Offering Prices and Yield on Bonds.**

(a) **Offering Price.** On *Exhibit C*, the Purchaser has certified that (1) all of the Bonds have been the subject of an initial offering to the public at prices no higher than those shown on such *Exhibit C*, plus accrued interest (the "Offering Prices"); and (2) the Purchaser expects that at least 10% of the Bonds of each maturity will be sold to the public at initial offering prices no higher than said Offering Prices. The aggregate initial offering price of the Bonds is \$[\_\_\_\_], plus accrued interest.

(b) **Bond Yield.** Based on the Offering Prices, the yield on the Bonds is [\_\_\_\_]% as shown in the Verification Report. The Issuer has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

[The Bonds maturing on September 1, 20[\_\_\_\_] are subject to the special rules of Regulations § 1.148-4(b)(3) for certain Bonds that are subject to optional redemption and issued at an original issue premium that exceeds the stated redemption price at maturity by more than ¼% multiplied by the product of the stated redemption price at maturity and the number of complete years to the first optional redemption date for such Bond. Such maturity was sold to the public at an original issue premium in excess of the formula stated above. Therefore, in computing yield on the Bonds, such maturity was treated as redeemed at the stated redemption price on the optional redemption date (September 1, 2019) that produces the lowest yield for the Bonds.]

### **Section 3.13 Miscellaneous Arbitrage Matters.**

(a) **No Abusive Arbitrage Device.** The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) **No Over-Issuance.** The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the Issuer, do not exceed the cost of the governmental purpose of the Bonds as described above.

**Section 3.14 Conclusion.** On the basis of the facts, estimates and circumstances set forth in this Tax Certificate, the Issuer does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148 and the Regulations.

## **ARTICLE IV**

### **ARBITRAGE INVESTMENT INSTRUCTIONS**

**Section 4.01 Temporary Periods/Yield Restriction.** Except as described below, Gross Proceeds must not be invested at a Yield greater than the Yield on the Bonds:

(a) **Improvement Fund.** Bond proceeds deposited in the Improvement Fund and Investment earnings on such proceeds may be invested without Yield restriction for three years after the Issue Date. If any unspent proceeds of the New Money Portion remain in the Improvement Fund after three years, such amounts may continue to be invested without Yield restriction so long as the Issuer pays to the IRS

all Yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate requirements of Code § 148.

(b) **Escrow Fund.** Bond proceeds deposited in the Escrow Fund are being invested at a Yield less than the Yield on the Bonds.

(c) **Cost of Issuance Account.** New Money Portion proceeds deposited in the Cost of Issuance Account and Investment earnings on such proceeds may be invested without Yield restriction for three years after the Issue Date. If any unspent proceeds of the New Money Portion remain in the Costs of Issuance Account after three years, such amounts may continue to be invested without Yield restriction so long as the Issuer pays to the IRS all Yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate requirements of Code § 148. Refunding Portion proceeds deposited in the Cost of Issuance Account and Investment earnings on such proceeds may be invested without Yield restriction for thirteen months after the Issue Date.

(d) **Debt Service Account.** To the extent that the Debt Service Account qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.

(e) **Minor Portion.** In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

#### **Section 4.02 Fair Market Value.**

(a) **General.** No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with § 1.148-5 of the Regulations.

(b) **Established Securities Market.** Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with § 1.148-5 of the Regulations.

(c) **Certificates of Deposit.** The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) **Guaranteed Investment Contracts.** The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) **Bona Fide Solicitation for Bids.** The Issuer makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the Issuer or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the Issuer’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) **Bids Received.** The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) *Winning Bid.* The winning bid is the highest Yielding bona fide bid (determined net of any broker's fees).

(4) *Fees Paid.* The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) *Records.* The Issuer retains the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Issuer, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments.* If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (e.g., as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

#### **Section 4.03 Bonds Exempt from the Rebate Requirement.**

(a) *The New Money Portion Qualifies as a Rebate-Exempt Small Issue.*

(1) The Issuer is a governmental unit under State law with general taxing powers;

(2) No Bond allocable to the New Money Portion is a "private activity bond" as defined in Code § 141;

(3) 95% or more of the net proceeds of the New Money Portion are to be used for local governmental activities of the Issuer; and

(4) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) to be issued by the Issuer during the current calendar year is not reasonably expected to exceed \$5,000,000. The Issuer understands that, for this purpose: (A) the Issuer and all entities which issue bonds on behalf of the Issuer are treated as one issuer; (B) all bonds issued by an entity subordinate to the Issuer are treated as issued by the Issuer; and (C) bonds issued by the Issuer to currently refund any other bond are not taken into account to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the Refunded Obligations.

(b) ***The Refunding Portion Qualifies as a Rebate-Exempt Small Issue.***

(1) The aggregate face amount of the Bonds does not exceed \$5,000,000;

(2) Each Refunded Obligation was issued as part of an issue that was exempt from arbitrage rebate under the small-issuer exception of Code § 148(f)(4)(D); and

(3) No Bond of the Refunding Portion has a maturity date later than 30 years after the issue date of the Original Obligations.

(c) ***Conclusion as to Small Issuer Exemption.*** Based on these certifications, Bond Counsel has advised the Issuer that the Bonds are exempt from the arbitrage rebate requirements of Code § 148(f), under the small-issuer exception set forth in Code § 148(f)(4)(D).

**Section 4.04 Filing Requirements.** The Issuer will file or cause to be filed with the Internal Revenue Service such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

**Section 5.01 Term of Tax Certificate.** This Tax Certificate will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that the provisions of *Article IV* of this Tax Certificate regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

**Section 5.02 Amendments.** This Tax Certificate may be amended from time to time by the parties to this Tax Certificate without notice to or the consent of any of the Owners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Certificate as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the Issuer receives this Opinion of Bond Counsel.

**Section 5.03 Opinion of Bond Counsel.** The Issuer may deviate from the provisions of this Tax Certificate if furnished with an Opinion of Bond Counsel addressed to each of them to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Issuer will comply with any further or different instructions

provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

**Section 5.04 Reliance.** In delivering this Tax Certificate the Issuer is making only those certifications, representations and agreements as are specifically attributed to them in this Tax Certificate. The Issuer is not aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Certificate and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Certificate understand that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

**Section 5.05 Severability.** If any provision in this Tax Certificate or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.06 Benefit of Certificate.** This Tax Certificate is binding upon the Issuer its respective successors and assigns, and inures to the benefit of the parties to this Tax Certificate and the owners of the Bonds. Nothing in this Tax Certificate or in the Bond Resolution or the Bonds, express or implied, gives to any person, other than the parties to this Tax Certificate, their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Certificate.

**Section 5.07 Default; Breach and Enforcement.** Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Certificate may be pursued by the Owners pursuant to the terms of the Bond Resolution or any other document which references this Tax Certificate and gives remedies for a misrepresentation or breach thereof.

**Section 5.08 Record Keeping Responsibilities.** The Issuer recognizes: (i) that investors purchase the Bonds with the expectation that interest on the Bonds is excluded from gross income for federal income tax purposes, (ii) that the tax-exempt status of interest on the Bonds depends on the accuracy of the representations and the satisfaction of the covenants contained herein by the Issuer, many of which relate to matters that will occur after the date the Bonds are issued, and (iii) that as part of its ongoing tax-exempt bond audit program the Internal Revenue Service requires that records be created and maintained with respect to the following matters:

- (a) Documentation evidencing expenditure of Bond proceeds and the Original Obligation proceeds in sufficient detail to determine the date of the expenditure, the asset acquired or the purpose of the expenditure.
- (b) Documentation evidencing use of the Financed Improvements by public and private persons (e.g., copies of Management Agreements).
- (c) Documentation evidencing all sources of payment or security for the Bonds.
- (d) Documentation pertaining to any Investment of Bond proceeds (including the purchase and sale of securities, SLGs subscriptions, actual Investment income received from the Investment of proceeds, guaranteed Investment contracts, and (if required) rebate calculations).

The Issuer has procedures in place or will establish procedures to create and retain these records or to cause these records to be created and retained. Unless otherwise specifically instructed in a written opinion of Bond Counsel or to the extent otherwise provided in this Tax Certificate, the Issuer shall retain and maintain these records until three years following the final maturity of (i) the Bonds or (ii) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

**Section 5.09 Execution in Counterparts.** This Tax Certificate may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

**Section 5.10 Governing Law.** This Tax Certificate will be governed by and construed in accordance with the laws of the State.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]



**THE UNDERSIGNED**, Chairman and Clerk of the Issuer, by their execution of this Tax Certificate hereby make the foregoing certifications, representations, and agreements contained in this Tax Certificate on behalf of the Issuer, as of the Issue Date of the Bonds.

**DOUGLAS COUNTY, KANSAS**

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Clerk

***EXHIBIT A***

IRS FORM 8038-G

(EVIDENCE OF FILING OF FORM 8038-G)

**EXHIBIT B**

**RECEIPT FOR PURCHASE PRICE**

**\$2,450,000\***

**DOUGLAS COUNTY, KANSAS**

**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**

**SERIES 2009-A**

**DATED OCTOBER 1, 2009**

The undersigned Clerk of Douglas County, Kansas, this day received from Piper Jaffray & Co., Leawood, Kansas, the original purchaser of the above-described bonds (the "Bonds"), the full purchase price of the Bonds, said purchase price received by the Issuer being calculated as follows:

|                                     |                 |
|-------------------------------------|-----------------|
| Principal Amount .....              | \$2,450,000*.00 |
| Less Underwriting Discount .....    | - _____         |
| [Plus Original Issue Premium .....  | _____ ]         |
| [Less Original Issue Discount ..... | - _____ ]       |
| <b>Total Purchase Price .....</b>   | <b>\$ _____</b> |

DATED: October 1, 2009.

**DOUGLAS COUNTY, KANSAS**

By \_\_\_\_\_  
Clerk

**EXHIBIT C**

**RECEIPT AND REPRESENTATION**

**\$2,450,000\***

**DOUGLAS COUNTY, KANSAS**

**GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS**

**SERIES 2009-A**

**DATED OCTOBER 1, 2009**

This certificate is being delivered by Piper Jaffray & Co., Leawood, Kansas (the "Purchaser") in connection with the issuance of the above-described bonds (the "Bonds"), being issued on the date of this Receipt by Douglas County, Kansas (the "Issuer"). Based on its records and information available to the undersigned which the undersigned believes to be correct, the Purchaser represents as follows:

1. **Authorized Representative.** The undersigned is the duly authorized representative of the Purchaser.
2. **Receipt for Bonds.** The Purchaser acknowledges receipt by the Depository Trust Company on behalf of the Purchaser on the Issue Date of the Bonds consisting of "book-entry-only" bonds in Authorized Denominations in a form acceptable to the Purchaser.
3. **Public Offering.** All of the Bonds have been the subject of a *bona fide* offering to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) (the "Public") made pursuant to the Bond Purchase Agreement between the Issuer and the Purchaser dated September 16, 2009 (the "Sale Date"). On the Sale Date, the Purchaser reasonably expected that at least 10 percent of the principal amount of each such maturity of the Bonds would be initially sold to the Public at the respective price for that maturity set forth on *Schedule I* attached to this Certificate, plus accrued interest (the "Offering Prices"). For purposes of this certificate, we have assumed that the phrase "bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers" refers only to persons who, to our actual knowledge, have an arrangement with the Issuer or the Purchaser to act in such capacity on behalf of the Issuer or the Purchaser.
4. **Compliance with Bond Purchase Agreement.** The Purchaser acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to it pursuant to the Bond Purchase Agreement on the date of the delivery of and payment for the Bonds (except to the extent the Purchaser has waived or consented to modification of certain provisions thereof), and that the Issuer has in all respects complied with and satisfied all of its obligations to us which are required under the Bond Purchase Agreement to be complied with and satisfied on or before the date hereof. To the extent that the Purchaser has provided the Issuer and Gilmore & Bell, P.C., Bond Counsel ("Bond Counsel") with certain computations that show a bond yield, issue price, weighted average maturity and certain other information with respect to the Bonds, these computations are provided for informational purposes and are based on our understanding of directions that we have received from Bond Counsel regarding interpretation of the applicable law. We express no view regarding the legal sufficiency of any such computations or the correctness of any legal interpretation made by Bond Counsel.

5. **Reliance.** The Issuer may rely on the foregoing representations in executing and delivering its Federal Tax Certificate with respect to its certification as to issue price of the Bonds under the Internal Revenue Code of 1986, as amended (the "Code"), and Bond Counsel may rely on the foregoing representations in rendering its opinion relating to the exclusion from federal gross income of the interest on the Bonds under the Code; *provided, however*, nothing herein represents our interpretation of any laws, and in particular, regulations under the Code.

Dated: October 1, 2009.

**PIPER JAFFRAY & CO.  
LEAWOOD, KANSAS**

By: \_\_\_\_\_  
Title: Managing Director

**SCHEDULE I**

**[SERIAL BONDS]**

| <b><u>Stated</u></b><br><b><u>Maturity</u></b><br><b><u>September 1</u></b> | <b><u>Principal</u></b><br><b><u>Amount</u></b> | <b><u>Annual</u></b><br><b><u>Rate of</u></b><br><b><u>Interest</u></b> | <b><u>Dollar</u></b><br><b><u>Price</u></b> | <b><u>Stated</u></b><br><b><u>Maturity</u></b><br><b><u>September 1</u></b> | <b><u>Principal</u></b><br><b><u>Amount</u></b> | <b><u>Annual</u></b><br><b><u>Rate of</u></b><br><b><u>Interest</u></b> | <b><u>Dollar</u></b><br><b><u>Price</u></b> |
|---|---|---|---|---|---|---|---|
| 2011  | \$  |   |   |   | \$  |   |   |

2030

**[TERM BONDS]**

| <b><u>Stated</u></b><br><b><u>Maturity</u></b><br><b><u>September 1</u></b> | <b><u>Principal</u></b><br><b><u>Amount</u></b> | <b><u>Annual</u></b><br><b><u>Rate of</u></b><br><b><u>Interest</u></b> | <b><u>Dollar</u></b><br><b><u>Price</u></b> |
|---|---|---|---|
| 2030  | \$  |   | ]   |

**EXHIBIT D**

**\$2,450,000\***

**DOUGLAS COUNTY, KANSAS  
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS  
SERIES 2009-A  
DATED OCTOBER 1, 2009**

**DESCRIPTION OF PROPERTY COMPRISING THE FINANCED IMPROVEMENTS**

| <b>Description</b>          | <b>Year Placed<br/>in Service</b> | <b>Estimated<br/>Useful Life</b> | <b>Total Cost</b>         | <b>Amount Financed<br/>From Bonds or<br/>Refunded Obligations</b> |
|-----------------------------|-----------------------------------|----------------------------------|---------------------------|---|
| Sanitary Sewer Improvements | 2009                              | 20 years                         | \$2,983,031               | \$2,410,000   |
| Road Improvements           | 2006                              | 20 years                         | <u>255,160</u>            | <u>25,000</u>   |
| <b>Total</b>                |                                   |                                  | <b><u>\$3,238,191</u></b> | <b><u>\$2,435,000</u></b>   |





## DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street  
Lawrence, KS 66044-3350  
(785) 832-5293 Fax (785) 841-0943  
dgcopubw@douglas-county.com  
www.douglas-county.com

**Keith A. Browning, P.E.**  
Director of Public Works/County Engineer

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### MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : August 25, 2009

Re : Consider adopting special rules for special music event at Lone Star Lake

Doug Dubois has inquired about holding an old-time string music "mini-festival" at Lone Star Lake campground October 10 (see attached copy of email). October 10 is the last Saturday of the camping season, which ends October 15. He is requesting the BOCC adopt special rules for this event, in particular altering the following rules & regulation:

- Quiet hours from 10:00 PM to 6:00 AM
- A maximum of two tents per campsite

This department has no problem with the request. Mr. Dubois says in his email they will "leave the grounds cleaner than we found them". However, the BOCC may consider requiring a \$500 deposit to cover possible department costs for post-event clean-up.

Action required: Consider adopting special rules & regulations for a special event at Lone Star Lake.

## **PW - Browning, Keith**

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**From:** d o u g d u b o i s [doug@oldtimefiddle.us]  
**Sent:** Wednesday, August 05, 2009 4:31 PM  
**To:** PW - Admin email group  
**Subject:** Lone Star Lake special event

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Mr. Browning and staff,

I am interested in permission to hold a special event at Lone Star Lake, possibly on October 10 of this year. I am a fiddler who plays old-time stringband music, I owned a music hall in downtown Lawrence many years ago, and my wife and I have produced numerous low-key festivals, concerts and dances over the years. We've resided in Douglas County for over 32 years. I work at KalScott Engineering and Bayliss works in the KU libraries.

What we have in mind for Lone Star Lake is a small, laid-back, one-evening stringband "mini-festival." Lawrence now has 10 or more stringbands that play old-time music, which is the fiddle/banjo/vocal tradition that bluegrass grew out of. I have been making pilgrimages to West Virginia and surrounding areas for 20 years now in an effort to bring the best of this tradition back to Kansas and reinvigorate our local stringband scene. Bringing these local musicians together for music and camaraderie is an important part of this effort, as well as helping to get their music in front of appreciative audiences.

We would like to eat, play and camp together for one fall afternoon and evening (October 10). We would like to feature some local bands in a concert, with a low-power sound system that is appropriate to the campground and no louder (more for balance than volume, and it can be powered by battery if there is no AC available nearby). A corner of the Lone Star campground would seem ideal for this event, and I believe most campers that already happen to be there would be appreciative of the music. Depending on how we promote the event, we might bring a total crowd of 80-200 people, with maybe half of them camping overnight.

In your posted rules and regulations for Lone Star Lake Park, I see that "the board may adopt special rules to govern special events." If you might be amenable to the kind of event we have in mind, we would be interested in a small variance to the quiet hours rule. Our needs would be well served if we could operate the low-power sound system from 6pm-10pm, and then allow unamplified acoustic instruments and singing (jamming) until 1-2am. We would also ask if the 2 tents per campsite rule could be relaxed for this evening so we could camp closer together (perhaps charge \$7 per tent instead of per campsite), and if there is any way the most suitable location for this event could be reserved in advance. Perhaps the fact that this would take place a few days before the park closes for the year might make this less of an issue.

I can assure you that our crowd is a courteous and well-behaved one, and I'll describe the Appalachian Music Stringband Festival in Clifftop, WV as evidence of this. The event is put on in George Washington Carver State Park, a division of the Babcock State Park. Between 3,000 and 4,000 old-time musicians from all over the world convene there every summer (we just got back from the 2009 event), and it is the most gentle, fun-loving family event you can imagine. When they did the first one in 1990, the grounds were patrolled by gun-toting officers... they obviously figured out that that was entirely uncalled for, as every year since then we've seen one sheriff at the gate and no other security presence! We promise to be well-behaved and will endeavor to leave the grounds cleaner than we

found them.

Thank you for your consideration. I will try to reach you by phone very soon. Feel free to call or write with any questions.

Doug DuBois  
1704 Alabama St.  
Lawrence, KS  
785-760-6660

**STAFF REPORT  
BOARD OF COUNTY COMMISSION**

**DETAILED RECLAMATION PLANS FOR BIG SPRINGS QUARRY; 2 N 1700 ROAD**

Staff review of detailed reclamation plans for Phases 1A, 2, 3 and 4 of Big Springs Quarry, located at 2 N 1700 Road. Submitted by Professional Engineering Consultants for Mid-States Materials, quarry operator.

**STAFF RECOMMENDATION:** Staff recommends that the Board of County Commissioners approve the detailed reclamation plans for Phases 1A, 2, 3, and 4 subject to the following conditions:

1. Provision of a detail sheet for the County Engineer's approval, showing the erosion control method which will be used for the removal of the overburden pile in Phase 1A. The detail should show the erosion control method to be used, the location, and which phase of the reclamation they will be installed in.
2. A modification from the Consent Decree has been requested by the operator to permit the natural strata along the north edge of the water feature in Phase 1A to remain. If the modification is not approved, the north slope of the water feature in Phase 1A shall be revised on the reclamation plan to a 3:1 slope or less.
3. The applicant shall make the following revisions to the reclamation plans:
  - a. General Note 3 on the Title Page should be revised to clarify that reclamation in these phases will be conducted per requirements of the Consent Decree and will not be concurrent with mining activity in those phases.
  - b. General Note 4 on the Title Page shall be revised to reflect the appropriate range of variations as determined by the County Engineer. The water features shall be shown to reflect the anticipated size on the plan and the anticipated surface area of the water features shall be noted on the plan. The Note shall also indicate that any variation beyond the approved range would require administrative review by the Planning Staff and approval by the County Engineer.
  - c. Note 3 on the General Sequencing Plan shall be revised to indicate that the utilization of natural strata rather than the 3:1 or less slope above the established water surface elevation shall require notification to the Planning Office and approval by the County Engineer.
  - d. Sequencing Note 1 on Plan Sheet 7 shall also state that the erosion control measures will be 'maintained' as required in the Stormwater Pollution Protection Plan.
  - e. The sentence in the first paragraph under the heading 'Sequencing Plan' on Plan Sheet 7 shall be revised: "Reclamation of each quarried area within a phase is planned to occur concurrently with mining operations and will be completed as soon as practical after quarrying is complete; **however Phase 1-A is an exception as quarrying is complete but reclamation is occurring to**

**resolve a pre-existing condition and portions of Phase 1-A and Phase 2 will be disturbed to facilitate this reclamation.”**

- f. Revise the reclamation plan shown on Plan Sheet 5 to remove the grading change over the Mid-American Pipeline.
- g. Sheet 5 shall be revised to show accurately the 160 ft setback along the western property line.
- h. The plan should note that each pond will have an ‘outflow’ and indicate the approximate location.

**Attachments:**

- Attachment A – Consent Decree
- Attachment B – Operator’s request to modify the Consent Decree to permit the retention of the north wall of the water feature
- Attachment C – Correspondence from quarry operator with photos of north face of water feature
- Attachment D -- Correspondence from the public
- Attachment E -- Detailed reclamation plans
- Attachment F -- State Conservation Commission Reclamation Regulations
- Attachment G -- State Conservation Commission review letter

On May 27, 2009 the Board of County Commissioners and Mid-States Materials signed a Consent Decree in the matter of Conditional Use Permits for Operation of a Quarry: Mid-States Materials, LLC. The Consent Decree contains requirements for the reclamation of Phase 1A and Phases 2, 3 and 4. Reclamation plans for these phases have been submitted to the Planning Office and reviewed for compliance with the terms of the consent decree and with the Conditional Use Permits. The Consent Decree contains the following terms of agreement:

1) TIMING OF RECLAMATION PLANS

The Consent Decree required that Mid-States Material submit a detailed reclamation plan, with an appropriate drainage study, to the Planning Department for Phases 1A, 2, 3 and 4 within 60 days of the date of the decree (by July 27, 2009). A detailed reclamation plan for Phase 1A reasonably in compliance with the requirements of this Section was required to be submitted such that the Board could approve it on or before August 31, 2009.

- June 19, 2009 -- Staff met with neighboring property owners and their representative to discuss the requirements of the Consent Decree and the neighbor’s principal concerns with the reclamation plans.
- June 25, 2009 -- A pre-submittal meeting was held with Mid-States Materials to review the requirements of the Consent Decree and outline what would be expected on the reclamation plans. Mid-States provided a ‘concept’ reclamation plan at that time. Staff provided general comments on this concept plan on July 1<sup>st</sup>.

- 
- July 24, 2009 -- Detailed reclamation plans for Phases 1A, 2, 3, and 4 and a drainage study were submitted to the Planning Office on July 24, 2009. Staff forwarded copies of the reclamation plans to the neighboring property owners who had requested them.
  - August 6, 2009 -- Staff reviewed the plans and met with the neighboring property owners. Comments were provided to Mid-States on August 6, 2009 which included both staff's comments and a summary of the neighbor's concerns noted at the meeting.
  - August 13, 2009 – Mid-States Materials provided revised reclamation plans and the SWP3 (Stormwater Pollution Prevention Plan which was submitted to the KDHE) as requested by staff.

## 2) RECLAMATION PLAN

- Submittal of an appropriate drainage study. The County Engineer reviewed the drainage study which was provided and determined, after revisions were made, that the study was acceptable.
- Removal of the overburden pile along E 100 Rd to an established elevation. The County Engineer reviewed contours from the 1950s and determined that an elevation of 1070 would be similar to the surrounding area at that time. The reclamation plans provided show the overburden pile being reduced to an elevation of 1070.
- Include the elevation and grade along the banks of the water feature which will be modified to achieve a 3:1 slope or flatter. The reclamation plans indicate that the slopes of the water features will be 3:1 or flatter with the exception of the north wall of the water feature in Phase 1A. Mid-States Materials requested that the rock wall along the north be permitted to remain to stabilize the north bank of the water feature. The County Engineer indicated that the rock wall would stabilize the north bank and staff recommends that the north wall of the water feature be permitted to remain as shown on the reclamation plan and on the photographs in Attachment D rather than being required to be graded to a 3:1 slope. A request to modify the Consent Decree to permit this grade to exceed 3:1 has been provided to the Board of County Commissioners and is being considered concurrently with these reclamation plans.
- Shall contain a note establishing a sequencing plan necessary to complete the reclamation. The notes on plan sheet 7 provide the sequencing information for the reclamation of Phase 1A. The Cover Sheet contains general sequencing information for reclamation.
- Shall provide information on where the overburden material will be used or relocated. This information is provided in the notes on plan sheet 7.
- Mid-States Material must attend a pre-submittal meeting with staff. A pre-application meeting was held on June 25, 2009.
- After submittal, Planning Staff shall review in accordance with Section 8 of the CUP. Planning and other county staff reviewed the reclamation plans.

## RECLAMATION PLANS REQUIREMENTS FROM CUP

The staff report "Reclamation: The Process and the Plan" clarified the various types of post mine activity by stating " *Restoration* implies that the conditions of the site prior to the time of disturbance will be replicated after the action that disturbed the land is terminated. *Reclamation* implies that the site is habitable by organisms that were originally present or by others that are

---

*similar to the original habitants. Rehabilitation implies that land will be returned to a form and level of productivity that conforms with a prior land use plan."*

Per Condition 8 of the CUP(revised 1992): "The property shall be reclaimed to a state similar to the existing state (or better) with reference to general topography, percent slope and plant and animal life supported by the established ecosystem." This section referred to pages 3 and 4 of the September 26, 1990 minutes.

The following information is included in the minutes and the report, "Reclamation, the Process and the Plan":

- Final reclamation plans call for reshaping of the terraced areas to blend with the existing, adjoining contours.
- Topography of the existing site would be replicated at the final ground level elevation, which is estimated on an average to be 15' lower than existing grade.
- Topsoil in the berms will be redistributed across the site as the areas are reclaimed.
- Final site reclamation is proposed to be at an elevation of no higher than the surrounding land.
- Each phase, when reclaimed, is proposed to have a pond. Ponds should be stocked with fish as part of the re-establishment of a self-sustaining biological community.
- Because reclaiming is to be sequential and on-going, it is appropriate that a detailed reclamation plan be submitted at the close of mining operations per phase, and prior to the opening of a successive phase. Such a plan would include a site plan showing elevations, cross-sections and the proposed plan for revegetation of the area.

#### RESOURCES USED FOR REVIEW

Staff reviewed the reclamation plans for compliance with the following:

- Requirements in the reclamation plan submitted with the original bound application.
- Requirements in the staff report: "Reclamation, the Process and the Plan"; as referenced in the CUP.
- Requirements in the minutes of the Sept 26, 1990 Planning Commission meeting; as referenced in the CUP.

Other materials used by staff to complete this review include:

State of Kansas Reclamation Regulations; Sections 11-8-6 through 11-8-7' (Kansas State Conservation Commission website [www.scc.ks.gov](http://www.scc.ks.gov))

"Best Management Practices for Reclaiming Surface Mines in Washington and Oregon" (Washington Division of Geology and Earth Resources, Open File Report 96-2, Revised Edition December 1997)

In addition to the resources noted above, Staff consulted the County Engineer for technical review of the drainage study and for assistance with details of the reclamation plans and Dennis Baker, Mined Land Reclamation Program Manager with the State Conservation Commission, for additional information regarding reclamation process and requirements.

#### STAFF REVIEW

Reclamation will occur concurrently with mining activity as required by the CUP; however, the reclamation of Phase 1A and Phase 2 will be occurring after mining is complete in those phases

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in order to correct the overburden pile and water feature created by the previous operator. General Note 3 on the Title Page should be revised to clarify that reclamation in these phases will be conducted per requirements of the Consent Decree and will not be concurrent with mining activity in those phases.

The Consent Decree requires that reclamation plans represent the final grading and contouring after mining and reclamation work is complete for each phase. "Landshaping is an important part of the reclamation process. Objectives of landshaping are:

- Minimize erosion
- Reduce slope angles to provide stability for post-mining development
- Contour aesthetically pleasing landforms to blend with the surrounding area
- Form shapes and slopes consistent with the subsequent use planned for the site
- Increase revegetation success
- Provide diverse wildlife and fish habitat" (Best Management Practices, page 4.1)

The actual location and quantity of limestone deposits will be determined during the quarrying process; therefore, as the reclamation plans are being provided prior to any quarrying activity on the phase, it is understood that there may be some variation in the finished elevation and size of the water features; however, the general shaping of the land will be consistent with the reclamation plans. Staff received varying reports regarding the amount of knowledge a quarry operator should have of the deposits. Some outside experts indicated that they should have a solid knowledge of the location and amounts of deposits based on the boring tests. Other experts indicated that there is variability in the deposits and it is not possible to know with precision where the deposits are located or the amount and quality of the deposits until quarrying the materials. Based on this information, staff concludes that some variation from the elevations and sizes of the water features shown on the reclamation plans is reasonable; but that ranges of acceptable variation must be established in order to provide reliability within the plans. Staff recommends an administrative review process for variations beyond this range similar to the review process for the drainage study.

The quarry operator is concerned that they may be required to borrow or import materials to meet a minimum elevation if the limestone deposits were very deep in the area. The setting of an acceptable range in elevation provides flexibility, while insuring predictability with the plan. Variations beyond the approved range would require review to determine whether the variation will have any adverse impact on the neighboring properties or water bodies, and if the variation is compliant with the approved reclamation plan. General Note 4 on the Title Page shall be revised to reflect the approved range of variation and the means for approval of greater variations, when necessary. Staff is still working with the applicant to determine the appropriate range of variation and will provide the Commissioners with an update prior to the September 16 meeting.

General Note 4 on the Title Page also indicates that there may be variation in the location and size of the water features (depending on the location and amount of deposit removed). An upper range of 45% of the disturbed area has been proposed by the operator for the maximum size of any water feature. The original reclamation plan submitted with the bound application did not provide standards for the size of water features. The operator explained that the water features shown on the plan are symbols and are not meant to represent area. The water features will be located at the terminus of the mining activity in that phase, so the general location is being marked with the water feature symbol. Staff recommends that the water features be shown to the anticipated size on the plan with the range of variation noted.



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Variations beyond this range would also require staff review and approval by the County Engineer.

Reclamation Plan for Overburden Pile 1A (Plan Sheets 7, 8 and 9)

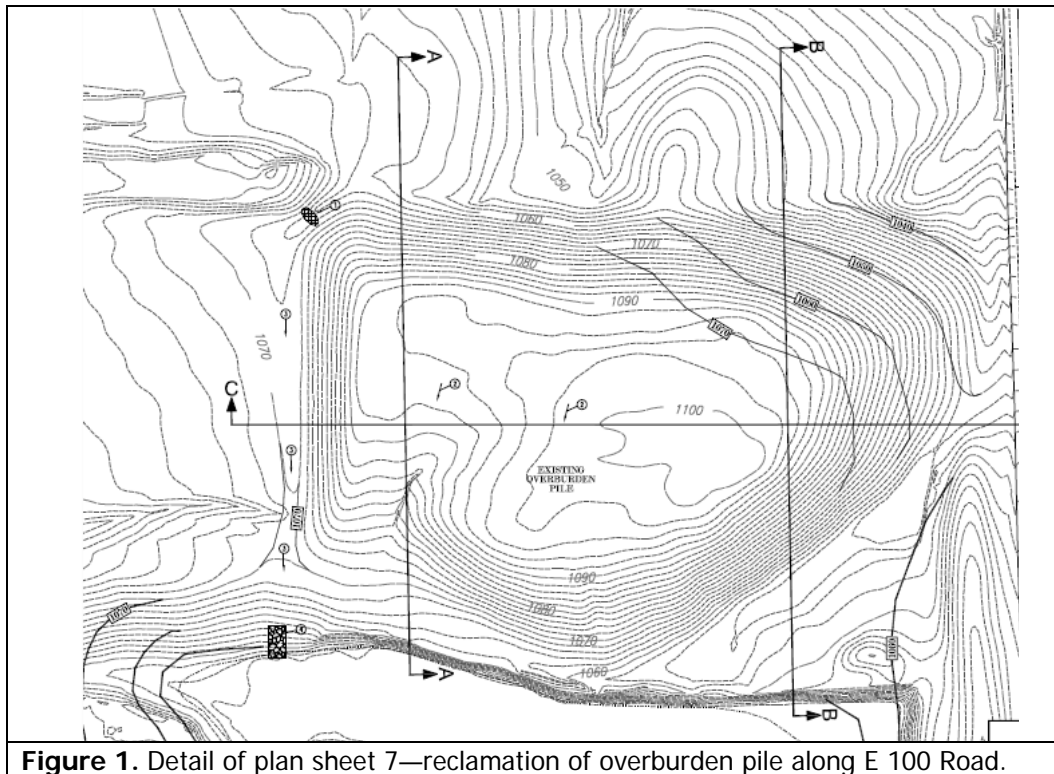
The County Engineer determined that an elevation of 1070 was an appropriate elevation for the area with the overburden pile as it is similar to the existing elevations in the area prior to any mining activity using 1950 contour maps of the area. The overburden pile in Phase 1A will be reduced to the established elevation of 1070 and reshaped as shown on Plan Sheet 7.

While reclamation will occur concurrently with the mining process and overburden piles will not be created elsewhere in the quarry, the removal of the existing overburden pile on Phase 1A will not occur concurrently with mining and will involve large earth moving operations which will leave large portions of overburden exposed. The first paragraph under the heading 'Sequencing Plan-Phase 1A' contains the statement: "Reclamation of each quarried area within a phase is planned to occur concurrently with mining operations and will be completed as soon as practical after quarrying is complete." Quarrying is completed in Phase 1A, and reclamation is occurring on the overburden pile and the water feature. The statement should be revised to indicate that Phase 1-A is an exception as quarrying is complete but reclamation is occurring to resolve a pre-existing condition and portions of Phase 1-A and Phase 2 will be disturbed to facilitate this reclamation.

Sequencing Note 1 on Plan Sheet 7 states that erosion controls will be installed per the Best Management Practices of the SWP3 dated June 2009. A detail sheet should be included with the reclamation plan for the removal of the overburden pile to show which erosion control method will be used: silt fencing, sediment ponds, rock check dams, diversion berms, or vegetative buffer zones, where they will be located, and which phase of the reclamation they will be installed in. The County Engineer shall review these measures to insure they will be effective. The note should also state that the erosion control measures will be maintained as required in the SWP3. The routine inspections of the reclamation of Phase 1A will include inspection of the erosion control measures.

During the scheduled compliance site visits, the stormwater pollution measures will be evaluated by County staff for compliance with the requirements of the SWP3. A copy of the SWP3 has been made available to the Planning Office, the Director of Public Works and the Director of Zoning and Codes.

Plan Sheets 8 and 9 show the cross-section of the proposed overburden pile. The horizontal and vertical scales are not the same, to permit the cross-section to fit on the page and to allow vertical detail to be shown. Each cross-section has an inset with the horizontal and vertical scales the same to allow a true representation of the shape of the revised over-burden pile.



Reclamation Phases 1A AND 2 (plan sheet 4)

The reclamation plan for Phase 1A shows the changes to the overburden pile and the water feature (Figure 2). The banks of the water feature will be graded to a slope of 3:1 or less with the exception of the northern shore. Mid-States Materials is proposing to keep the rock wall on the northern shore to stabilize the bank. Mining in Phase 2 is nearly complete and the portion which was disturbed will be reclaimed with slopes of no greater than 3:1 and a water feature. In response to concerns raised by the neighboring property owners, the water features are shown as 300 ft from the adjacent roadway. As mining is nearly completed in this phase, minimal variations are expected from the reclamation plan.

The applicant has requested a modification from the requirement to provide a slope of 3:1 or less gradient above the established water surface elevation for the north bank of the existing water feature in Phase 1A. The applicant provided photos of the existing bank and indicated that the bank would be more stable than grading to the 3:1 slope. The County Engineer reviewed the photos and agreed that the rock bank would be stable. He had no objection to the retention of the rock wall. Staff has no objection to the retention of the strata on the shore of the water feature in this area.



Figure 2. Reclamation plans for Phases 1A and 2

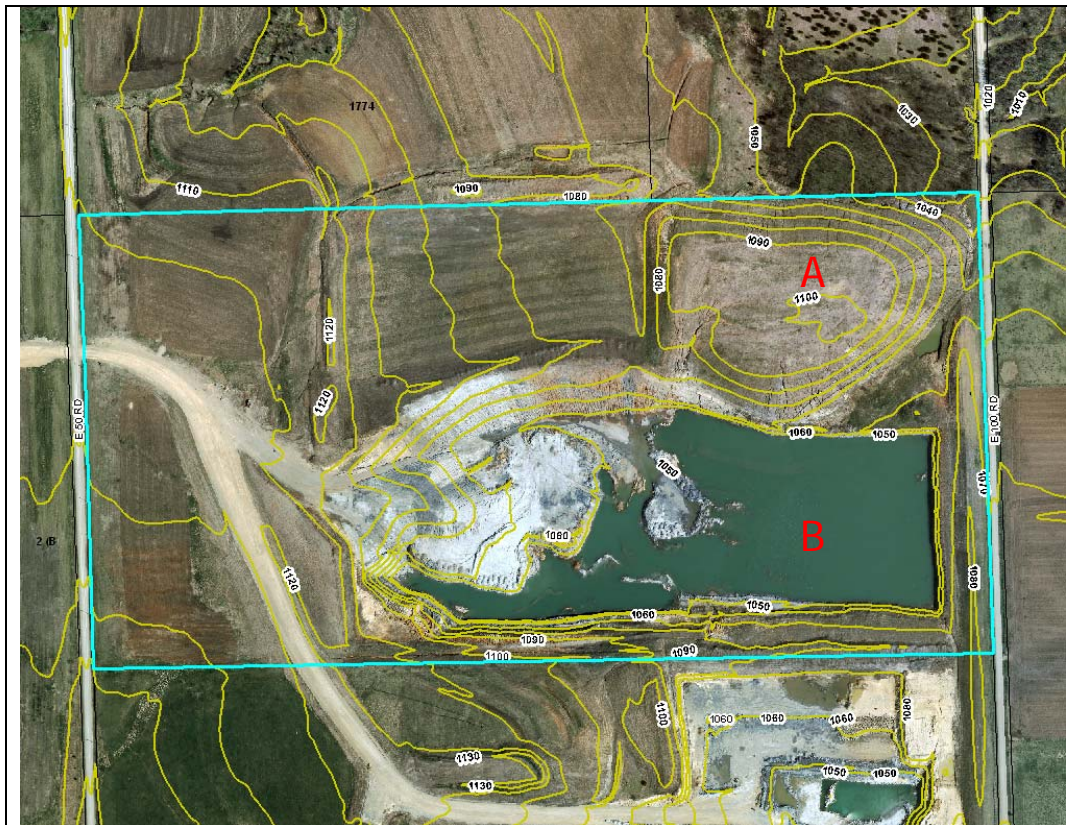
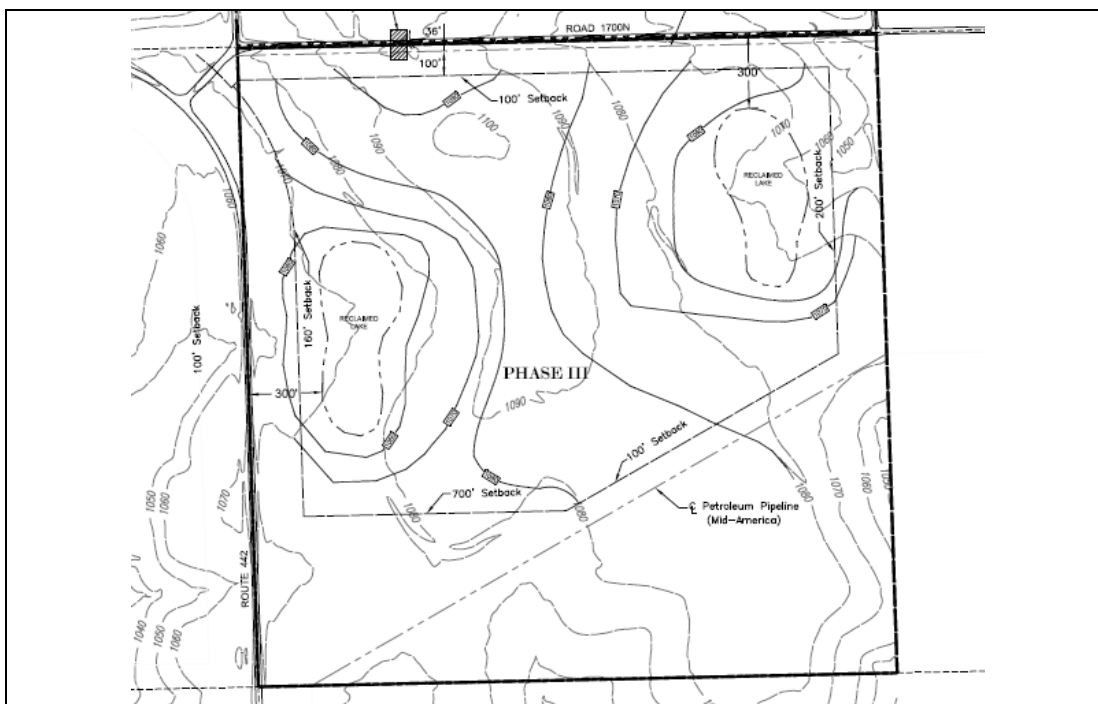


Figure 3. Aerial showing overburden pile 'A' and existing water feature 'B' in Phase I-A.

Reclamation Phase 3 (Plan Sheet 5)

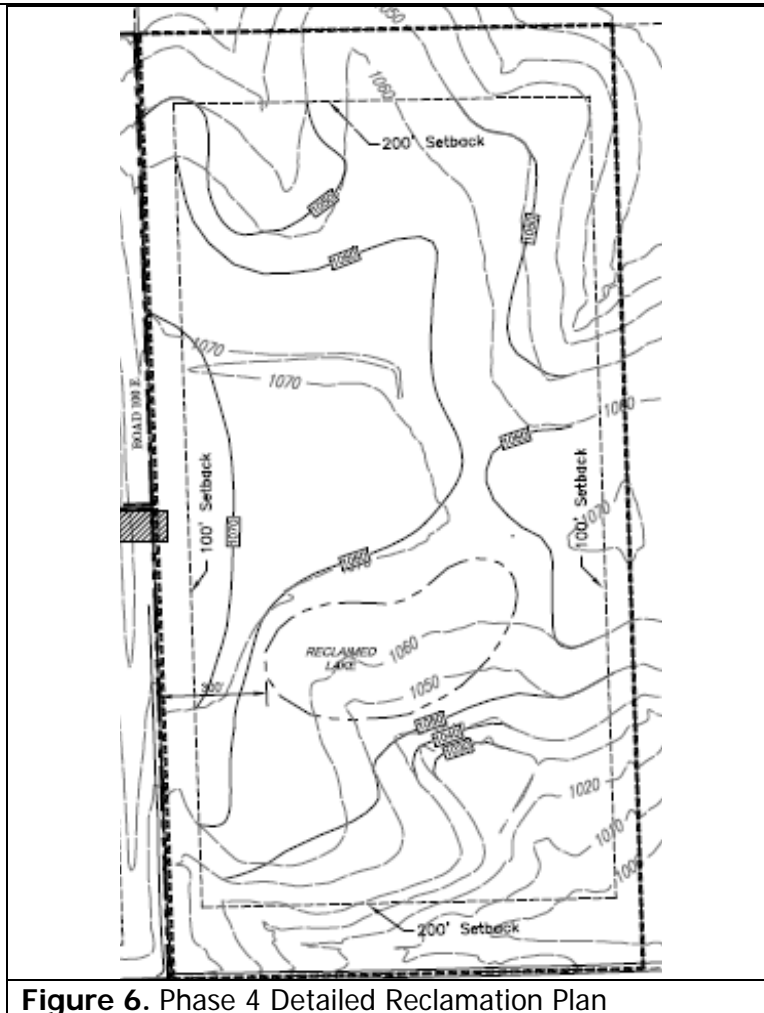
The revised plans dated 8-12-2009 show that no reclamation is occurring within the mining setbacks and the 100' setback from the Mid-American pipeline with the exception of one contour over the 100' Mid-American pipeline setback (Figure 5). Mid-American Pipeline indicated the grading change was not acceptable. The reclamation plan shall be revised to show no grade change within the setback area. The new contours are generally about 10 ft lower than the existing contours; however, this may change somewhat depending on the amount of deposit which is available and removed. Mid-American Pipeline and Southern Star have been contacted for comments. They did not provide comments, beyond the comment regarding the change in grade over the easement, but did provide the plans to their engineers for further comments to the operator regarding blasting requirements.



**Figure 5.** Phase 3 detailed reclamation plan.

Reclamation Phase 4 (Plan Sheet 6)

The reclamation plan for Phase 4 shows all grading/contouring work occurring between the mining setbacks (Figure 6). The water feature is shown with a minimum dimension of 300 ft from the road. The elevations are 10' or less than the current elevation; however, as noted previously the finished elevation may vary depend on the amount of deposit available and removed.



**Figure 6.** Phase 4 Detailed Reclamation Plan

Composite Reclamation of Phases 1A, 2, 3, and 4 (Plan Sheet 3)

Mid-States Materials provided a composite reclamation plan (Figure 7) to show how the reclamation of each phase would relate. It is understood that there may be variations to the elevations and water features within each phase but the contours and elevations of each phase shall maintain the general relationship as shown on this plan. Figures 8 and 9 contain the general standards provided in the reclamation plan data provided with the original bound application.

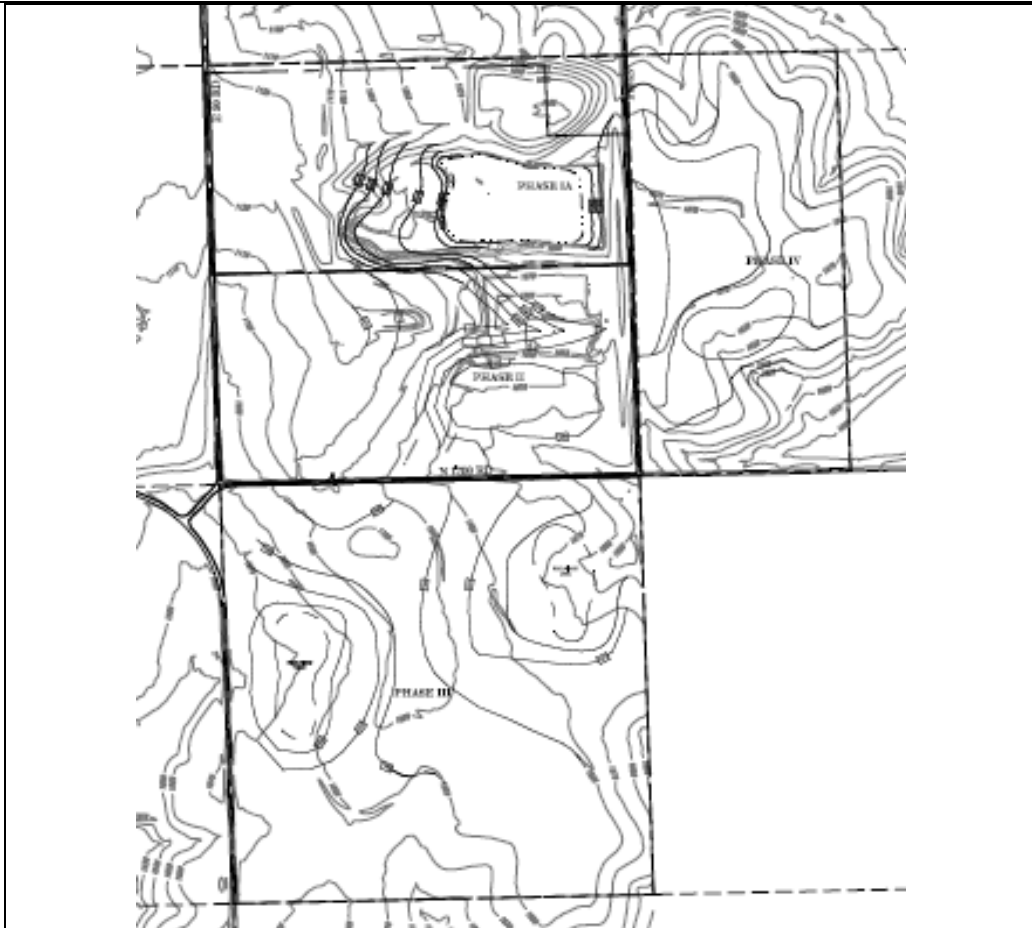


Figure 7. Composite reclamation plan of Phases 1A, 2, 3 and 4

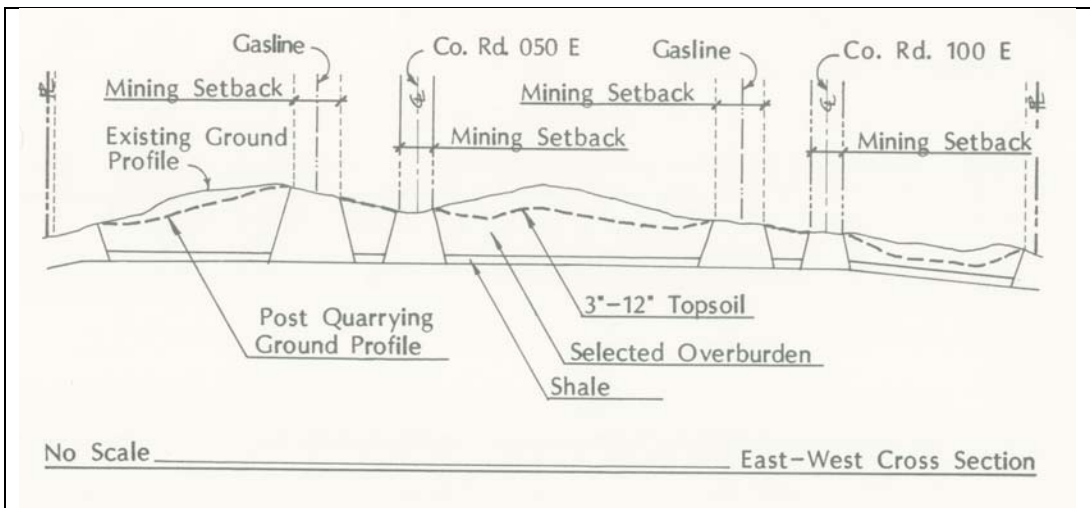
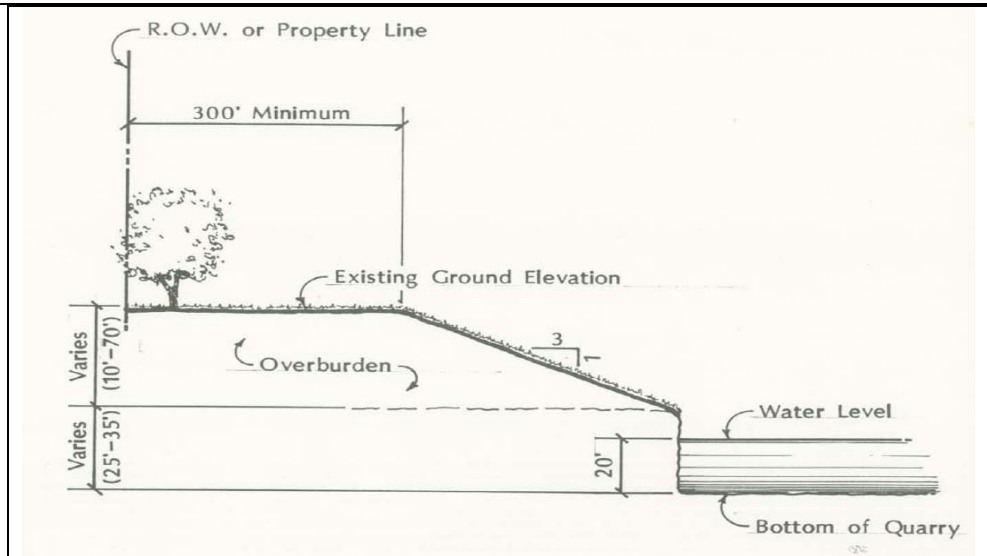


Figure 8. Concept reclamation plan: Exhibit D of approved reclamation plan



**Figure 9.** Typical Final Reclamation Slope: Exhibit 15 of approved reclamation plan

Staff met representatives of the State Conservation Commission, and Mid-States Materials for a site visit on September 1, 2009. Staff documented the existing conditions of Phase 1A for use as the 'baseline' for the quarterly reclamation progress assessments for Phase 1A and reviewed other components of the quarry. Figure 10 shows the vegetation that is being established on the southern shore of the water feature in Phase 1A.



**Figure 10.** Vegetation being established on southern shore of water feature in Phase 1A.

The work which is being done to reshape the water feature is shown in Figure 11



**Figure 11.** Work being done to reshape the water feature in Phase 1A.



**Figure 12.** Fish feeder for the fish that have been stocked in this pond.

Mid-States indicated they stocked the water feature in Phase 1-A. Figure 12 shows the electronic feeder they are using to establish the fish population.



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## OVERALL REVIEW

The proposed end land use for the quarry property is 'agriculture, recreation and wildlife habitat'. The proposed reclamation plan will result in land which is suitable for these uses. The proposed seeding is a wildlife mix recommended by Quail Unlimited with some fescue for areas which may be prone to erosion or which are planned as mowed lawns. Each phase will have a water feature which will be stocked with fish and will have a grade of 3:1 or less to the established water surface.

There was some concern that 4" of top-soil might not be adequate for the establishment of vegetation. Dennis Baker, of the State Conservation Commission, indicated that 4" of top soil would be adequate and that vegetation has been successfully established on lands with less top soil. The 4" of top soil is the minimum depth of top soil that will be replaced on the site; if additional top soil is available, it will be utilized for reclamation.

The Best Management Practices document lists the following items which should be shown on a reclamation map:

Should contain the following Permit area plus an appropriate border on all sides

- Final elevations and contours, adjacent natural ground slopes, reclaimed drainage patterns, and other topographic features
- Locations and names of roads, utility lines, etc
- Locations and names (if any) of all streams and drainages
- Locations and names (if any) of significant buildings, parks, and other structures or features
- Locations and names (if any) of all lakes, springs, and wetlands
- Location and depth of topsoil to be replaced
- Permanent drainage and water-control systems (with expanded view if needed)
- Area to be revegetated and proposed species
- At least 2 cross sections (generally at right angles) with horizontal and vertical scales the same that show the original and final topography and the water table. *(BMP (Page 1.8) Final Reclamation Map)*

These items were shown on the submitted reclamation plans. The plan should note that each pond will have an 'outflow' and indicate the approximate location.

## PUBLIC COMMENT

Dave and Rick Henry provided public comment prior to the publication of this report which is included in Attachment B. The principal concern noted in their letter was the variation which was being proposed in General Note 4. Staff has discussed this issue with the quarry operator and understands that it is not possible to definitively identify every contour and the exact location and size of the water features due to the uncertainty of the amount and location of the limestone deposits. While variation may be necessary, a range of variation should be set to provide a level of predictability with the plans. Staff recommends a range of variation be set with the provision that variations beyond that range would require a revision to the reclamation plan. These revisions could be administrative, or could require the approval of the County Commission. The increased size of the water features would be reviewed by the County Engineer for negative impacts to surrounding water bodies, and the variation in the contours would be reviewed by Planning Staff to determine that the 3:1 slope is maintained.

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Mr Prager provided some comments in his review for the neighboring property owner which is included as an attachment with this staff report. Some of his comments, with Staff's response, are listed below:

- 1) Sheet is not sealed by a professional engineer. Draft plans are not typically sealed. The final approved plans will be sealed by a professional engineer. The operation/management plans for Phases 3 and 4 were sealed as well as the drainage study.
- 2) General Note 4: "Nearby landowners still do not know how the land will be reclaimed or how often they will have to review plans that are revised." An acceptable range of variation in final elevation and size and location of the water features shall be established which takes into account the uncertainty of the limestone deposit while maintaining predictability of the plan. Variations beyond this range require staff review and the approval of the County Engineer.
- 3) What are the criteria for final acceptance of successful establishment of vegetation and what is the required schedule? What are the maintenance requirements? The Zoning and Codes Office is responsible for determining when reclamation has been successfully achieved on a phase. The operator has provided a bond for reclamation and this bond will be released, or rolled over to another phase, only when the Zoning and Codes Office indicates that reclamation is complete. Dennis Baker, Mined Lands Reclamation Program Manager, will visit the quarry when the operator indicates that reclamation is complete and will evaluate the vegetation for density and diversity. The Zoning and Codes Office relies on the State Conservation Commission's determination on the successful establishment of vegetation. The seeded area is required to be mulched until vegetated. The seeding mixture contains native plants which require no or little maintenance.
- 4) Is it the intent of the plan to reclaim the land to approximately the same percentage of land use as pre-quarrying? Will any of the area be reforested? No, it is not the intent to reclaim the land to the same percentage of land use, and the area was not forested prior to quarrying.
- 5) 'Erosion control sediment barrier' does not provide enough information about stormwater management.. This note is adequate as a 'sequencing note'. More details are provided in the Stormwater Pollution Prevention Plan (SWP3).
- 6) Note 2-General Sequencing Note: "Will fill material be systematically placed? Will more erodible material be buried? How will fill be placed, at what moisture content? Is it dumped, spread or compacted? What is the maximum allowable lift thickness? Method of filling excavated area is not defined. The quarry operator indicated that fill material is systematically placed as fill occurs concurrently with mining operations. The operator indicated that the moisture content is more of an issue when filling areas which are proposed for future construction. As the future landuse is agriculture, recreation and wildlife habitat the moisture content of the fill material is not a factor. The material is dumped by end dump truck, spread by bulldozers and there will be some compaction as a result of this activity.
- 7) General Sequencing Plan 4. Who determines what is appropriate and where terraces will be installed? What is the maximum height of a terrace and the minimum width? The Consent Decree requires a maximum slope of 3:1; there are no regulations regarding the width or height of a terrace. As long as the 3:1 slope is maintained,

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- the operator makes the determination on the dimensions of the terraces, where used.
- 8) General Sequencing Plan Note 5. Four inches of top soil may not be adequate. How is the interface between fill soil and topsoil treated? Will it be scarified? The operator indicated that they disc the fill soil prior to placement of the topsoil. The SCC indicated that 4" of top soil is adequate to establish vegetation.
  - 9) General Sequencing Plan Note 6. No indication of fertilizer will be used. Who determines where optional seed mixes will be placed? Native species are being used to reduce or eliminate the need to irrigate or fertilize When will sediment barriers be removed? Sediment barriers will be removed when vegetation has been established to the point that they are no longer needed. Who determines that the vegetative cover is adequate and acceptable? The Douglas County Zoning and Codes Office is responsible for determining when reclamation is complete. They depend on the State Conservation Commission's determination on the establishment of vegetation. How often is the site inspected and repaired prior to final acceptance?. The site is inspected when the quarry operator indicates it is reclaimed. If it is determined to be successfully reclaimed, the bond is released.

I did not respond to each of Mr Pragers comments on the individual pages, but did consider them in the overall review.

The reclamation plans are not sealed at this time as they are not final documents. Mid-States Material indicated that the engineer would seal the plans when the final revisions have been made. Therefore, sealed reclamation plans for Phases 1A, 2, 3, and 4 will be provided when the review is complete and revised plans have been provided which meet the conditions of approval.

### **Conclusion**

The reclamation plans provide the finished contours and grading of the land and these are appropriate for the proposed end land use of 'agriculture, recreation and wildlife habitat'. In order to provide both flexibility and predictability with the plans ranges of variation which have been determined by the County Engineer to be acceptable for the final elevation and size of water features will be noted in General Note 4. The reclamation plan, as conditioned, meets the standards of the CUP and the Consent Decree.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY, KANSAS

In the matter of Conditional Use Permits for )  
Operation of a Quarry: )  
Mid-States Materials, LLC )  
CUP-7-2-90 (No. 3500); CUP-6-6-92 (No. 3853) & )  
CUP-12-09-06 )

CONSENT DECREE

The Board of County Commissioners of Douglas County, Kansas (the "Board") and Mid-States Materials, LLC ("Mid-States") enter into this Consent Decree (this "Agreement") as follows:

RECITALS

- A. Pursuant to Conditional Use Permit-7-2-90 (No. 3500), as amended by Conditional Use Permit-6-6-92 (No. 3853) (collectively the "CUP"), the Board authorized Martin Marietta Aggregates ("Martin Marietta") to operate a quarry in western Douglas County, Kansas through December 19, 2020 (the "Quarry"), all pursuant to and governed by the Restrictions of Use and Conditions of Approval imposed in connection with the Board's granting of the CUP.
- B. On July 17, 2007, pursuant to the provisions of XIV of the CUP, the Board approved and consented to the transfer of the CUP from Martin Marietta to Mid-States, which was assigned Conditional Use Permit-12-09-06 (the "Consent").
- C. At the time of the Consent, the Board made no finding concerning any reclamation deficiencies or that the overburden pile in Phase 1A violated the provisions of the CUP. Mid-States accepted the transfer of the CUP subject to the CUP, pertinent staff reports and Planning Commission minutes, and was of the belief that Martin Marietta's reclamation of Phase 1A was substantially in compliance with the reclamation requirements of the CUP. The Board has now determined that the overburden pile must be reduced to an established elevation and the banks along the water feature in Phase 1A must be recontoured and regraded to reduce the steepness of the slopes. As a representation of good faith, Mid-States enters into this Agreement in an effort to correct these alleged deficiencies that were created by Martin Marietta and which existed at the time of transfer of the CUP.
- D. In an effort to bring clarity to the reclamation issue and to address other matters, Mid-States has filed an application to amend the CUP, which is presently pending before the Lawrence-Douglas County Planning Commission. Mid-States submitted detailed reclamation plans for Phases 1A and 2 with this application.
- E. Mid-States owns and operates the Quarry, and nearby property owners have made allegations and complaints, and the Board has determined, that certain compliance site issues exist at the Quarry, and must be resolved.
- F. The Board and Mid-States enter into this Agreement to document and form a binding agreement between the Board and Mid-States with respect to the matters addressed herein.

## TERMS OF AGREEMENT

NOW, THEREFORE, the Board and Mid-States agree as follows:

1. Reclamation Plans. The Board has never approved any detailed reclamation plans for individual phases of the Quarry pursuant to Section VIII of the CUP. Mid-States agrees to submit a detailed reclamation plan, which shall include an appropriate drainage study, to the Planning Department for Phases 1A, 2, 3 and 4 within 60 days of the date of this Agreement, with such submittals being pursuant to Section VIII and X of the CUP and not part of any amendment to the CUP. (Mid-States understand that the CUP requires it to submit a detailed reclamation plan and drainage study to the Planning Department for Phases 5 and 6 for approval before Mid-States begins quarrying in such subsequent phases.) The detailed reclamation plan for Phase 1A shall provide for the removal of the overburden pile along E 100 Road to an established elevation; shall include the elevation and grade along the banks of the water feature which will be modified to achieve a 3:1 slope or flatter, shall contain a note establishing a sequencing plan necessary to complete the reclamation, and shall provide information on where the overburden material will be used or relocated. Prior to formal submittal of the detailed reclamation plan, Mid-States shall attend a pre-submittal meeting with the Planning Department staff to discuss and to receive staff's comments on Mid-State's proposed reclamation plans. Upon formal submittal of the detailed reclamation plan(s) outlined in this Section, the Planning Department will review and make a recommendation to the Board, and the Board will approve, approve with conditions, or deny the detailed reclamation plan in accordance with Section VIII of the CUP. The approved detailed reclamation plans shall represent the final grading and contouring after mining and reclamation work is complete for each phase. Once the Planning Department has forwarded the detailed reclamation plans for Phases 1A, 2, 3, and 4 to the Board, the Board shall schedule the matter as a regular agenda item and receive, review, and, if the Board determines that the detailed reclamation plans comply with this Agreement and the CUP, approve the detailed reclamation plans as expeditiously as reasonably possible. Barring good cause, the Board shall approve the detailed reclamation plans for Phases 1A, 2, 3, and 4 at the same time. If Mid-States does not submit a detailed reclamation plan for Phase 1A providing for removing, regrading and recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, reasonably in compliance with the requirements of this Section such that the Board cannot approve it on or before August 31, 2009, the provisions in Section 8 shall not prohibit the Board from its commencement or continuation of additional enforcement action with respect to the matters addressed in this Agreement.

2. Phase 1A Reclamation. Phase 1A reclamation (which includes removing, regrading and recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, all in accordance with the approved detailed reclamation plan for Phase 1A and a portion of Phase 2) shall be completed within 12 months from the date of approval of the detailed reclamation plan (including Phases 1A, 2, 3 and 4). This deadline for reclamation is a strict deadline and not subject to extension without the express written consent of the Board. In order to verify that Mid-States is diligently pursuing reclamation in Phase 1A, a designated representative of Mid-States and of the County shall meet onsite and inspect the progress of reclamation every 3 months until reclamation is complete. As long as Mid-States makes satisfactory progress, according to the County inspections, in reclaiming Phase 1A and Phase 2 in accordance with the approved Phase 1A and Phase 2 detailed reclamation plan and the note to the detailed reclamation plan establishing the sequencing plan, acreage disturbed in Phase 1A and acreage disturbed in the N½ of the SE¼ of the SE¼ of Section 23, Township 12 South, Range 17 East (which is the

northeastern portion of Phase 2, directly south of the Phase 1A water feature and must be disturbed to reduce the slopes to the water feature, as depicted by cross-hatch in Exhibit A) in complying with the detailed reclamation plan of Phase 1A and 2 shall not be counted in the number of open acres as contemplated in Section VII (d) of the CUP. In the event Mid-States fails to complete reclamation of Phase 1A in accordance with the approved detailed reclamation plan by the date specified, Mid-States agrees that the provisions in Section VII(d) of the CUP will require Mid-States to limit quarrying in Phase 3 to 10 acres until County staff confirms in writing that Mid-States has completed reclamation in Phase 1A. In addition, Mid-States understands and agrees that it cannot proceed with quarrying in Phase 4 or any other subsequent phase until the moving of soil, overburden, and other materials as necessary for the reclamation of Phase 1A is complete, according to the detailed reclamation plan. For purposes of this Agreement and for purposes of determining whether reclamation is complete so as to enable Mid-States to quarry in subsequent phases in accordance with Section VII(d) of the CUP, reclamation for each phase shall be deemed completed upon final grading, contouring and seeding, notwithstanding the growth of vegetation or the accumulation of water in planned water features. Notwithstanding the foregoing sentence, Mid-States understands that the reclamation process and the CUP requires revegetation for all Phases, which is the establishment of annual and perennial plant material for long term soil stabilization, and Mid-States agrees to exercise due diligence in proceeding with revegetation of each Phase after final grading and contouring, including reseeded as necessary to reestablish permanent vegetation.

3. Compliance With Approved Reclamation Plans. Upon the Board's approval of the reclamation plans submitted and approved in accordance with Section 1 of this Agreement and Section VIII of the CUP, Mid-States shall comply with the approved reclamation plans, both in accordance with the type and manner of reclamation.

4. Fence Repair. Mid-States acknowledges Section III of the CUP requires that the Quarry site be fenced and the fences be maintained in accordance with Kansas fence laws, with new fencing consisting of five-strand barbed wire fence. On or before July 1, 2009, Mid-States shall (i) either replace the two-strand wire gate at the southeast corner of Phase 2 with a five-strand barbed wire fence or gate that complies with Kansas fence laws, and (ii) fix all missing fencing and fencing with a single strand of barbed wire along Douglas County Route 442 (the west side of Phase 3), either by repair of existing fencing or installation of new fences that comply with Kansas fence laws.

5. Use of Berms. Mid-States acknowledges that the berms around the Quarry were built, in part, to shield neighboring properties from noise and activity of the Quarry. As such, Mid-States agrees not to use the berms as vehicular drives to get to different locations of the Quarry. The foregoing, however, shall not prohibit Mid-States from driving vehicles on the berms in connection with installation of silt fencing and other berm maintenance and berm construction activities.

6. Approved Truck Routes; Truck Requirements. Mid-States acknowledges that Section XI of the CUP provides approved truck routes and imposes certain requirements and prohibitions on loaded trucks leaving the Quarry. Mid-States understands and agrees that the principal truck entrance and exit, whether unloaded or loaded with rock or other materials, is U.S. 40, and that, except for local deliveries (which the parties agree is limited to traveling to and from the Quarry and property in Kanwaka Township and Clinton Township that is west of E 550 Road), all trucks leaving or entering the Quarry to or from County Route 442 are prohibited from traveling to or from the east. Mid-States further acknowledges that the exit from the

Quarry onto Douglas County Route 442 (which turns into 45<sup>th</sup> Street in Shawnee County) is on the Douglas County side of the county line and, as such, agrees that use of this exit is subject to the terms and conditions of the CUP, including covering loads and following permitted truck routes (even if the truck is carrying rock or other materials originating on the Shawnee County side of the county line); provided that, if Mid-States has the consent of Shawnee County, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may turn west on Douglas County Route 442 and travel into Shawnee County; provided further that, if and to the extent done in compliance with all other applicable governmental rules and regulations, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may use U.S. 40 for ingress and egress. With respect to a road project in Douglas County, if and to the extent that the Board or the Director of the Douglas County Department of Public Works specifically consents, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may use Douglas County Route 442 for ingress and egress. Mid-States agrees to use its best efforts to require all trucks leaving the Quarry (even if carrying rock or other materials originating on the Shawnee County side of the county line) to comply with the approved truck routes and truck loading requirements. Mid-States agrees to provide periodic letters to all of its regular customers, not less than annually (within 30 days of the date of this Agreement and thereafter on or about March 1 of each year), informing them of the approved truck routes and the truck loading requirements, shall retain copies of such letters for a period of two years, and shall permit representatives of Douglas County to view such letters upon request. Furthermore, Mid-States shall prohibit its employees from giving weight tickets to drivers of trucks that are (i) flat bed trucks without sides or tailgates, (ii) do not have tailgates in place and in upright position; or (iii) have loads that are not covered by a tied-down tarp.

7. Shop Maintenance Facility and Hours of Operation. Mid-States acknowledges that when Martin-Marietta applied for an amendment to the CUP to permit construction and use of the shop maintenance facility, Martin-Marietta requested expanded hours to permit maintenance activities beyond 6AM-10PM, Monday–Thursday and 6AM-5:30PM, Friday. Specifically, Martin-Marietta requested that maintenance hours be extended until 9:00PM, Friday, and also be permitted from 6AM-5PM, Saturdays. Although the Board amended the CUP to permit construction and use of the shop maintenance facility, the Board denied the request for extended maintenance hours. As such, at the time the CUP was amended to permit construction and use of the shop maintenance facility, the intent and understanding of Martin-Marietta, the Planning Department, Lawrence-Douglas County Planning Commission, and the Board was that hours for maintenance operation would remain limited to 6AM-10PM, Monday–Thursday and 6AM-5:30PM, Friday. Absent an amendment to the terms and conditions of the CUP, Mid-States agrees to comply with these times. In addition, Mid-States acknowledges that the Board placed two additional ongoing conditions upon its amending the CUP to permit construction and use of the shop maintenance facility: (1) all repair and maintenance activities shall occur in the enclosed shop facility; and (2) repair and maintenance activities shall be limited to service of vehicles and equipment in use at this specific Quarry location. The parties acknowledge that some equipment, including but not limited to, the crushing plant, is too large and immobile to be serviced in the shop facility. Accordingly, such equipment may be serviced in its present location outside the shop facility.

8. Suspension of Formal Enforcement Action. Provided Mid-States complies with the terms and conditions of this Agreement, including compliance with the approved detailed reclamation plans, the Board will suspend formal enforcement action with respect to the matters

addressed in this Agreement. In the event Mid-States fails to timely comply with any provisions or requirements of this Agreement, the Board will immediately exercise any and all legal enforcement actions, including but not limited to those provided for in Section XVII of the CUP, Article 24 of the Douglas County Zoning Regulations, and K.S.A. 12-761.

9. Other CUP Requirements and Conditions. Nothing in this Agreement overrules or supersedes the various requirements and conditions imposed upon Martin Marietta pursuant to the CUP and assumed by Mid-States pursuant to the Consent, and Mid-States agrees to comply with all such requirements and conditions. By entering into this Agreement, the Board is not limiting or suspending its right to enforce the various requirements and conditions of the CUP that are not expressly addressed in this Agreement.

10. Pending CUP Amendment. Mid-States has filed a CUP application, seeking to make various amendments to the terms and conditions of the CUP, which is currently pending before the Lawrence-Douglas County Planning Commission. By signing this Agreement, Mid-States hereby withdraws such application. Although the Board cannot prohibit Mid-States from filing a new application earlier, Mid-States recognizes that the Board anticipates that Mid-States will wait until it has completed removal of the overburden pile from Phase IA before filing a new application.

11. Binding Effect and Condition. This Agreement shall be binding upon and inure to the benefit of the respective parties, and their successors and assigns, except as otherwise expressly provided herein.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

13. Governing Law. This Agreement shall be interpreted and governed by the laws of the State of Kansas.

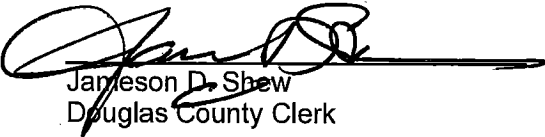
14. Severability. Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

15. Modifications. This Agreement may not be amended, altered, modified or otherwise changed except in writing executed by all parties hereto and expressly stating that it is an amendment to this Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have or they hereafter have, based upon any alleged oral alteration, oral amendment, oral modification or other changes based upon any alleged oral warranty, representation or promise except as set forth expressly in this Agreement.




IN WITNESS WHEREOF, this Agreement is approved and effective on this 31<sup>st</sup> day  
of May 2009.

**ATTEST:**

  
Jameson D. Shew  
Douglas County Clerk


**BOARD:**

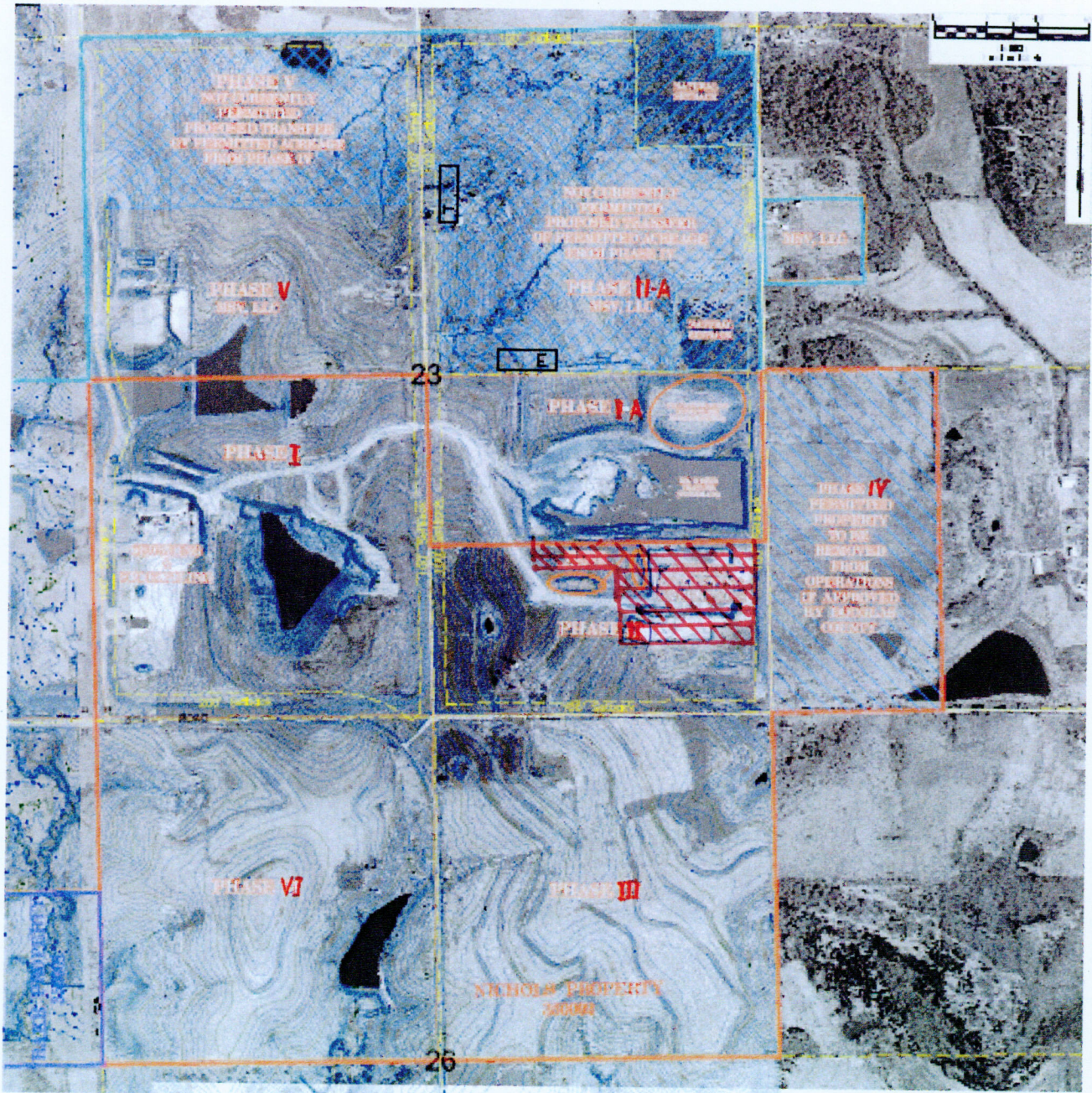
Board of County Commissioners of Douglas  
County, Kansas

By:   
Nancy Thellman, Chair

**MID-STATES:**

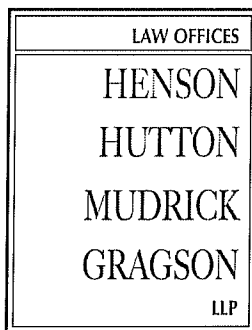
Mid-States Materials, LLC  
a Kansas limited liability company

By:   
Eric H. Bettis, Managing Member



|||| 2

CHARLES N. HENSON (*Retired*)  
JOHN H. HUTTON \*  
DAVID P. MUDRICK\*  
J. PHILLIP GRAGSON\*  
BRANDI L. STUDER\*



*Of Counsel:*  
THOMAS D. HANEY  
  
\* Also Admitted in Missouri

Sender's e-mail  
jhutton@hensonlawoffice.com

File No.: 17041-8

September 3, 2009

**VIA E-MAIL AND U.S. MAIL**

Evan Ice  
Stevens & Brand, LLP  
900 Massachusetts Street, Suite 500  
P.O. Box 189  
Lawrence, KS 66044-0189

Re: Our Client: Mid-States Materials, LLC  
(Big Springs Quarry Consent Decree)

Dear Evan:

As you know, my client and Douglas County entered into a Consent Decree concerning the above-referenced quarry on May 27, 2009. Please note that paragraph 1, Reclamation Plan indicates that the banks of the water feature shall be graded to a 3 to 1 slope or flatter. After review of the water feature in Phase 1A and during the process of preparing the proposed reclamation plan, it has been determined by my client and its consulting engineers that maintaining the weathered limestone outcropping along the north bank of the Phase 1A water feature would be beneficial to maintain the integrity of the north shore for purposes of preventing future erosion.

This issue has been thoroughly discussed with County staff, including Mary Miller, Scott McCullough and Keith Dabney. It is my understanding that staff has no objection to this modification after reviewing the proposed reclamation plans, photographs, and a site visit where this issue was specifically discussed on September 1, 2009.

Bearing this in mind, at the recommendation of staff, I am hereby requesting on behalf of my client that the terms of the Consent Decree be amended to allow the above-referenced natural outcropping to remain on the north shore of the Phase 1A water feature. This amendment would not alter the requirement for a 3 to 1 slope for the balance of the shoreline on the Phase 1A water feature and any other water features to be constructed in the phases subject to the Consent Decree. It is my understanding that this request can be taken up with the County Commission at the September 16 meeting, along with the reclamation plan itself.

Evan Ice  
September 3, 2009  
Page -2-

Thank you in advance for your attention to this request. Please let me know if you have any questions or comments.

Very truly yours,

HENSON, HUTTON,  
MUDRICK & GRAGSON, LLP

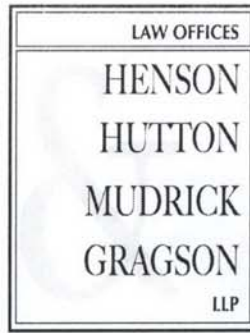


John H. Hutton

JHH:jbc

cc: Mary Miller  
Keith Dabney  
Mike Berry  
Eric Bettis

CHARLES N. HENSON (Retired)  
JOHN H. HUTTON \*  
DAVID P. MUDRICK\*  
J. PHILLIP GRAGSON\*  
JON P. WHITTON\*  
BRANDI L. STUDER\*



Of Counsel:  
THOMAS D. HANEY

\* Also Admitted in Missouri



Sender's e-mail  
jhutton@hensonlawoffice.com

July 17, 2009

VIA E-MAIL AND U.S. MAIL

Mary Miller, AICP  
Lawrence/Douglas County Planning and Development Services  
6 East 6th Street  
P.O. Box 708  
Lawrence, KS 66044

RE: Our Client: Mid-States Materials, LLC  
Big Springs Quarry Reclamation Plan

Dear Mary:

In your summary of the comments concerning the pre-submittal meeting held with regard to the reclamation plan, you requested photos of the north shore of the water feature in Phase 1A, along with a more complete explanation as to why my client would propose that the weathered outcropping of rock remain in that area. I have attached several photos showing the exposed outcropping of limestone along the north shore of the Phase 1A water feature. As you can see, this is, in reality, not a high wall. In fact, it is simply an outcropping of rock which is fairly common in many ponds and lakes in northeast Kansas. This rock is highly weathered and does not present a high "cliff" type appearance that was of concern to the neighbors. This is why we hesitate to call the rock in this area a "high wall".

The photos that have been provided show the north shore with a water level that is significantly lower than the final water level. My client conservatively expects that the water level will raise several feet upon completion of reclamation which will substantially cover the outcropping with water.

In my client's opinion and in Mike Berry's opinion, leaving this rock in place will significantly protect the shoreline from wave action erosion which could cause extensive erosion on the recontoured southern exposure of the overburden pile and result in unnecessary sedimentation of the water feature. As you know, many water features and waterways have limestone "shot rock", "rip-rap" or other sized materials placed in areas that will be in contact with water. In this

Mary Miller  
July 17, 2009  
Page -2-

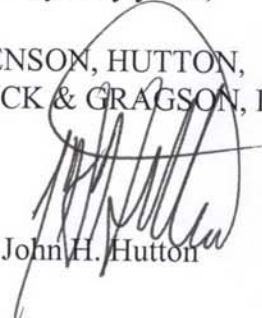
circumstance, there is a natural occurrence of rock that is both more attractive and more effective than man-made placement of rip-rap would be.

The bottom line is that the existing outcropping of rock is not detrimental to the overall reclamation plan and is, in fact, beneficial and more effective than other means of erosion control would be.

Please let me know if you have any further questions.

Very truly yours,

HENSON, HUTTON,  
MUDRICK & GRAGSON, LLP



John H. Hutton

JHH:jbc

Enclosure (by U.S. mail only)

cc: Eric Bettis (w/o enc.) (via e-mail)  
Mike Berry (w/o enc.) (via e-mail)

























## Mary Miller

---

**From:** DAVID HENRY [dk\_henry@sbcglobal.net]  
**Sent:** Wednesday, August 12, 2009 9:27 AM  
**To:** Buffo, David; Scott McCullough  
**Cc:** Mary Miller; Rick Henry; Patty O'Conner; kdabney@douglas-county.com  
**Subject:** Re: Mid-States / Revised Reclamation Plan

Scott --

I wanted to let you know that I have reviewed Mr. Buffo's correspondence and concur with his summary of the discussion and the concerns he expressed regarding Mary's representation of the meeting in her letter to Mr. Bettis. I also question how the outstanding issues can be properly considered and hopefully resolved in time for the County Commission to take action on August 19th. Thank you for your consideration and feel free to let me know of any questions.

Dave Henry

---

**From:** "Buffo, David" <David.Buffo@huschblackwell.com>  
**To:** Scott McCullough <smccullough@ci.lawrence.ks.us>  
**Cc:** Mary Miller <mmiller@ci.lawrence.ks.us>; Rick Henry <RHenry@mktpileman.com>; DAVID HENRY <dk\_henry@sbcglobal.net>; Patty O'Conner <oconnor2@peoplepc.com>; "kdabney@douglas-county.com" <kdabney@douglas-county.com>  
**Sent:** Tuesday, August 11, 2009 3:17:29 PM  
**Subject:** Mid-States / Revised Reclamation Plan

Scott:

As you know, David Henry, Bart Christian, Patty O'Conner, Ken O'Conner and myself met with Mary Miller and Keith Dabney on Thursday, August 6. Prior to meeting on August 6, Ms. Miller had provided us copies of Mid-State's revised reclamation plans and we had provided comments and questions in advance of the meeting. Ms. Miller had addressed certain of our questions before the meeting and we agreed to leave certain questions, particularly questions regarding General Note 4 for discussion at the meeting. Additionally, Lone Oak retained the services Robert Prager, P.E. to review and provide comment on Mid-State's submittals. We provided a copy of Mr. Prager's stamped report to Ms. Miller the day before the meeting; unfortunately, Ms. Miller did not review Mr. Prager's report before the meeting. We have attached another copy of Mr. Prager's report to this e-mail and strongly encourage the County to review and consider Mr. Prager's comments before taking any action regarding Mid-States' revised reclamation plans. Planning Staff may also want to consider sharing Mr. Prager's report with the commissioners. Mr. Prager has extensive experience in this area and his comments should be taken into consideration.

On Monday, August 10, we were provided a copy of the letter Ms. Miller sent to Mid-States as a result of the nearly two hour meeting with the neighbors. We have great concerns with Ms. Miller's letter because it does not fully encompass the comments and issues raised by the neighbors and does not accurately represent what was discussed at the August 6 meeting. We have tried to capture in as brief of a summary as possible (and there may be other issues raised at the August 6 meeting not set forth below), what was discussed at the meeting. Also, we want to make sure that the neighbors' comments are accurately reflected in transmittals to Mid-States and the commissioners. The neighbors have committed themselves to working with the County and Mid-States and we want to be certain that the neighbors are properly represented in correspondence and communication with Mid-States and the commissioners.

1. Lone Oak raised the concern that a proper hydrology study had not been submitted for the wells and streams on Lone Oak's property. Staff responded that it had been determined that the hydrology study had been submitted as required and no further action on this issue is planned. Mr. O'Conner indicated that the hydrology study that had been completed on his property was incomplete and inaccurate. Staff indicated

that any resolution of these issues would need to occur outside of this process. Mr. Buffo asked that Staff make note that the concerns had been brought forward.

2. A lengthy discussion occurred surrounding General Note 4 of the Reclamation Plans. Staff indicated that it was not feasible to have a reclamation plan at this point in time that determined the outcome of reclamation activities due to varying field conditions that may be encountered during mining operations. Staff also indicated that they had recommended that a "range" be included in the Note to establish the amount of variation allowed. The neighbors provided the following comments;
  - o The Consent Decree requires that "The approved detailed reclamation plans shall represent the final grading and contouring after mining and reclamation work is complete for each phase "and any reclamation plan that varies from that requirement is not in compliance with the consent decree. "
  - o That the proposed General Note 4 is inconsistent with the Consent Decree, and the CUP reclamation requirements.
  - o Any proposed "range" of variation should be determined according to engineering best practices and not some arbitrary value.
3. An offshoot of the discussion of General Note 4 was the neighbors raising the concern that the plans had been submitted without being "sealed" by a Professional Engineer, and that they lack appropriate detail. Staff responded that due to the variability of conditions as indicated by General Note 4 that it would not be possible for the submittal to be sealed. The comments of the neighbors were as follows;
  - o Zoning and Codes has a long established requirement that all engineering drawings required to be submitted as part of the Big Springs Quarry CUP are required to be sealed. Mr. Dabney confirmed the accuracy of this statement. Staff was asked the reason for departing from this established practice, no response was provided.
  - o If the plans are not sealed, what evidence exists that they are an accurate representation of pre and post mining site conditions?
  - o We find the lack of professional engineering review and approval of the proposed plans unacceptable
4. Asked the status of the independent engineering review of the plans as previously suggested by Staff. Staff indicated that funding for this type of review was not available and therefore the suggestion was not going to be implemented. Neighbors commented that an independent engineering review of the Plans should be conducted as opposed to Staff attempting to interpret the highly technical and specialized engineering data related to the reclamation plans. An alternative would be to have the County Engineer perform a detailed review and issue a formal report.
5. Asked why the drawings as submitted do not accurately reflect the established setbacks. Staff responded that the CUP setback requirements were difficult to understand and that Staff had developed a summary for the Operator to clarify the requirements. Neighbors commented that this material error in the reclamation plans supports the need for professional engineering review and approval of the plans to better ensure the accuracy of those plans.
6. Asked why the drawings as submitted do not accurately reflect the location and established safety restrictions for the pipelines that exist in the affected areas? Staff indicated that they were not aware that the drawings were inaccurate or that there were specific safety restrictions regarding mining and reclamation activities in the areas surrounding the pipelines. Neighbors commented that the pipeline issues must be fully explored and resolved for life safety reasons prior to approval of the proposed plans. Pointed out that this error also supports the need for professional engineering review and approval of the plans to better ensure the accuracy of those plans.
7. Discussed how the proposed water features may impact the adjacent downstream property owners. Staff reported that the Operator had indicated that there would be no impact. Asked Staff to determine if the proposed water features would discharge into the existing waterways or if the water features would be non-discharging. If the water features are found to be non-discharging how would this not impact the receiving waterways? Staff was also asked if any study had been conducted to determine the water flow (both surface and ground) received by adjacent property owners and what impact the quarrying operation would have on the water flow. It appears from our studies, that one of the springs that feeds the water feature on Lone Oak's property produces approximately 29,000 gallons of water a day.
8. Staff indicated that they support the Operator's proposal to maintain the exposed cut on the north side of the Phase 1A water feature. Neighbors commented that this conflicts with the requirements of the Consent Decree and therefore is unacceptable.
9. Planning Staff indicated that they had not received or reviewed the comments of Robert Prager, P.E. Mr. Buffo reported that the message had been sent electronically the previous day. All in attendance, with the exception of Ms. Miller, confirmed receipt of the correspondence. Neighbors comments included;
  - o Mr. Prager's comments should be closely reviewed and considered by Staff as they are detailed and

identify a number of errors and omissions requiring correction. Since Mr. Prager's input is the only Professional Engineering opinion that has been given in the entire process, it should carry significant weight.

- Is the County Engineer available to consult with Mr. Prager or other interested engineering professionals related to the drawings as submitted?
  - What steps will be taken to resolve the concerns raised in Mr. Prager's report?
10. It appears that the post reclamation elevations are similar to the pre mining elevations. Information previously submitted indicates that, on average, a 15' decrease in pre mining elevations can be anticipated upon reclamation. Has the County Engineer reviewed this apparent discrepancy and issued an opinion on the feasibility of the proposed post reclamation elevations?

It is apparent that there are many complex and technical issues with Mid-States' revised reclamation plans and, as such, it would appear that this matter will not be ready to go before the commissioners on August 19. Our concern is that even if Mid-States responds to Ms. Miller's letter by August 12 as requested, the neighbors will not have sufficient time to review and comment before this matter goes to the commissioners on August 19. If my recollection is correct, the goal for this process was to present the commissioners with a revised reclamation plan that was acceptable to Mid-States, the County and the neighbors. In its current form, the revised reclamation plan is not acceptable to the neighbors and should not be accepted by the County. Even if Mid-States addresses the concerns raised in Ms. Miller's letter, the revised reclamation plans will still be deficient and not provide the adequate protections for the neighbors and the environment.

If you have any questions, please feel free to give me a call.

Dave



HUSCHBLACKWELL  
SANDERS LLP

**David M. Buffo** 

**Attorney**

Husch Blackwell Sanders LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Direct Phone: 816.983.8253  
Direct Fax: 816.983.8080

E-Mail: [david.buffo@huschblackwell.com](mailto:david.buffo@huschblackwell.com)  
Website: [www.huschblackwell.com](http://www.huschblackwell.com)

# INTUITION & LOGIC

450 N. New Ballas Rd., Suite 264N St. Louis, MO 63141  
314.432.2543 • 314.432.5812 •

1306 Autumn Trace Amelia Island, FL 32034  
904.261.5555 •

August 5, 2009

Mr. Bart Christian  
Lone Oak, LLC  
1719 East 150 Road  
Lecompton, KS 66050

Dear Mr. Christian:

I have reviewed the following documents that were submitted to the City of Lawrence, Kansas:

Big Springs Quarry, Detailed Reclamation Plan, Phase 1A, 2, 3, and 4, Douglas County, Kansas, dated July 2009, Sheet 1 through 10, prepared by Professional Engineering Consultants, P.A.

I also reviewed the August 4, 2009, 7:29 am e-mail from Mary Miller, AICP to D. Buffo, D. Henry, R. Henry and P. O'Connor, Subject: response to comments.

I have not notified Professional Engineers Consultants, PA that I have reviewed their submittal as these documents were not sealed and were in the public domain. I have not reviewed any back-up calculations in support of these drawings.

## Review comments from documents

### Sheet 1 of 10

1. Sheet is not sealed by a professional engineer.
2. General Note 4. This note allows the plan to be modified for the convenience of quarrying operations. Nearby landowners still do not know how the land will be reclaimed or how often they will have to review plans that are revised. This note nullifies the plans. Quoting the note, "The detailed reclamation plans presented herein are subject to change based on variable field conditions relative to soil and rock volumes, soil and rock characteristics, and field conditions which may be encountered during mining and reclamation processes." Some of the *variable* field conditions

It is by LOGIC that we prove  
but by INTUITION that we discover

can be controlled by the quarry. As an example, if the quarry sells the soil, it will not be available for reclamation or if the soil is stockpiled but not maintained to prevent erosion the soil is lost as fill and pollutes the creeks. Again quoting the note, "Landforms indicated are general in nature and final elevations are subject to change. Water bodies may change relative to size and location (within the range noted on individual the plan); and shape and elevation as field conditions dictate." The note does state the allowable percentage of open water, minimum elevation of a lake, and the mandated 3 horizontal to 1 vertical slope. "Any other variation will require a revision of the reclamation plan." These plans do not contain detailed reclamation plans as stated in General Note 4.

3. **GENERAL SEQUENCING PLAN.** The open paragraph states that reclamation activities are complete when final grading, seeding, mulching operations are complete. These operations do not guarantee successful establishment of vegetation. What are the criteria for final acceptance and what is the required schedule. What are the maintenance requirements until establishment of vegetation?
4. **GENERAL SEQUENCING PLAN.** The opening paragraph states the intent of the reclamation is to *return* the land to be suitable for agriculture, recreation, wildlife habitat, or other uses. Is it the intent of the plan to reclaim the land to approximately the same percentage of land use as pre-quarrying? Will any of the area be reforested?
5. **GENERAL SEQUENCING PLAN Note 1.** An erosion control plan and storm water pollution prevention plan should be developed for each phase. The phrase, "erosion control sediment barrier" makes no sense. Either erosion is prevented by grassing, erosion control fabric or similar products or sediment, the product of erosion, is capture by silt fences, sedimentation ponds or similar products or methods. Organizations like the International Erosion Control Association have standards that relate the slope of the land, soil type and conditions to the maximum area draining to any sediment barrier. Placing a single barrier on the down gradient side of earthmoving operations is inadequate. This note does not address storm water handling or dust pollution from earthwork operations.
6. **GENERAL SEQUENCING PLAN Note 2.** This note limits fill material to overburden only. Will fill material be systematically placed? Will more erodible material be buried? How will filled be placed, at what moisture content? Is it dumped, spread or compacted? What is the maximum allowable lift thickness? Method of filling excavated area is not defined.
7. **GENERAL SEQUENCING PLAN Note 4.** Who determines what is appropriate and where terraces will be installed? What is the maximum height of a terrace? What is the minimum width?
8. **GENERAL SEQUENCING PLAN Note 5.** It is probable that the fill material will be sterile soil and that it will be compacted in such a manner not to settle excessively. Four inches of topsoil may not be adequate to maintain moisture and establish sustainable vegetation. How was the four inches determined? How is the interface between fill soil and topsoil treated? Will it be scarified?
9. **GENERAL SEQUENCING PLAN Note 6.** There is no indication that soil will be tested to determine if fertilizer or other admixtures are required. There is no

Mr. Bart Christian  
August 5, 2009

indication how the site will be maintained during establishment of vegetative cover. Will it be watered? How will weeds and other invasives be handled? Is K-31 fescue and annual rye the appropriate cover for the entire site? Who determines where optional seed mixes will be placed? When will sediment barriers be removed? Who determines that the vegetative cover is adequate and acceptable? How often is the site inspected and repaired prior to final acceptance?

Sheet 2 of 10

1. Sheet is not sealed by a professional engineer.
2. The figure in the upper right corner is illegible. It appears to be an excerpt of the Kansas Geologic Survey Map 26. The legend on the drawing is not related to the legend on the inserted figure. What is the purpose of this drawing?
3. It is assumed the symbols on the topographic map are exploration borings. Each symbol is numbered and an elevation is called out. It is assumed the numbers associated with the legend call outs are thicknesses. How is this information relative to the reclamation? Is a quantity of overburden and anticipated excavation calculated? Is there a cut and fill balance calculation?
4. The date of the topography is not referenced. The date of the borings is not referenced.
5. Were groundwater observations noted at the time of the borings and is this information available?
6. How is the sheet 2 related to sheet 3? Only the Ervine Creek Limestone is called out on Sheet 3.

Sheet 3 of 10.

1. Sheet is not sealed by a professional engineer.
2. The cross-sections show all the layers as horizontal but cursory review of the boring data (if correctly interpreted) indicates quite a variation in the elevation of the bottom of the top soil and Ervine Creek Limestone. It does not appear to be planar as presented on the cross-section. What is the purpose of this drawing?
3. I have not checked all the strata but the Ervine Creek Limestone's average thickness is 8.8 feet plus 3 feet and minus 3.6 feet, not 10+/- feet. How is this data used in the reclamation design and is this significant?
4. Below the top soil and clay slopes are vertical or 1:1. How does this relate to the reclamation slope of 3:1? What are the bench widths? Will the bench widths be adequate to restore the slopes to 3:1?

Sheet 4 of 10.

1. Sheet is not sealed by a professional engineer.
2. Details of sheet 7 are not shown on Sheet 4.
3. All reclaimed slopes are steeper than the surrounding topography and do not restore the landform as required by the CUP. Slopes that are flatter at the top

and steeper downhill are very susceptible to erosion. Runoff moves slowly across the flatter upper slopes and accelerates on the steeper lower slopes usually resulting in gullies.

4. The landform on the northwest quadrant of Phase 1A comes to a sharp ridge pointing east. This is not natural or sustainable or easily constructed. Smooth the nose of the ridge.
5. The landform on the northeast quadrant of Phase 2 comes to a sharp ridge pointing east. This is not natural or sustainable or easily constructed. Smooth the nose of the ridge.
6. On Sheet 1, General Note 4 states, "Water bodies may change relative size and location (within range noted on individual plan)". No range is shown on Sheet 4.
7. The contours on the southeastern quadrant of Phase 1A come to a "v" and will concentrate run-off resulting in erosion.
8. The east end of the south slope of the quarry pit in Phase 1A is steeper than 3:1.
9. Drainage direction is shown on Sheet 10 but no outfalls or flow controls are shown on Sheet 4.
10. Note 2 requires terrace, but none are shown and there is no criteria as to height and width of terraces.
11. Is there sufficient topsoil in the piles indicated by Note 4 to cover Phase 1A?
12. In the southwest quadrant of Phase 1A, the Elevation 1200 contour should be reshaped to be more natural.

#### Sheet 5 of 10

1. Sheet is not sealed by a professional engineer.
2. Contour Elevation 1070 comes to a point in the northeast quadrant southeast of the proposed lake.
3. On Sheet 1, General Note 4 states, "Water bodies may change relative size and location (within range noted on individual plan)". No range is shown on Sheet 4.

#### Sheet 6 of 10

1. Sheet is not sealed by a professional engineer.
2. The upstream end of an existing lake on Lone Oak, LLC is in the southeast corner of Phase 4. North of that lake is an existing small pond. North of that is a future pond labeled "RECLAIMED LAKE". To the west is the Phase 2 "RECLAIMED LAKE". Flow directions and water courses are shown on Sheet 10 of 10. There is insufficient detail on the drawings to determine how these lakes interact. There is insufficient drainage area to supply these lakes from runoff. The existing lake on Lone Oak is spring feed along with surface run-off. Post-quarrying, how will there be sufficient water to supply all these lakes? What provisions are in place to protect groundwater sources?

Mr. Bart Christian  
August 5, 2009

3. In the northwest quadrant of Phase 4, the slope between the Elevation 1050 and 1060 contours is steepened and may generate more erosion resulting in an increase in sediment loading to the stream.
4. On Sheet 1, General Note 4 states, "Water bodies may change relative size and location (within range noted on individual plan)". No range is shown on Sheet 4.

Sheet 7 of 10.

1. Sheet is not sealed by a professional engineer.
2. Sequencing Plan – Phase 1A, Note 1. An erosion control plan and storm water pollution prevention plan should be developed. The phrase, "erosion control sediment barrier" makes no sense. Either erosion is prevented by grassing, erosion control fabric or similar products or sediment, the product of erosion, is capture by silt fences, sedimentation ponds or similar products or methods. Organizations like the International Erosion Control Association have standards that relate the slope of the land, soil type and conditions to the maximum area draining to any sediment barrier. This note does not address storm water handling or dust pollution from earthwork operations.
3. Sequencing Plan – Phase 1A, Note 4 states that the "Natural strata on the north side of the water body will be retained in place of bank stabilization." The north side of the lake is a quarried face and is not natural strata. It should be restored to 3 horizontal to 1 vertical slope as required by the CUP.
4. Sequencing Plan – Phase 1A, Note 6. It is not clear in the note. Is it the intent to excavate and fill and finish grade all of Phase 1A before placing top soil and planting or as an area is completed will it be planted as recommended by Best Management Practices? If so what is the schedule/sequence so that progress can be observed as requires by the consent decree.
5. Sequencing Plan – Phase 1A. Why aren't notes 1 and 8 included on the other drawings?
6. The CUP requires that the land be reclaimed to a similar shape after quarrying. The stockpile should be removed to the original ground surface. Original drainage should be restored. There was a spring-fed lake under the stockpile that drained to the northeast. Runoff and spring-fed discharges are being routed away from the tributary that flows to Lone Oak, LLC at the northeast corner of Phase 1A.
7. Reclamation Drainage Plan Notes 1 through 4 divert runoff away from its original drainage course and to the new lake to the south.

Sheets 8 and 9 of 10

1. Sheets are not sealed by a professional engineer.
2. Overburden pile should be removed to original ground surface.



Mr. Bart Christian  
August 5, 2009

Sheet 10 of 10 with contour.

1. Sheet is not sealed by a professional engineer.
2. Drainage Map - Post Reclamation has original contours and do not match the contours as shown on Sheets 4 through 7.
3. Watershed crest on Drainage Map - Post Reclamation do not match the drainage crested on Sheets 4 through 7 for reclamation.
4. Drainage areas on Drainage Map - Post Reclamation are incorrect and do not match Sheets 4 through 7 for reclamation.
5. The topography is not referenced. No date is given for the contours.
6. Drainage Map -- Pre-Mining watershed Crest do not follow contour.

August 4, 2009, 7:29 am e-mail from Mary Miller, AICP to D. Buffo, D. Henry, R. Henry and P. O'Connor, Subject: response to comments.

1. Response 2. Is the drainage plan available for review since it should have been the basis for the reclamation design?
2. Response 3. The US Natural Resource Conservation Service recommends a ratio of 20 to 1 for drainage area to lake area to have a sustainable lake fed only with run-off. There is insufficient drainage area to support the reclaimed lakes without groundwater. As an example using the contour data on Sheet 6 of 10 to calculate the drainage area to Reclaimed Lake the ratio is approximately 4 to 1. Existing lakes are spring fed. What provision is the Quarry taking to ensure that groundwater is not disrupted? Will lakes be permitted after each phase of reclamation or after all quarrying operations are complete?
3. Response 5. Does this mean that the final phase will be reclaimed with material excavated in the final phase and material brought from off-site?
4. Response 7. This assumes that topsoil is uniformly distributed on the site. Part of Phase 1A top soil is in the overburden pile based on the notes on Sheet 7 of 10.
5. Response 8. At a minimum Sheet 10 of 10 Drainage Map, Post-Reclamation should be revised with the correct topography, watershed crest, water course/waterbody, flow direction and areas.
6. Response 9. I concur.
7. Response 10. Does this require native grasses/wildflower planting or is it preferred?

## Discussion

As noted in my detailed comments above, these sheets present a generalized view of the reclamation plan but do not present a detailed plan. These plans are not definitive. As stated in General Note 4 on Sheet 1 of 10, "Landforms indicated are general in nature and final elevations are subject to change. Water bodies may change relative to size and location (within the range noted on individual the plan); and shape and elevation as field conditions dictate." This drawing set does not include a landscape

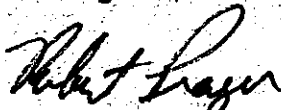
Mr. Bart Christian  
August 5, 2009

plan or erosion and sediment control plan. There is no inspection plan or a definite statement of what will be considered establishment of vegetation.

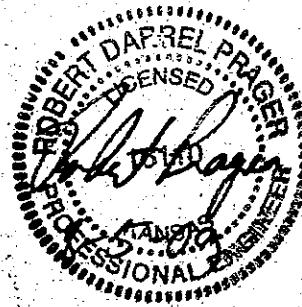
There are no details on how discharges from the lakes will be managed or if these are permanent lakes or if they will be dry part of the year. The lakes do not appear to be sized appropriate to their watershed without groundwater recharge. The drainage plan should clarify these concerns and the effects on off-quarry water sources.

As always, I am available to discuss my findings in more detail and to work with the designers to better understand their design and resolve any misunderstandings.

Best regards,



Robert Prager, P.E.  
Principal River Engineer



cc: Mr. David Buffo  
Husch, Blackwell Sanders, LLP

# INTUITION & N LOGIC

450 N. New Ballas Rd., Suite 264N St. Louis, MO 63141  
314.432.2543 ☎ 314.432.5812 📠

1306 Autumn Trace Amelia Island, FL 32034  
904.261.5555 📠

August 17, 2009

Mr. Bart Christian  
Lone Oak, LLC  
1719 East 150 Road  
Lecompton, KS 66050

Dear Mr. Christian:

I briefly reviewed the new set of reclamation plans, Sheets 1 through 11, provided by Mid-States.

The revision block in the lower right hand corner of the sheets is not filled out making it difficult to follow what revisions were made. The changes I found were renumbering of the set, addition of Sheet 3 and as noted below. My previous comments still stand.

#### Cover Sheet

- General Note 4 increases the allowable percentage of a water body to 45% from 40% **increases area for evaporation and loss of water from surrounding land owners.**
- General Sequencing Plan Note 6 changes seeding plan to prairie or wildlife mix.

#### Sheet 3 of 11

- Does not show changes to overburden pile.
- Does not show pipelines or setbacks.
- Does not have distinction between original contours and reclaimed.
- Original contours for land that will be excavated should be either removed or shown as a different line type.
- New contours do not connect to existing contour.
- Outfalls for lakes not shown.
- Also information on Sheet 3 should be shown on Sheet 10 including changes to *overburden pile and removal of contours of excavated land.*

#### Sheet 4 of 11

- Boundary of Phase I-A changed to **exclude** part of overburden pile and northern boundary.

Mr . Bart Christian  
August 17, 2009

Sheet 5 of 11

- Pipelines are shown.
- Setback changed in southwest corner and on the north boundary
- Excavation is shown over the southern pipeline. Contour changes.

Sheet 6 of 11

- Eastern setback **decreased** from 150 feet to 100 feet at Lone Oak LLC.

Sheet 7 of 11

- Sequencing Plan – Phase 1A Note 3 is revised to include temporary grassing of stockpiles prevention of wind or water erosion. No note added to address all other surfaces during reclamation.
- Sequencing Plan – Phase 1A Note 7 changes seeding plan to prairie or wildlife mix.

There may be other changes I did not find.

The drawings are not sealed. Quoted below are the Kansas regulations regarding the use of an Engineer's seal.

**AGENCY: STATE BOARD OF TECHNICAL PROFESSIONS**  
**ARTICLE 6. PROFESSIONAL PRACTICE**  
**NUMBER: 66-6-1**  
**TITLE: Seals and signatures.**

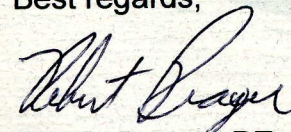
**66-6-1. Seals and Signatures.**

(b) Each original drawing, document, technical report, legal description, record, and paper prepared by or under the direct supervision of the licensee in the licensee's professional capacity shall be stamped with the licensee's seal, unless the project is exempt from the requirements for licensure pursuant to K.S.A. 74-7031, K.S.A. 74-7032, K.S.A. 74-7033, K.S.A. 74-7034, or K.S.A. 74-7042, and amendments thereto.

After the licensee's seal has been applied to the original or record copy, the licensee shall place the licensee's handwritten signature and date across the seal.

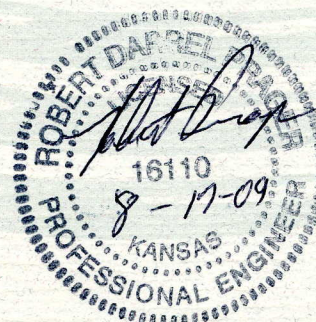
The exceptions do not appear to apply.

Best regards,



Robert Prager, PE, CVS

cc: Mr. David Buffo



August 12, 2009

David Buffo, Esq.  
Husch Blackwell Sanders LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112

RE: Groundwater Impact from Big Springs Quarry

Dear Mr. Buffo:

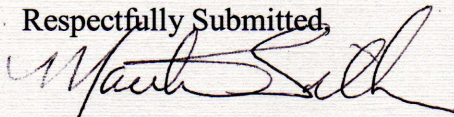
Based on a site survey report we prepared last fall and a report prepared by Mr. Vincent on behalf of Big Springs Quarry, the Kansas Geological Survey ("KGS") made the following conclusions:

- Mining in the eastern half of the NE1/4 of section 23 would likely significantly impact on the campground wells located little more than ¼ mile away. This impact is due to the reduction in contributing area and, therefore, reduction in quantity of source water for each well.
- The effects of the quarry ponds will enhance evaporation. The water lost by way of evaporation will reduce local streamflow.
- Quarry ponds will also divert groundwater from its natural path through the shallow bedrock aquifer system to a path recharging a deeper aquifer. This will act to further reduce the quantity of shallow groundwater locally.

Our interpretation of KGS's findings is that there is groundwater in the shallow bedrock and this groundwater is the source water of the campground wells and the contributing area of each groundwater well is around ¼ mile. Another logical conclusion is that this same groundwater is also the source water for the numerous springs discharging to the local creeks.

We also suggest that if mining within a ¼ mile of the campground wells will impact well yield then mining within a ¼ mile of the springs on Lone Oak's property will impact spring yield. These springs feed the Lone Oak pond and constitute local streamflow during much of the year. This surface water is important to the wildlife as well as the ascetics of the Lone Oak property. Streamflow on the Lone Oak property will not only be affected by the depletion of shallow groundwater discharge by way of the springs but also from the depletion of streamflow entering the property at the upstream reach due to evaporation losses in the quarry ponds.

Respectfully Submitted,



Martha Silks, PG  
Hydrogeologist  
Kansas License No. 508

# BIG SPRINGS QUARRY

## DETAILED RECLAMATION PLAN

### PHASE 1A, 2, 3, AND 4

## DOUGLAS COUNTY, KANSAS

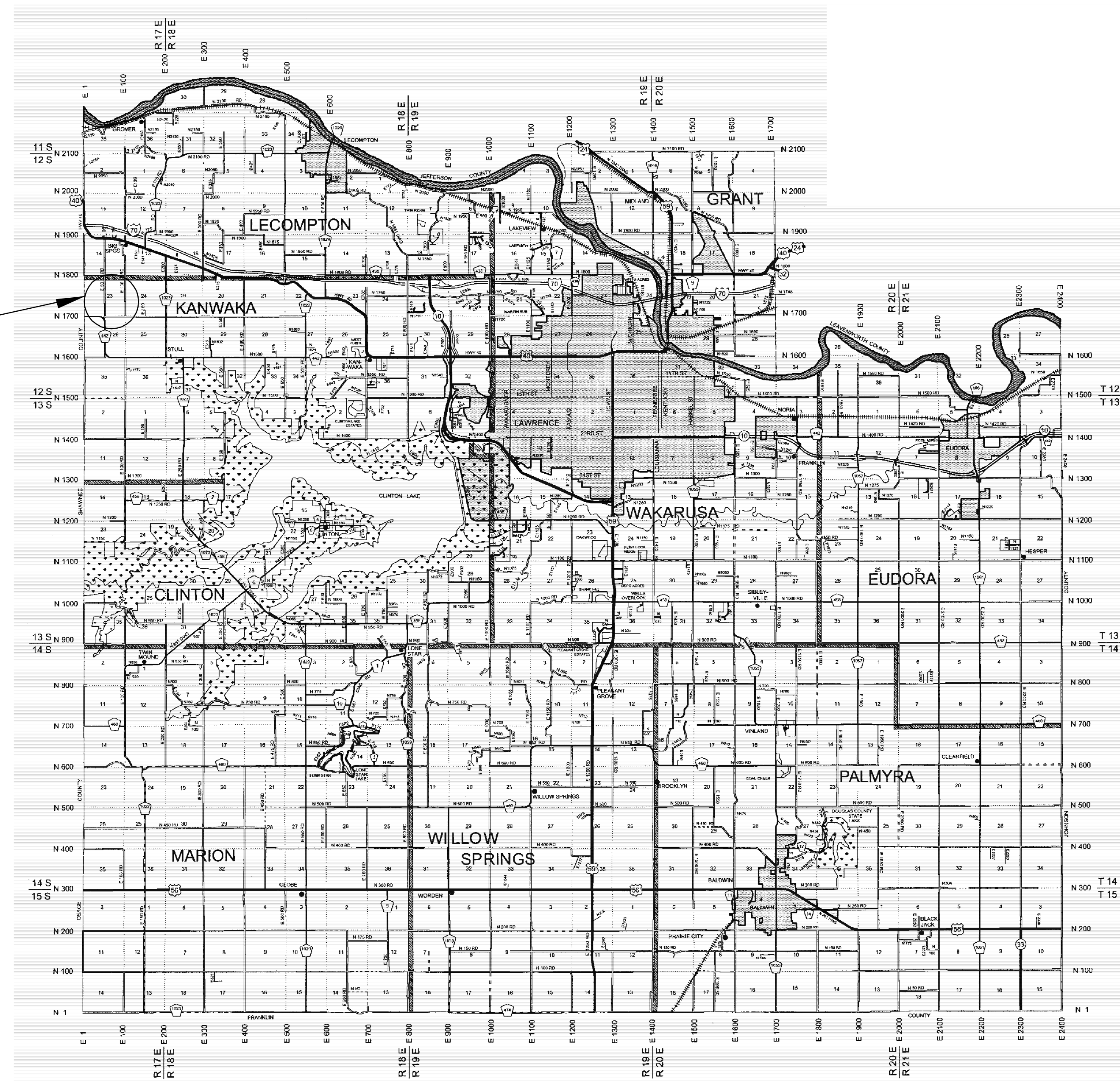
#### INDEX OF DRAWINGS

- 1 TITLE SHEET
- 2 OVERALL GEOLOGY MAP
- 3 COMPOSITE DETAILED RECLAMATION PLAN
- 4-6 DETAILED RECLAMATION PLANS
- 7 PHASE 1A RECLAMATION PLAN FOR OVERBURDEN PILE
- 8-9 PHASE 1A OVERBURDEN PILE CROSS SECTIONS
- 10 DRAINAGE PLAN FOR PHASE 1A, 2, 3, AND 4
- 11 GENERALIZED QUARRY CROSS SECTION

QUARRY LOCATION

#### LEGAL DESCRIPTION

All of Section 23, Township 12 South, Range 17 East of the Sixth Principal Meridian, in Douglas County, Kansas except the North 12 rods of East 16 rods of the Northeast Quarter of said Section 23;  
 TOGETHER WITH:  
 The Northwest Quarter and the Northeast Quarter of Section 26, Township 12 South, Range 17 East of the Sixth Principal Meridian, in Douglas County, Kansas  
 AND TOGETHER WITH:  
 The West Half of the Southwest Quarter of Section 24, Township 12 South, Range 17 East of the Sixth Principal Meridian, in Douglas County, Kansas.



**AUGUST 2009**  
**PEC PROJECT No. 08A39-000**

**Professional Engineering Consultants, P.A.**  
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#### GENERAL NOTES

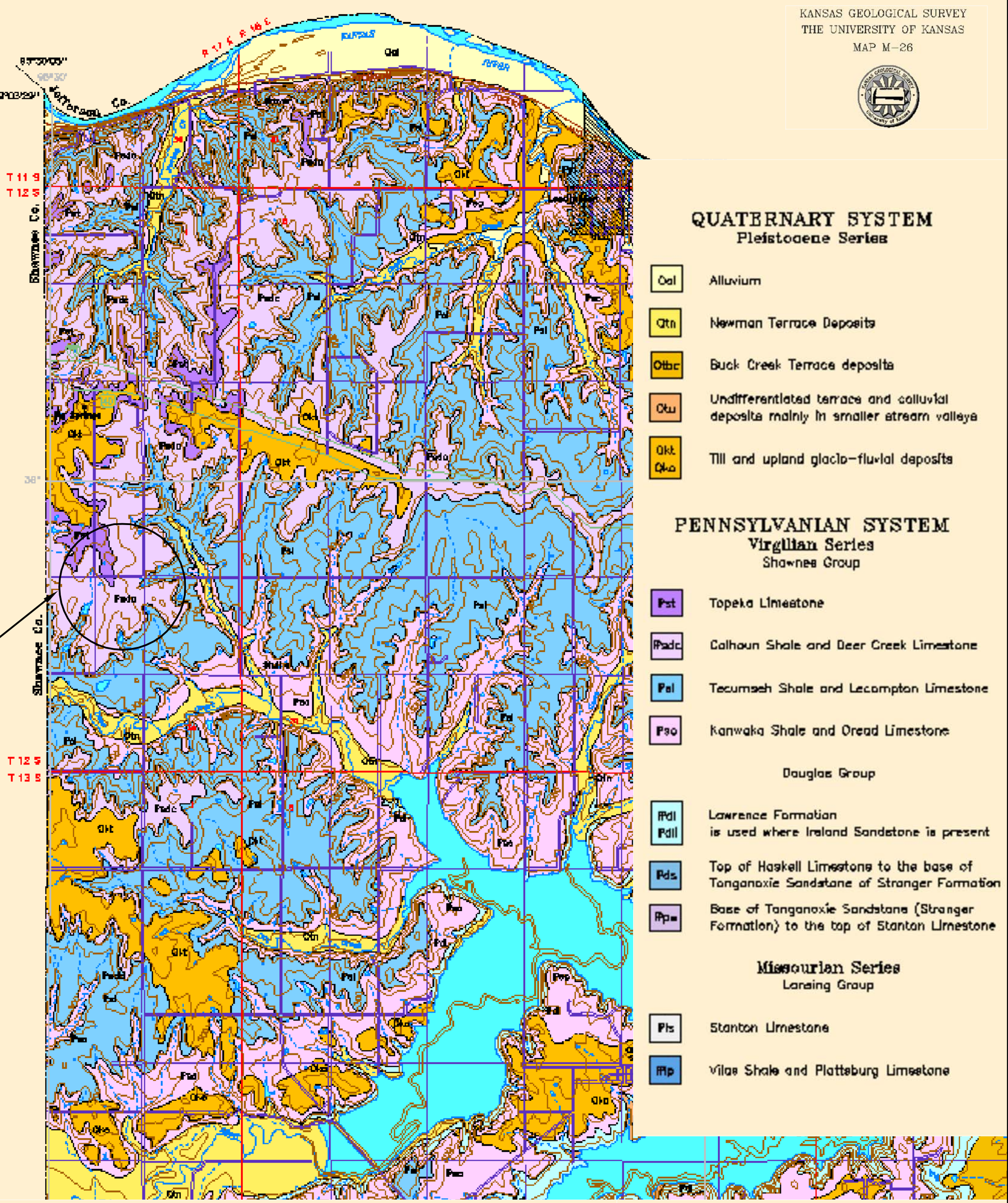
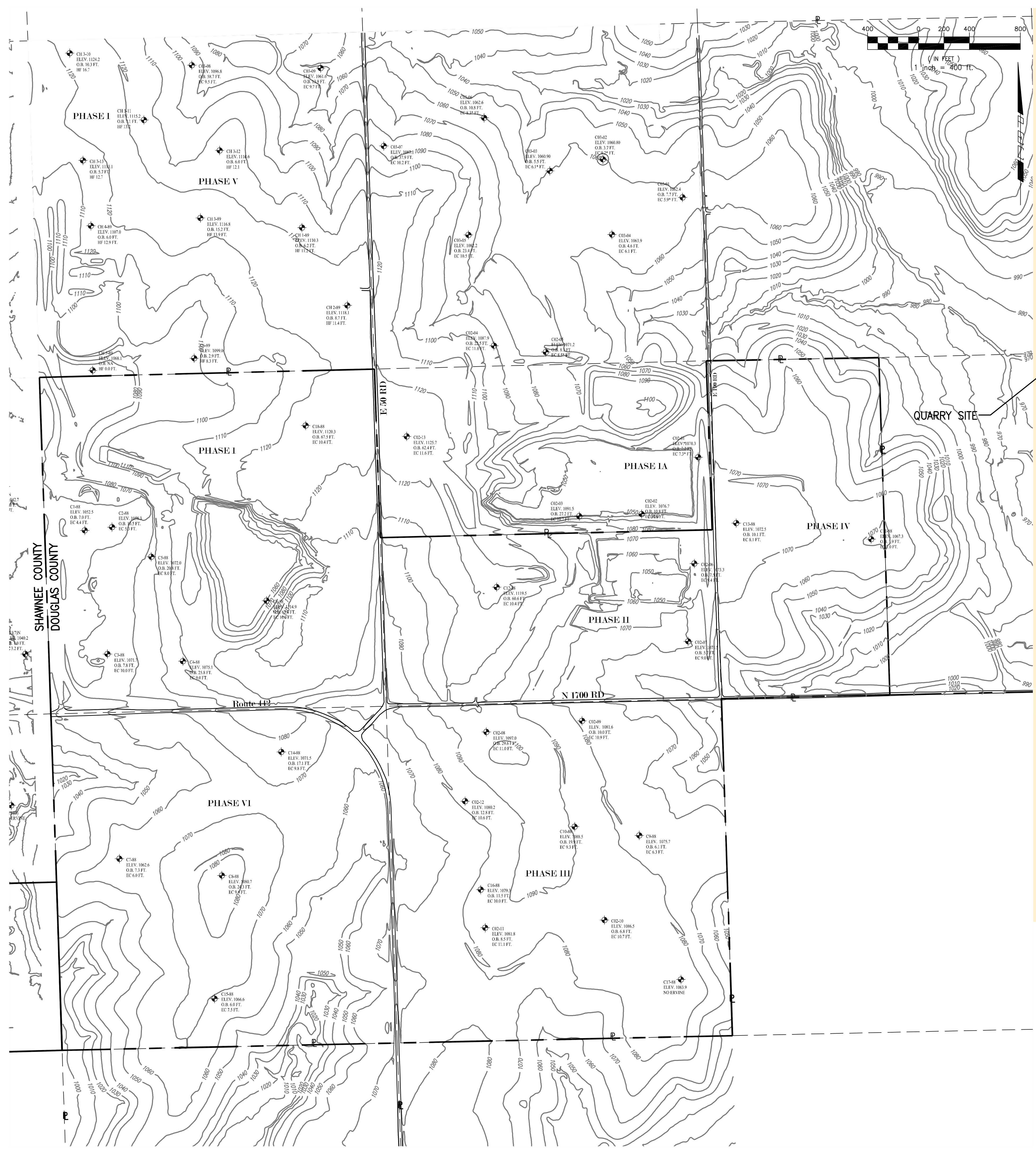
1. All quarry operations will be performed in accordance with the Storm Water Pollution Prevention Plan (SWPPP) on file with the Kansas Department of Health And Environment, as it may be amended from time to time.
2. Materials used to complete the reclamation of Phase 2 may be excavated and obtained from the mining operations in the area of Phase 3. In a likewise manner, materials used to complete the reclamation of the land in each phase may be taken from the mining operations in the subsequent phase. The area which may be disturbed in the subsequent phase prior to completion of reclamation in a previous phase is limited to the acreage specified in the CUP.
3. Reclamation of each quarried area within a phase is planned to occur concurrently with mining operations and will be completed as soon as practical after quarrying is complete. Material will be borrowed from the subsequent phase to finish reclamation in a completed phase where necessary. Reclamation activities, for the purpose of determining when quarrying in the subsequent phase may proceed beyond the acreage restriction in the CUP are considered complete when final grading, seeding, and mulching operations are completed.
4. The detailed reclamation plans presented herein are subject to change based on variable field conditions relative to soil and rock volumes, soil and rock characteristics, and field conditions which may be encountered during the mining and reclamation processes. Landforms indicated are general in nature and final elevations are subject to change. Water bodies may change relative to size and location (within the range noted on the individual plan); and shape and elevation as field conditions dictate. The surface area of any individual water body will not exceed 45% of the total disturbed area of a phase. No water body shall extend to a depth below elevation 1042. Depth and surface area of water bodies will vary based on climactic conditions. Any other variations will require a revision to the reclamation plan. Provided however, no man-made earth slope, with the exception of the slope of the water feature below the planned water level, shall exceed 3:1, and provided that where approved, natural strata with a slope steeper than 3:1 may be retained for stabilization of the bank of any water feature, and provided that the overburden pile located in Phase 1A will not exceed elevation 1070 after reclamation is complete.

#### GENERAL SEQUENCING PLAN

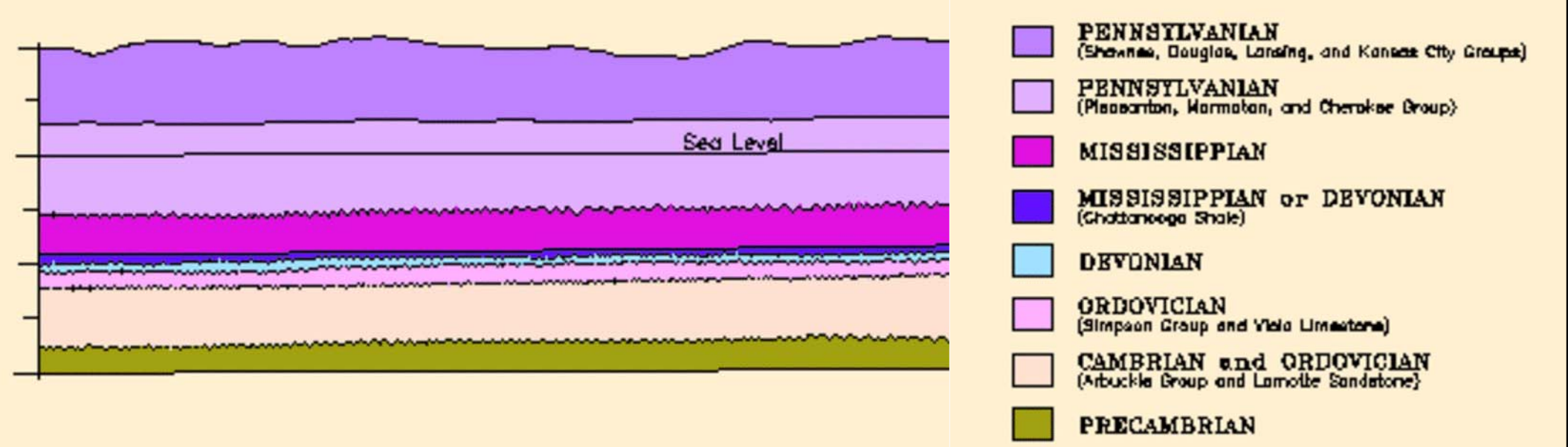
The intent of reclamation is to return the land to be suitable for use for agriculture (hay and ranching activities), recreation, wildlife habitat, or other uses. Water features will be incorporated into the reclaimed land to support ranching and fishing, as well as to support wildlife. Reclamation of each quarried area within a phase is planned to occur concurrently with mining operations and will be completed as soon as practical after quarrying is complete. Material will be borrowed from the subsequent phase to finish reclamation in a completed phase where necessary. Reclamation activities, for the purpose of determining when quarrying in the subsequent phase may proceed beyond the acreage restriction in the CUP are considered complete when final grading, seeding, and mulching operations are completed.

Reclamation will occur in the following sequence:

1. Place erosion control sediment barriers on down gradient side of earthmoving operations.
2. Fill excavated area with overburden material taken from active mining processes or available stockpiles.
3. Where water bodies are to be created, the slope above the planned water's edge will be shaped to a gradient of 3:1 or flatter. Natural strata along the water body may be retained in place for bank stabilization, or stone may be placed at the planned water's edge to stabilize the bank.
4. All man-made slopes will be graded to have slopes 3:1 or flatter, with the exception of the slope of the water feature below the planned water level, and provided that where approved, natural strata with a slope steeper than 3:1 may be retained for stabilization of the bank of any water feature. Where appropriate, terraces will be installed to minimize erosion.
5. After finish grading, a thickness of four inches of topsoil shall be placed on all areas to be vegetated. Topsoil material to be taken from topsoil stockpile(s) on site.
6. All disturbed non-water body areas shall be seeded and mulched. Seeding shall be prairie grass/wildflower mix for the District 1 area in accordance with the standards of the Kansas Department of Transportation, or wildlife habitat mix in accordance with the standards of Quail Unlimited. Prairie hay or wheat straw mulch shall be applied at a rate of two tons per acre and tacked down. In areas seeded for erosion control, mowed lawns, and berms, seeding shall be K-31 fescue at 300 pounds per acre and annual rye at 50 pounds per acre.



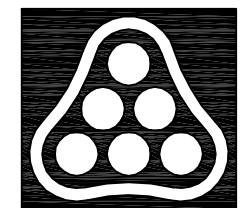
Generalized east-west geologic cross section across central Douglas County showing major rock units



**LEGEND**

OB OVERBURDEN  
EC ERVINE CREEK LIMESTONE MEMBER  
HF HARTFORD LIMESTONE MEMBER

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C:\2009\08A39\DWG\PLANS\REGULATION\_SITE\_08-15-09\08A39-000-SHT\_2-Overall Geology Map-NEW

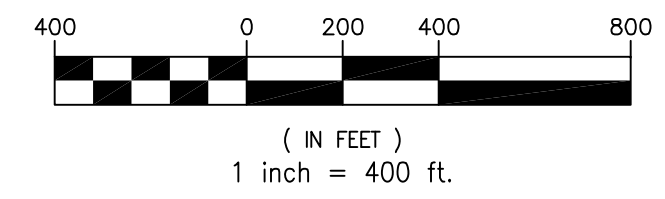
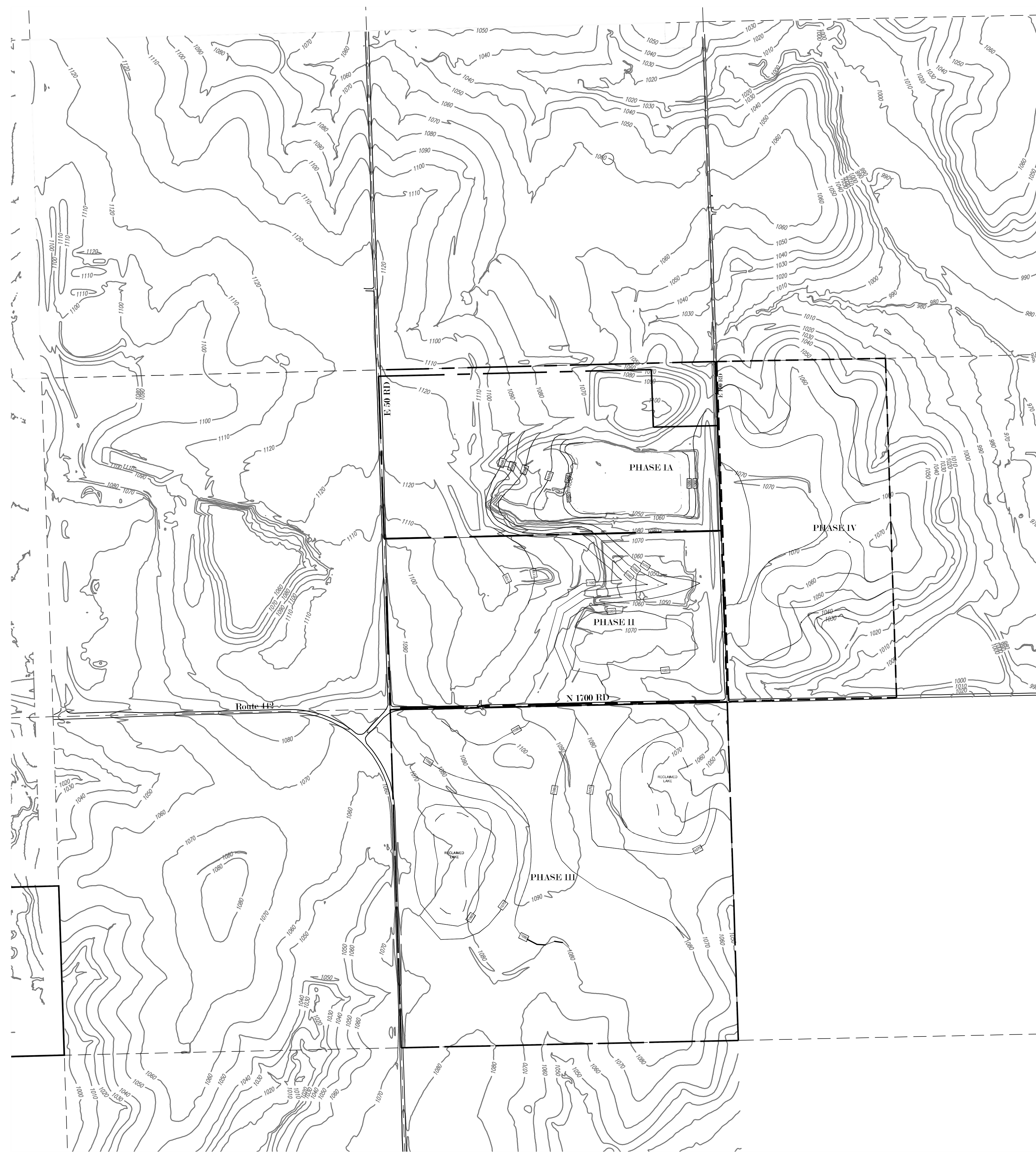


| No. | Revision | By | Date |
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**BIG SPRINGS QUARRY**  
DOUGLAS COUNTY, KANSAS  
**OVERALL GEOLOGY MAP**

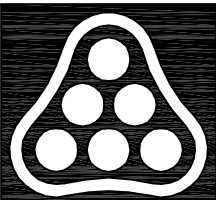
**Professional Engineering Consultants, P.A.**  
1263 SW TOPEKA BLVD. • TOPEKA, KANSAS 66612  
785-233-8300 • FAX 785-233-8855

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| Drawn by    | TCC    | Date    | JUNE 2009 |              |

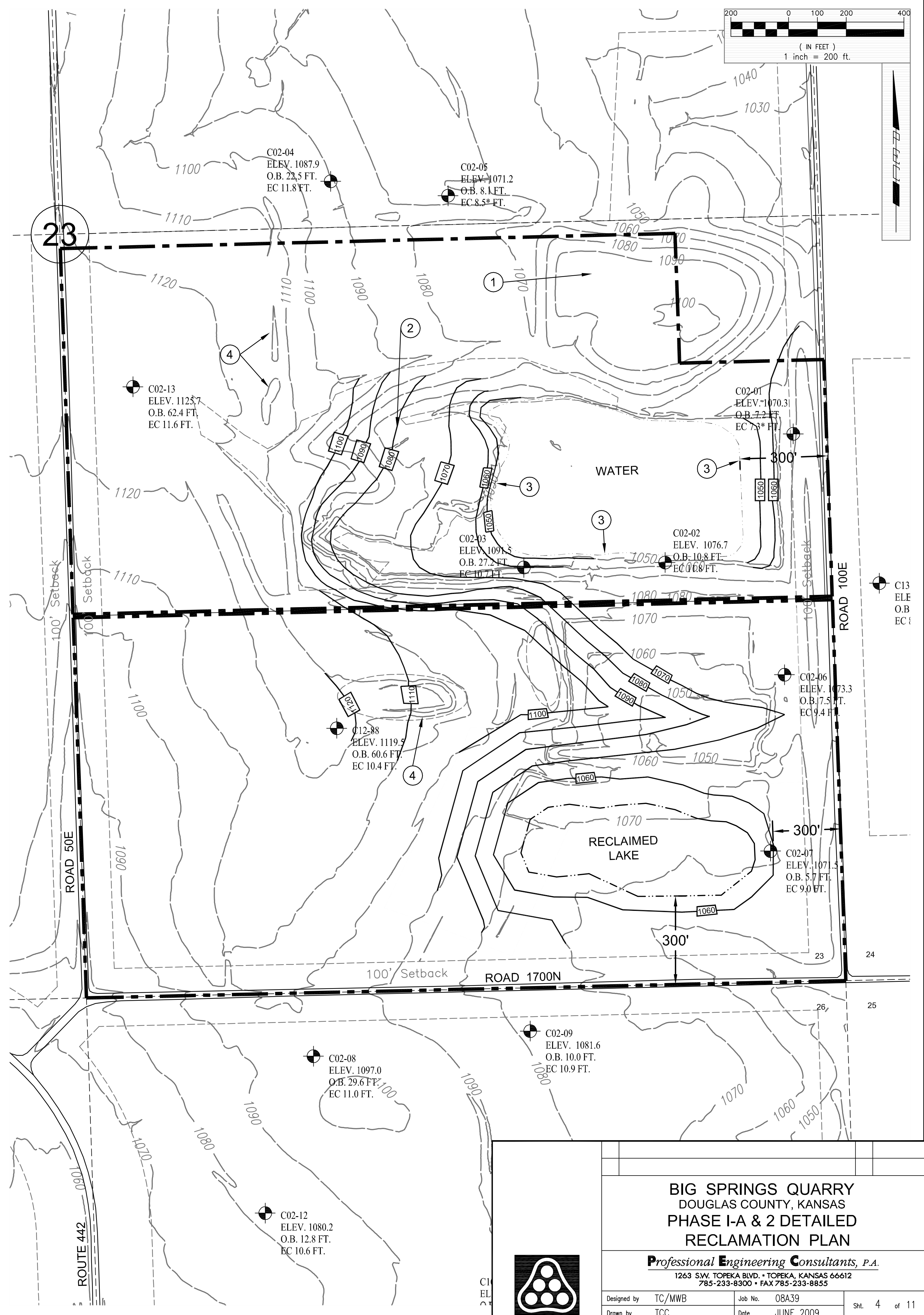
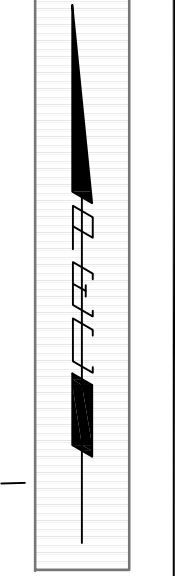
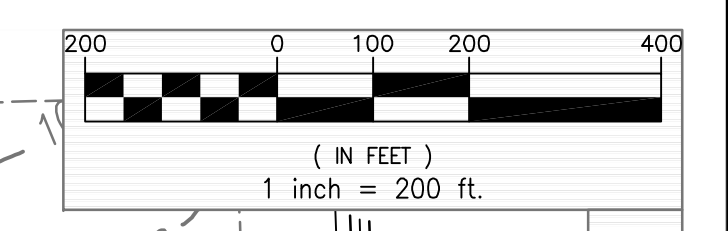


**LEGEND**

- PHASE 1A BOUNDARY
- PHASE 2 BOUNDARY
- PHASE 3 BOUNDARY
- PHASE 4 BOUNDARY

|  |   |              |
|--|---|--------------|
|   | No. _____ Revision _____ By _____ Date _____  |              |
|  | <b>BIG SPRINGS QUARRY<br/>                 DOUGLAS COUNTY, KANSAS<br/>                 COMPOSITE DETAILED<br/>                 RECLAMATION PLAN</b> |              |
| <b>Professional Engineering Consultants, P.A.</b><br>1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612<br>785-233-8300 • FAX 785-233-8855 |   |              |
| Designed by TC/MWB<br>Drawn by TCC   | Job No. 08A39<br>Date JUNE 2009   | Sht. 3 of 11 |





**LEGEND**

- PHASE 1A BOUNDARY
- PHASE 2 BOUNDARY

NOTE THAT ALL DIMENSIONS ARE TO PROPERTY LINE

PHASE IA & II

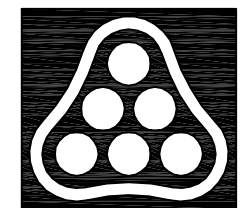
- ① Remove and reconstruct overburden pile to elevation 1070 or lower. See Sheet No.7.
- ② Place overburden material to provide terraced slope toward water body.
- ③ Reconstruct bank to 3:1 or flatter gradient.
- ④ Topsoil material to be used for topsoil operations in Phase I-A.

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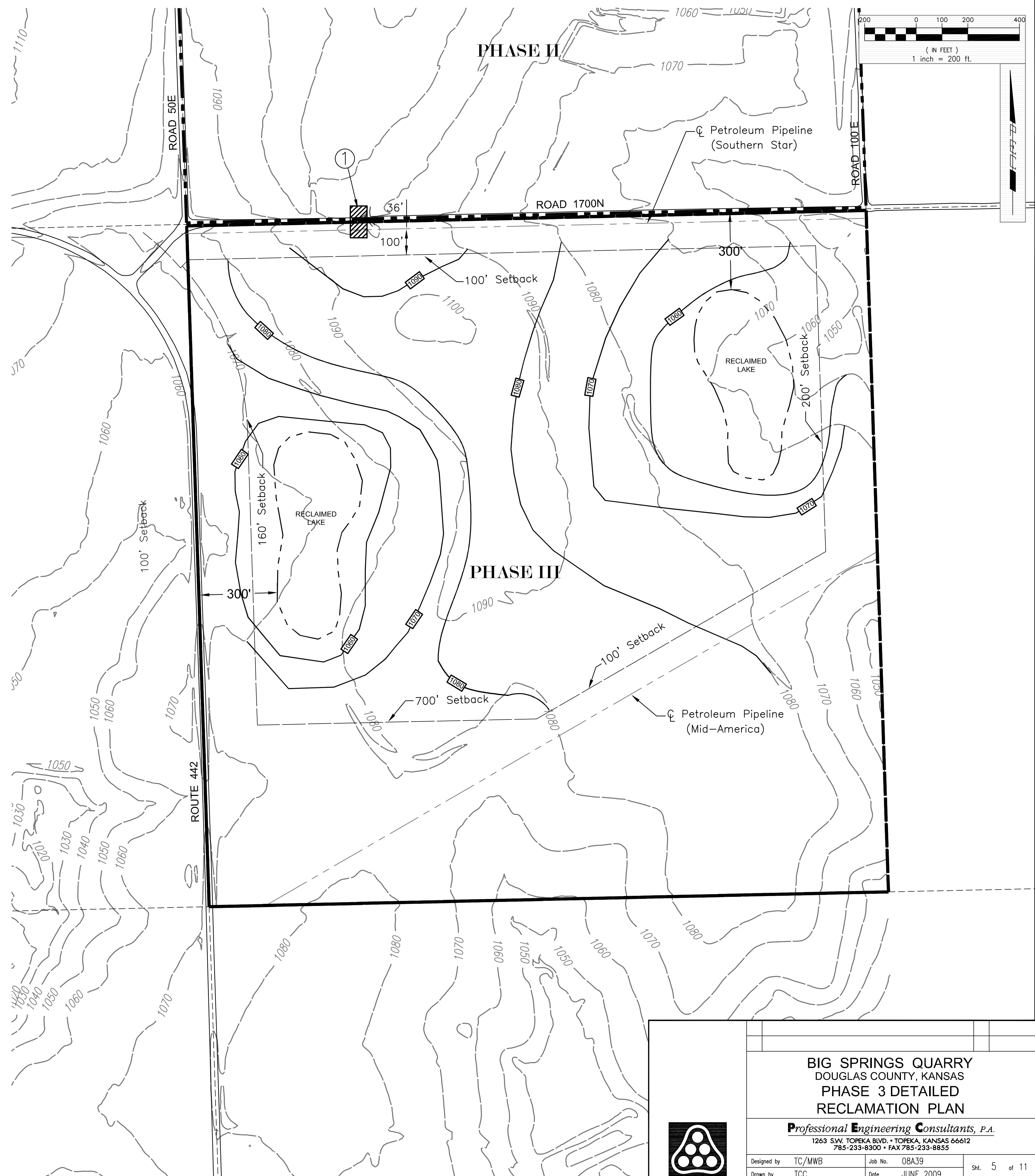
**BIG SPRINGS QUARRY**  
 DOUGLAS COUNTY, KANSAS  
**PHASE I-A & 2 DETAILED**  
**RECLAMATION PLAN**

**Professional Engineering Consultants, P.A.**  
 1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612  
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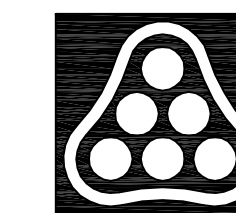


**LEGEND**

- PHASE 2 BOUNDARY
- PHASE 3 BOUNDARY

NOTE THAT ALL DIMENSIONS ARE TO PROPERTY LINE

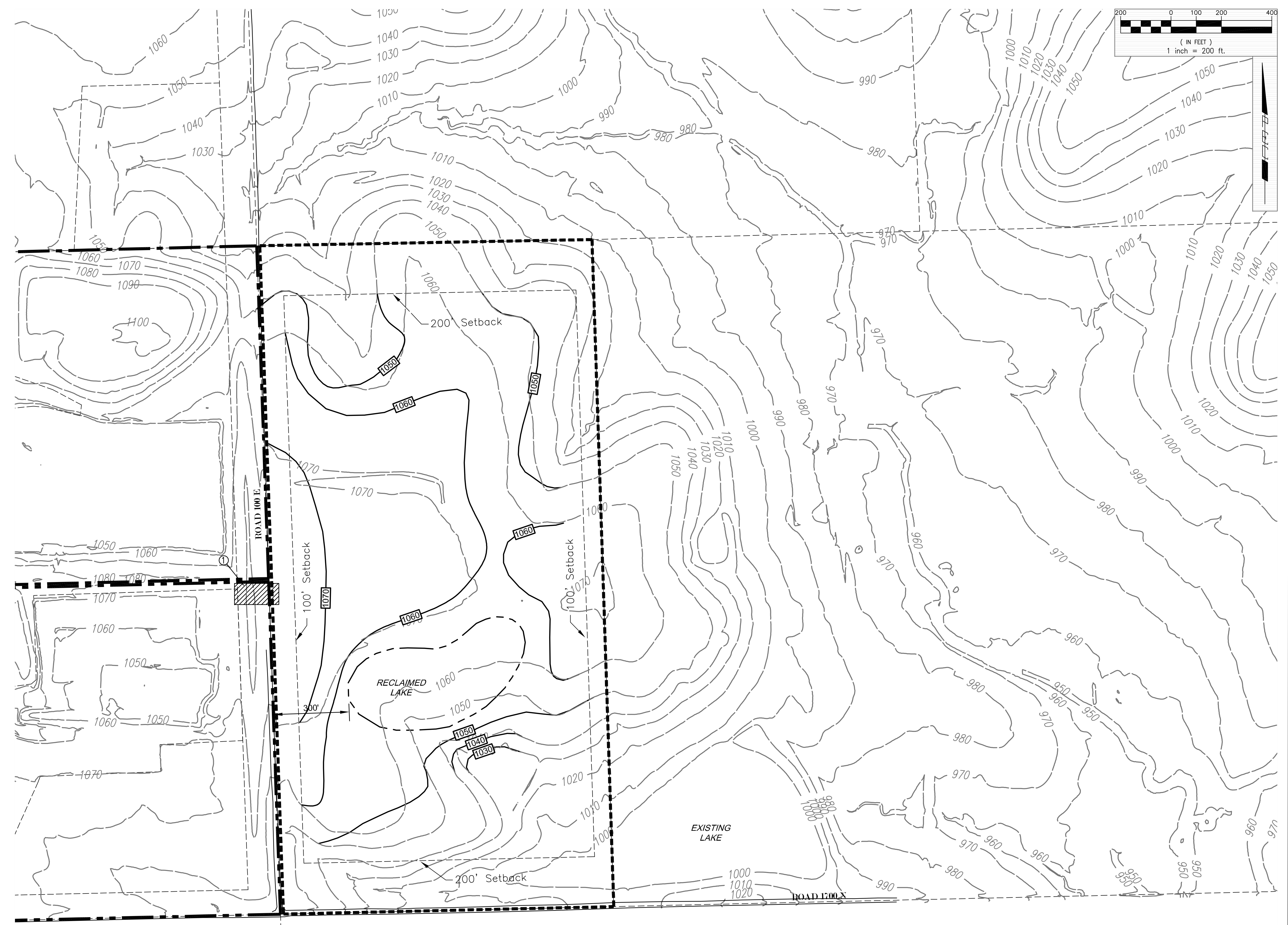
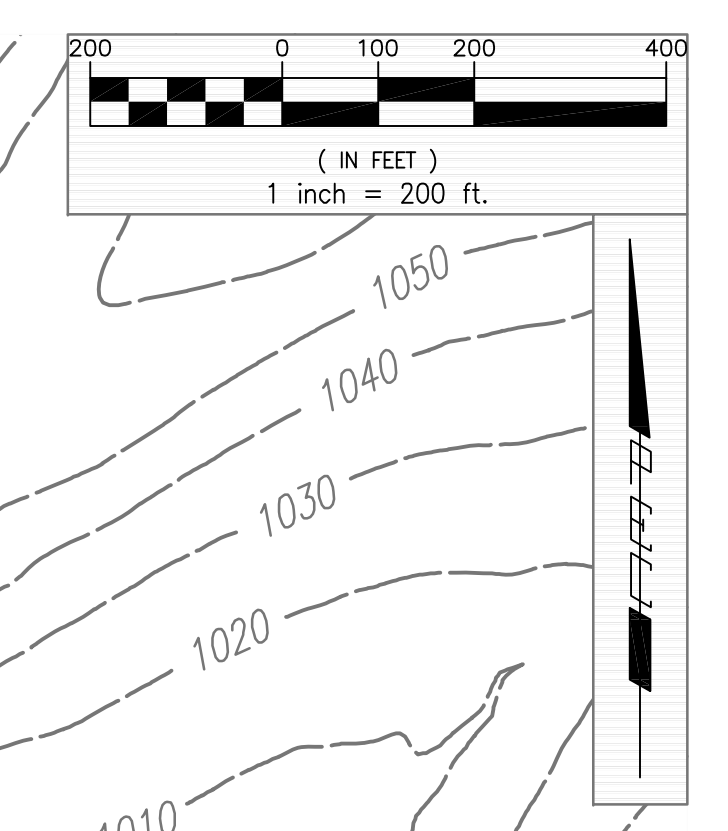
① HAUL ROAD CROSSING, APPROVED BY COUNTY ENGINEER, JUNE, 2009.



**BIG SPRINGS QUARRY  
 DOUGLAS COUNTY, KANSAS  
 PHASE 3 DETAILED  
 RECLAMATION PLAN**

**Professional Engineering Consultants, P.A.**  
 1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612  
 785-233-8300 • FAX 785-233-8855

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| Designed by | TC/MWB | Job No. | 08A39     | Sht. 5 of 11 |
| Drawn by    | TCC    | Date    | JUNE 2009 |              |



**LEGEND**

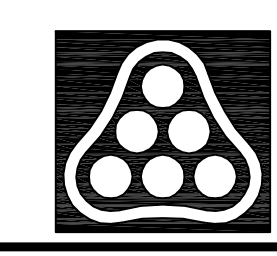
- — — — — PHASE 1A BOUNDARY
- — — — — PHASE 2 BOUNDARY
- - - - - PHASE 4 BOUNDARY

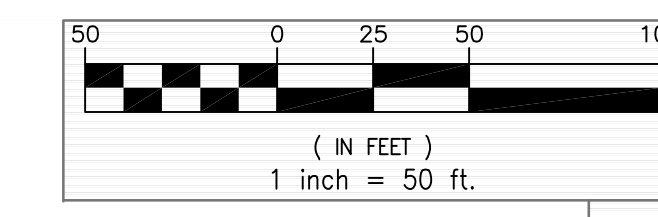
NOTE THAT ALL DIMENSIONS ARE TO PROPERTY LINE

① PROPOSED HAUL ROAD CROSSING TO STANDARD APPROVED BY COUNTY ENGINEER.

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| No.  |     | Revision |            | By   |  | Date    |  |
| <b>BIG SPRINGS QUARRY</b><br>DOUGLAS COUNTY, KANSAS<br><b>PHASE 4 DETAILED RECLAMATION PLAN</b>                                    |     |          |            |      |  |         |  |
| <b>Professional Engineering Consultants, P.A.</b><br>1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612<br>785-233-8300 • FAX 785-233-8855 |     |          |            |      |  |         |  |
| Designed by  | MWB | Job No.  | 08A39      | Sht. |  | 6 of 11 |  |
| Drawn by   | DMS | Date     | APRIL 2009 |      |  |         |  |





**RECLAMATION DRAINAGE PLAN NOTES**

- ① CONSTRUCT DITCH PLUG AT ELEV. 1068
- ② REMOVE OVERBURDEN TO ELEVATION 1070. GRADE TOP TO DRAIN TO SOUTH.
- ③ GRADE 10' EARTHEN CHANNEL TO DRAIN SOUTH.
- ④ CONSTRUCT RIPRAP DITCH LINING TO WATERS EDGE.

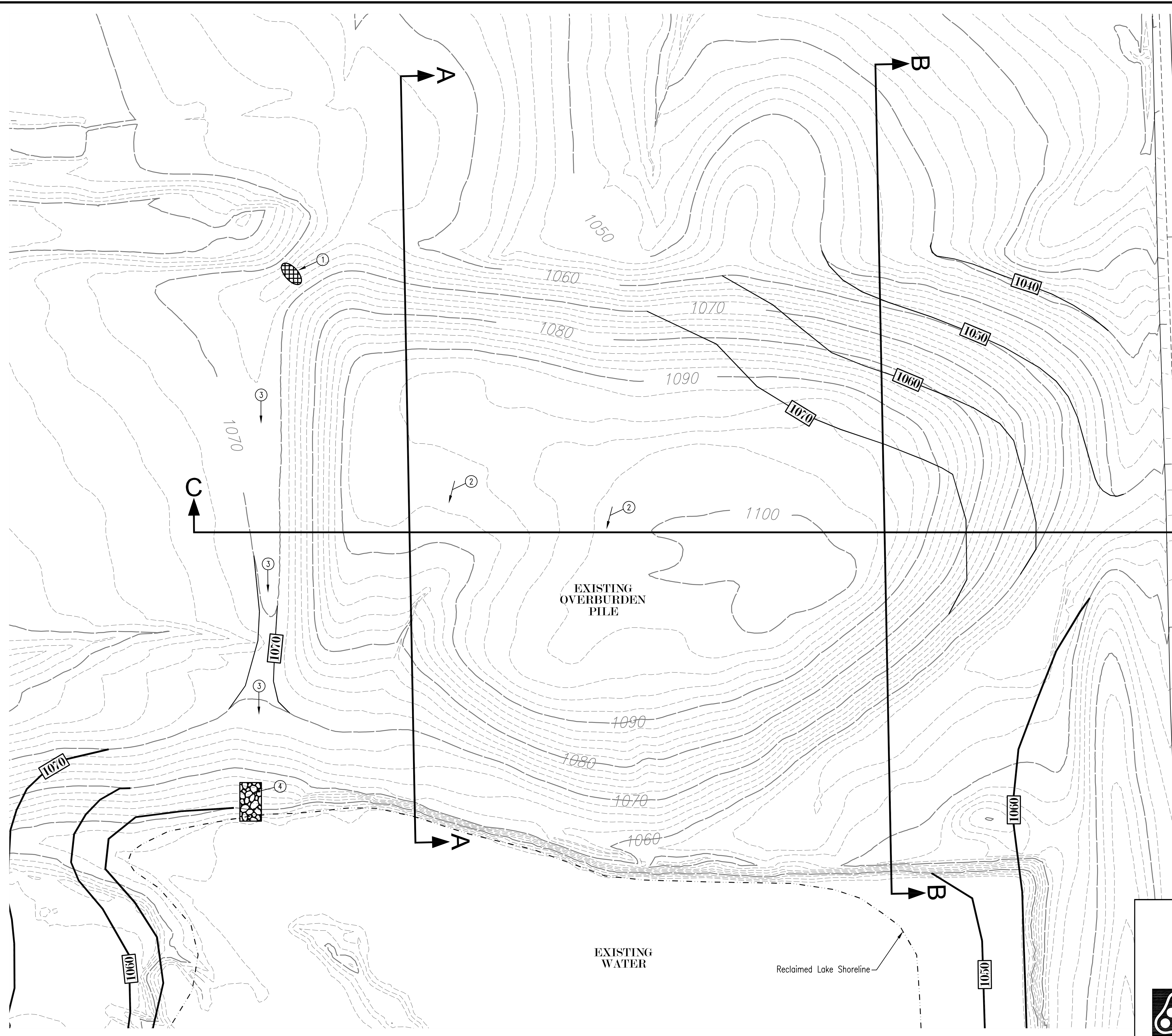
**SEQUENCING PLAN- PHASE 1A**

The intent of reclamation is to return the land to be suitable for use for agriculture (hay and ranching activities), recreation, wildlife habitat, or other uses. Water features will be incorporated into the reclaimed land to support ranching and fishing, as well as to support wildlife. Reclamation of each quarried area within a phase is planned to occur concurrently with mining operations and will be completed as soon as practical after quarrying is complete. Material will be borrowed from the subsequent phase to finish reclamation in a completed phase where necessary. Reclamation activities, for the purpose of determining when quarrying in the subsequent phase may proceed beyond the acreage restriction in the CUP are considered complete when final grading, seeding, and mulching operations are completed.

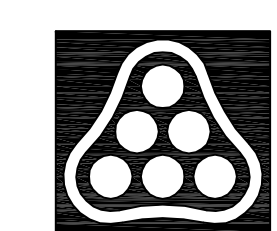
Reclamation of the area designated Phases 1A and 2 will be performed in accordance with the schedule set forth in Section 2 of the Consent Decree executed by the Board of County Commissioners, Douglas County, Kansas and Mid-States Materials, LLC on May 27, 2009.

Reclamation will occur in the following sequence:

1. In accordance with Best Management Practices, place and maintain erosion control sediment barriers on down gradient side of earthmoving operations. Refer to the Storm Water Pollution Prevention Plan Dated June 2009.
2. Perform test excavation on overburden pile to determine the limits and extent of topsoil that may be encountered in the pile.
3. If topsoil is present in volumes practical for salvage with conventional powered earthmoving equipment, remove and temporarily stockpile topsoil materials from the overburden pile for later reuse. Temporary stockpiles shall not exceed twelve feet in height and will be seeded in annual rye to prevent wind or water erosion. During these operations, retain existing vegetation on north and east sides of overburden pile as long as practical.
4. Utilizing overburden materials, re-established grades above the water line along the east, south and west sides of the existing water body to a gradient of 3:1 or flatter. Natural strata on the north side of the water body will be retained in place for bank stabilization. Stone may be placed at the planned water's edge to stabilize the bank. Create a terraced slope west of the water body utilizing material from the overburden pile. The remainder of the overburden pile will be graded to have slopes 3:1 or flatter and shall not exceed elevation 1070. During these operations, retain existing vegetation on north and east sides of overburden pile as long as practical.
5. If necessary to facilitate earthmoving operations, existing water levels may be modified. Any waters discharged from modification of water levels shall be disposed of in water bodies located in Phase 1 and/or Phase 2.
6. After finish grading, a thickness of four inches of topsoil shall be placed on all areas to be vegetated. Topsoil material to be taken from topsoil stockpile(s) on site.
7. All non-water body areas shall be seeded and mulched. Seeding shall be prairie grass/wildflower mix for the District 1 area in accordance with the standards of the Kansas Department of Transportation, or wildlife habitat mix in accordance with the standards of Quail Unlimited. Prairie hay or wheat straw mulch shall be applied at a rate of two tons per acre and tacked down. In areas seeded for erosion control, mowed lawns, and berms, seeding shall be K-31 fescue at 300 pounds per acre and annual rye at 50 pounds per acre.
8. Install and maintain temporary sediment barriers in accordance with best management practices until vegetation is established.



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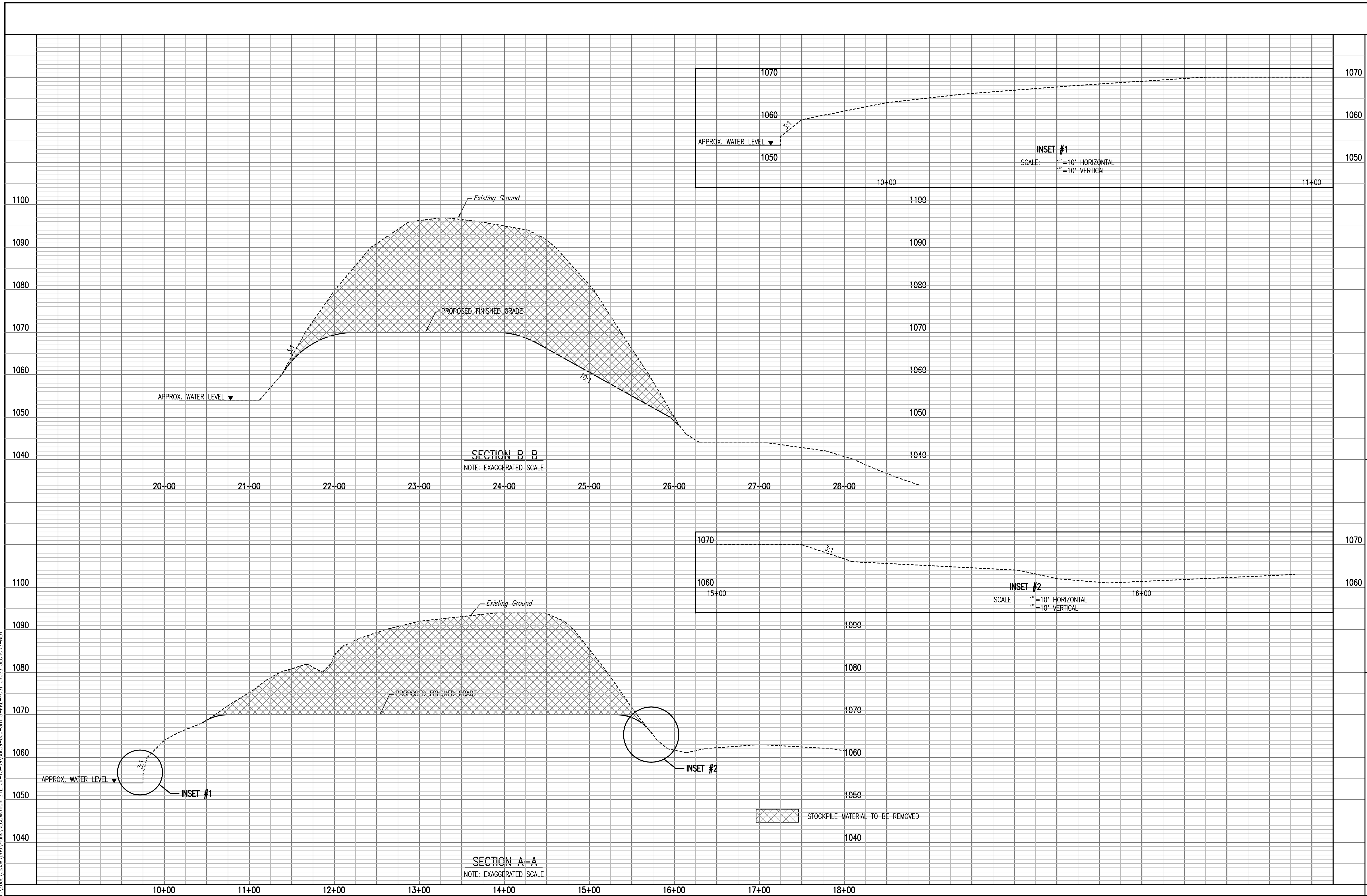
**BIG SPRINGS QUARRY**  
 DOUGLAS COUNTY, KANSAS  
**PHASE 1A RECLAMATION PLAN FOR OVERBURDEN PILE**  
**Professional Engineering Consultants, P.A.**  
 1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612  
 785-233-8300 • FAX 785-233-8855

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| Designed by | MWB | Job No. | 08A39     | Sht. 7 of 11 |
| Drawn by    | DMS | Date    | JULY 2009 |              |

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BIG SPRINGS QUARRY  
 DOUGLAS COUNTY, KANSAS  
 CROSS SECTIONS  
 PHASE 1A OVERBURDEN PILE

Professional Engineering Consultants, P.A.  
 1263 SW TOPEKA BLVD. • TOPEKA, KANSAS 66612  
 785-233-8300 • FAX 785-233-8655

Designed By: MMB  
 Drawn By: DMS

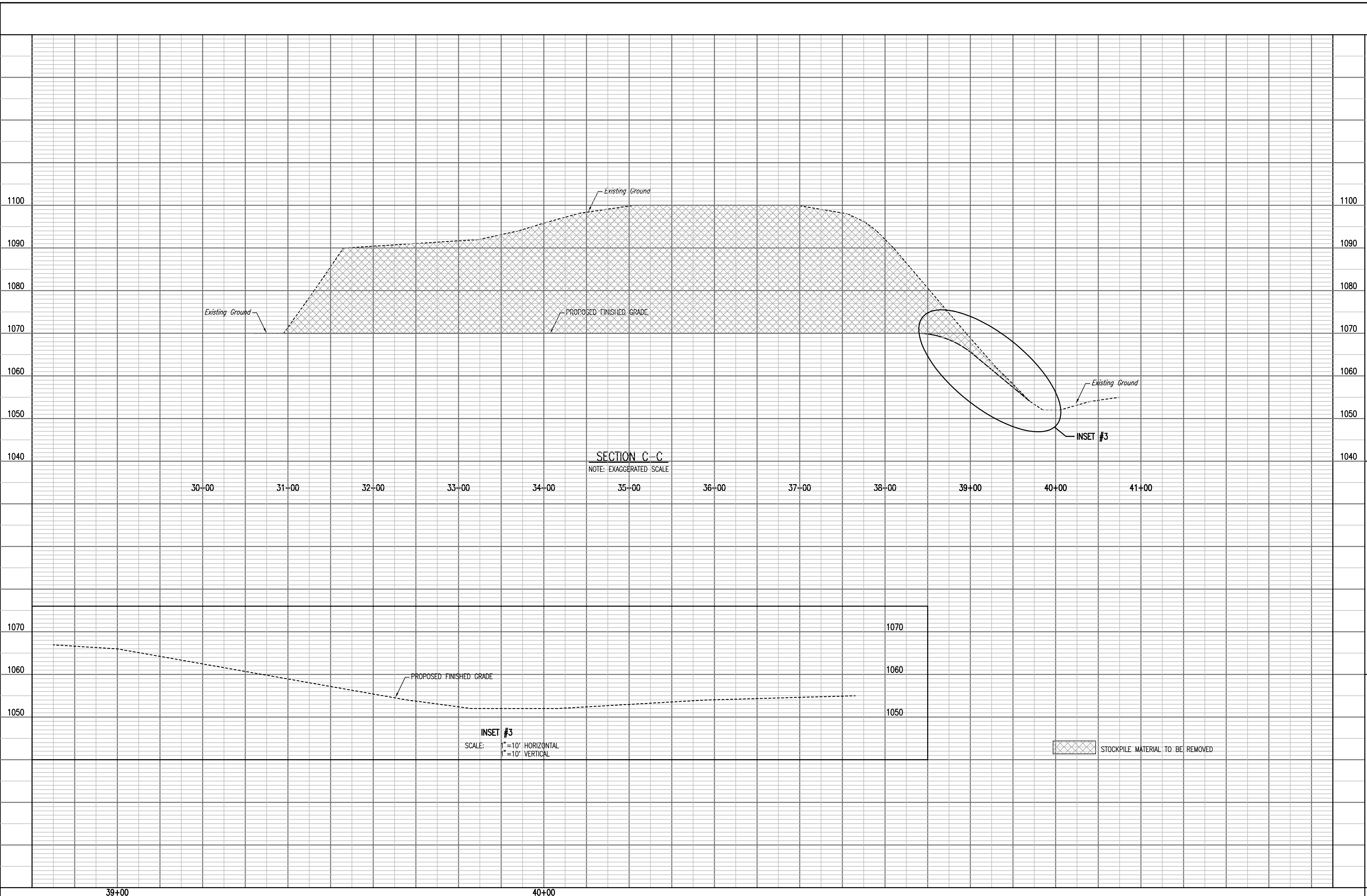
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 Date: JULY 2008

Sheet 8 of 11

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 by TIC

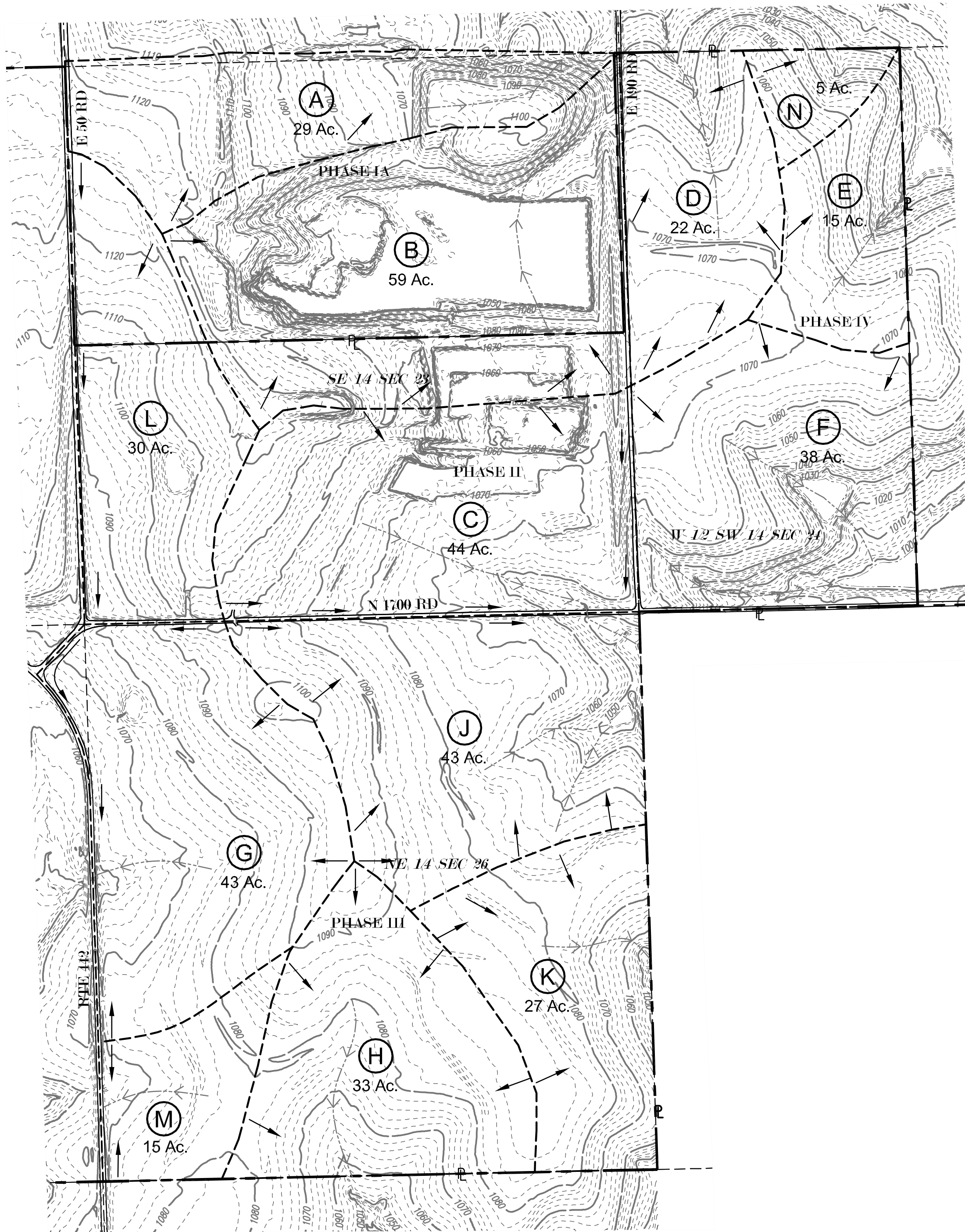
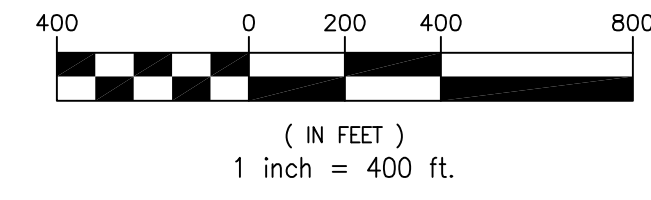


**BIG SPRINGS QUARRY**  
 DOUGLAS COUNTY, KANSAS  
 CROSS SECTIONS  
 PHASE 1A OVERBURDEN PILE

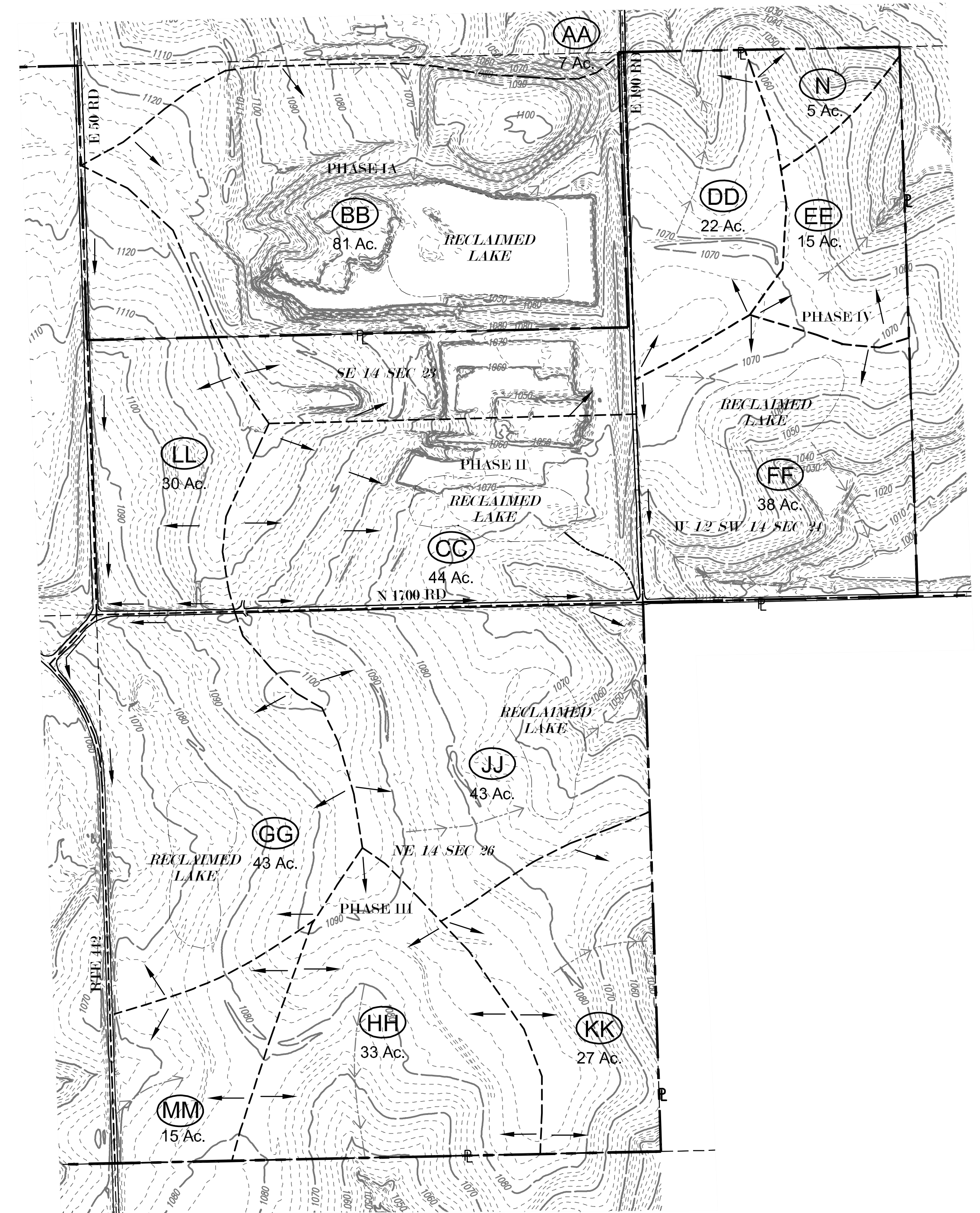
**Professional Engineering Consultants, P.A.**  
 1263 SW TOPEKA BLVD. • TOPEKA, KANSAS 66612  
 785-233-8300 • FAX 785-233-8655

Designed By: MMB  
 Drawn By: DMS

Job No.: 08A39  
 Date: JULY 2008



DRAINAGE MAP - PRE-MINING

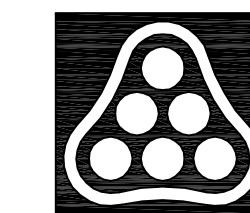


DRAINAGE MAP - POST RECLAMATION

**LEGEND**

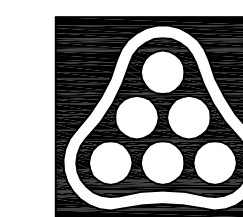
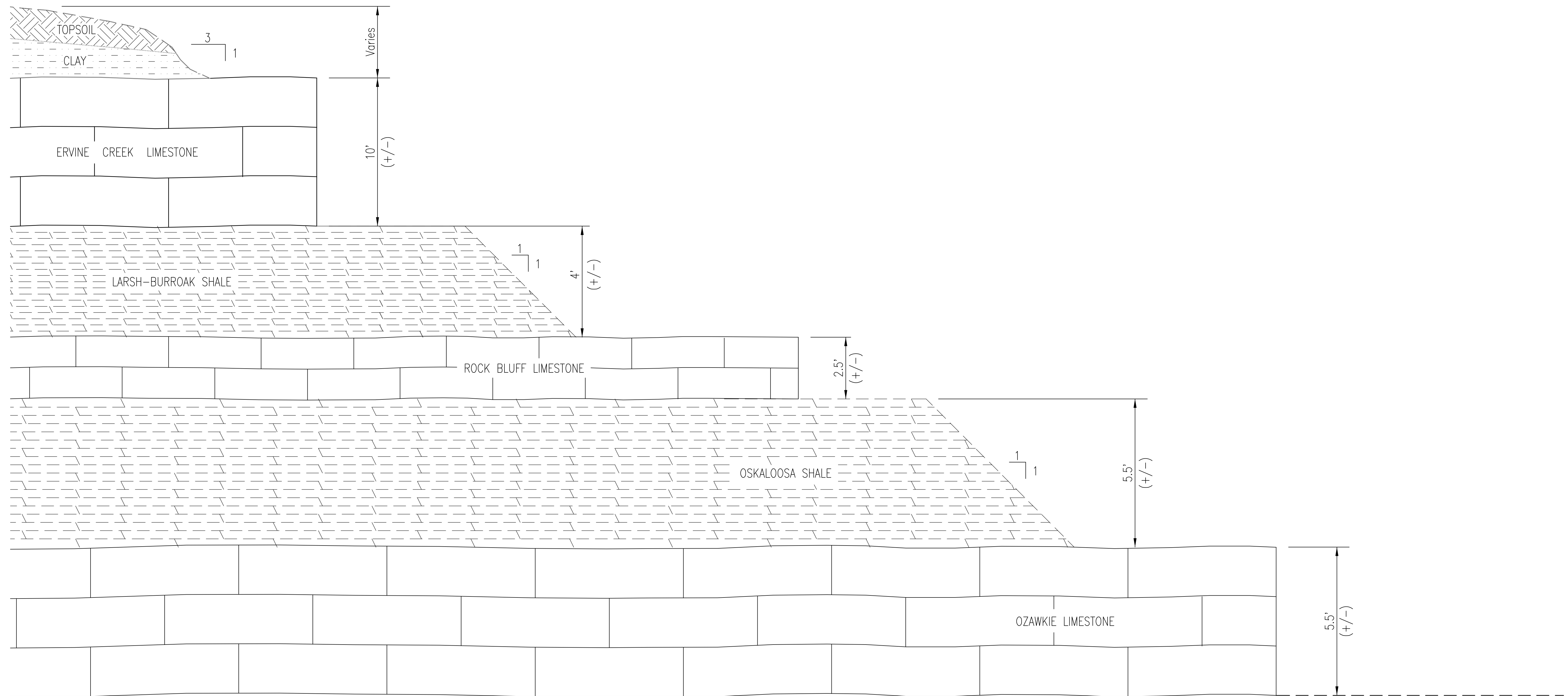
- Watershed Crest
- >->->-> Watercourse / Waterbody
- Flow Direction

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| No.  | Revision | By      | Date          |
|--|----------|---------|---------------|
|  |          |         |               |
| <b>BIG SPRINGS QUARRY</b><br>DOUGLAS COUNTY, KANSAS<br>DRAINAGE PLAN FOR<br>PHASE 1A, 2, 3, AND 4                                  |          |         |               |
| <b>Professional Engineering Consultants, P.A.</b><br>1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612<br>785-233-8300 • FAX 785-233-8855 |          |         |               |
| Designed by  | MWB      | Job No. | 08A39         |
| Drawn by   | DMS/TCC  | Date    | JUNE 2009     |
|  |          |         | Sht. 10 of 11 |

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 F:\2009\08A39\Drawings\REGULATION SITE 08-15-09\08A39-000-SHT11-Generalized Quarry Cross Section-NEW



| No. | Revision | By | Date |
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**BIG SPRINGS QUARRY**  
 DOUGLAS COUNTY, KANSAS  
 GENERALIZED QUARRY CROSS SECTION

**Professional Engineering Consultants, P.A.**  
 1263 SW TOPEKA BLVD • TOPEKA, KANSAS 66612  
 785-233-8300 • FAX 785-233-8855

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| Designed by | TC/MWB | Job No. | 08A39     | Sht. 11 of 11 |
| Drawn by    | TCC    | Date    | JUNE 2009 |               |



effective June 19, 1995.)

#### 11-8-6. Reclamation plan.

- (a) A reclamation plan shall be completed for each registered site and submitted with the initial registration application. The plan shall include the following:
- (1) a legal description of where the site is located including the nearest quarter quarter section, township, range and county;
  - (2) the total acreage of the site;
  - (3) a general description of the material to be mined, including:
    - (A) the average depth of the mineral layer;
    - (B) the average depth of overburden; and
    - (C) the average depth of the topsoil;
  - (4) the estimated life-span of the mine or the time period covered by the operator's long-term plan;
  - (5) an aerial photograph, survey map, engineered drawing or other representation approved by the director describing the land to be mined first and how the mining will proceed across the site;
  - (6) a description of the estimated total number of acres to be affected by mining, including the proportion to be reclaimed if different than the total affected acres;
  - (7) an aerial photograph, survey map, engineered drawing or other representation approved by the director outlining the affected land, water bodies remaining after reclamation, stockpiles, crushing areas, roads and buildings;
  - (8) a general description of the pre-mining and post-mining land-use;
  - (9) a general description of the final grading and revegetation that will be completed and an estimated time-line for completion of those activities;
  - (10) an illustration of the final topography;
  - (11) a general description of the types of plants to be used in revegetation;
  - (12) the approximate amount of topsoil and overburden, or if topsoil is not present the amount of overburden, to be stockpiled and used for reclamation of the site; and
  - (13) the name, address, telephone number and signature of the person responsible for reclamation. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607; effective June 19, 1995.)

**11-8-7. Reclamation requirements.** Reclamation of affected lands shall meet the following standards, in addition to the standards listed in K.S.A. 49-611, and amendments thereto.

- (a) Affected lands shall be graded to allowable slopes within six months after filing the final report for the site.
- (b) In grading the affected lands, all mining-related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the affected lands. Boulders and stones incompatible with the proposed post-mining use of the site shall be buried or removed from the site.
- (c) Topsoil and overburden, or if topsoil was not present initially, then overburden only, shall be preserved in an amount specified in the reclamation plan on the site for reclamation of affected lands.

- (d) Within one year following the conclusion of all earthwork, seeding of all areas in which vegetation is to be provided shall be completed to the extent permitted by weather and planting requirements.
- (e) Erosion control methods shall be used where necessary to prevent rill and gully formation.
- (f) Each operator shall allow the seeded vegetation at least one year to become established before filing a release request.
- (g) A variance from the requirements of sub-sections (a), (d) and (f) of this regulation, may be granted by the director if the operator submits a written request at least 30 days before the initiation of affected reclamation activities. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-611; effective June 19, 1995.)

#### **11-8-8. Bond or other security.**

- (a) Each applicant for registration of a surface mining site shall file a bond or other security with each

August 17, 2009

Mary K. Miller  
City/County Planning Division  
PO Box 708  
Lawrence, KS 66044

Dear Ms. Miller:

Per your request, I have reviewed the information you sent regarding the Big Springs Quarry Reclamation Plan. Specifically, you asked me to review the reclamation plan submitted by Mid- States Materials, LLC, for Phases 1A, 2, 3, and 4, the review of the plan prepared by Robert Prager, P.E., and the comments from the neighbors prepared by Mr. David Buffo. I am not a Professional Engineer; therefore, my comments are directed to the requirements of the *Surface Mining Land Conservation and Reclamation Act* that our office administers, found in Kansas Statutes Annotated (K.S.A.) 49-601 through 49-624, and Kansas Administrative Regulations (K.A.R.) 11-8-1 through 11-8-8.

Before I looked at the comments, I reviewed the reclamation plan prepared by Professional Engineering Consultants, P.A. The plan meets requirements of the Act. However, Douglas County has placed additional requirements to this law in the Conditional Use Permit issued to Mid-States Materials. These additional requirements are the subject of the reviews and the comments of the neighbors.

Mr. Prager's review is detailed and addresses a number of issues important in the reclamation process that are usually considered during the work. Our Reclamation Plan does not require the detail, but the issues he raised are a part of the actual reclamation process. For example, Mr. Prager asks about vegetative cover. The operator consults with the County Conservation District, the Kansas State University County Extension Office, Kansas Department of Wildlife and Parks, Kansas Department of Transportation, or other related offices to determine and recommend the best vegetative cover seed that will result in the cover to meet the needs of the final reclamation use for the area. To address another question posed by Mr. Prager concerning the terraces that may be required, the services provided by the USDA Natural Resources Conservation Service (NRCS) are used to lay-out and approve the work. These are only two of the concerns addressed by Mr. Prager that are not detailed in our reclamation plan, but are of great importance and consideration.

I do not have a copy of the Conditional Use Permit issued to Mid-States Material, LLC. Therefore, I am unable to comment regarding the conditions Douglas County has placed beyond the law. If it will be helpful for us to meet, I can arrange a time next week to discuss any issue regarding our Mined Land Reclamation Program.

Sincerely,

Dennis R. Baker, Ph.D.  
Mined Land Reclamation Program Manager

**Mary Miller**

---

**From:** DAVID HENRY [dk\_henry@sbcglobal.net]  
**Sent:** Tuesday, September 01, 2009 10:13 AM  
**To:** Mary Miller  
**Cc:** Rick Henry  
**Subject:** Input on Mid-States Reclamation Plans

Dear Mary,

We appreciate the effort you are making to bring the reclamation plans to an acceptable conclusion for all parties. We hope you realize that the neighbors are a diverse group with individual concerns and priorities, but all each of us wants is to minimize the negative impact of quarrying within the guidelines established through the CUP. The Henry's do not want to be repetitive, but we want to express our concerns independently as we are not represented by Mr. Buffo.

Our main concern is that General Note 4 is worded so that it completely negates the drawings that constitute the detailed reclamation plan. As an example, Note 4 allows the water bodies in phase 3 to be more than 6 times larger than what is shown on the drawings. Mr Prager has submitted a professional opinion that the water bodies shown on the drawings are up to 5 times larger than the standard drainage area rule of thumb recommends. In other words, Note 4 allows the water bodies to grow up to 30 times larger than the rule of thumb standard recommends. Wording that allows the water bodies to grow by a factor of 6 over what is shown in the detailed drawings should not be allowed in a detailed plan, and it is inconsistent with your response in the minutes of the 5/27/09 County Commission meeting when you stated that the reclamation plan "will show the exact location of any water feature."

In addition, General Note 4 allows unlimited variations in landforms and elevations when the Consent Decree requires that "the reclamation plans shall represent the final grading and contouring after mining and reclamation is complete." A detailed plan should not allow unlimited variations, and any variations considered should be based on best engineering practices. We hope that staff finds that the Consent Decree and the minutes of the 5/27 meeting mean what they say and that Mid- States complies with them.

The issues involved with the overburden pile, the phase 1A water body, and site drainage primarily impact Lone Oak and the O'Connor's. These concerns have been well documented in Mr. Buffo's correspondence and we have nothing further to add.

In closing, the reclamation plan drawings represent a big improvement over past submittals, but General Note 4 effectively negates the drawings and the reclamation plans. We hope that General Note 4 is eliminated or revised so that the drawings and details remain in place, and that a solution to the downstream water issues raised by Mr. Prager can be found. We think that resolving these two issues will go along way toward accomplishing the County Commission's goal of a reclamation plan that all stakeholders can support. Thanks for the opportunity to comment.

Sincerely,

Dave & Rick Henry