



# Missouri Highway and Transportation Department

Capitol Ave. at Jefferson St., P.O. Box 270, Jefferson City, MO 65102 (314) 751-2551 Fax (314) 751-6555

RECEIVED

SEP 19 1995

HNTB-KCMO

September 14, 1995

Mr. Brian McNulty  
U.S. Army Corps of Engineers  
Kansas City District  
601 E. 12th St.  
Kansas City, MO 64016

Dear Mr. McNulty:

Subject: Design  
Route 13, Ray and Lafayette Counties  
Lexington to Clinton  
Job Nos. J4P1234B, J4P1235 and J4P1119  
Section 404 Permit Application

Enclosed is the original Section 404 permit application that was faxed to you on September 8, 1995. This original is being provided to complete items 1 through 4. Please provide a completed application to Mr. Al Horn of the HNTB Corporation so that the application can be included in the Draft Environmental Impact Statement for the subject project. The address for the HNTB Corporation is 1201 Walnut, Suite 700, Kansas City, MO 64106.

If you have any questions concerning the processing of the application, I can be contacted by phone at (314) 751-4606.

Sincerely,

*Mark S. Kross*

Mark S. Kross  
Environmental Manager, Design

Enclosure

mb/sw

Copies: ~~Mr. Al Horn-HNTB (with enclosure)~~  
Mr. Ray Purvis-de



APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT  
(33 CFR 325)

OMB APPROVAL NO. 0710-003  
Expires October 1996

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

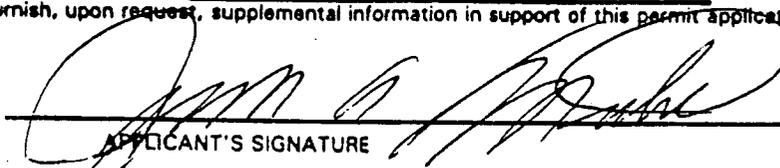
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME Joe Mickes, Chief Engineer	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) Bob Sfreddo, Division Engineer Design
6. APPLICANT'S ADDRESS Missouri Highway & Transportation Dept. P.O. Box 270 Jefferson City, Mo. 65102	9. AGENT'S ADDRESS Missouri Highway & Transportation Dept. P.O. Box 270 Jefferson City, Mo. 65102
7. APPLICANT'S PHONE NOS. W/AREA CODE a. Residence b. Business 314-751-4622	10. AGENT'S PHONE NOS. W/AREA CODE a. Residence b. Business 314-751-2876

STATEMENT OF AUTHORIZATION

I hereby authorize, Bob Sfreddo to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

  
APPLICANT'S SIGNATURE

9-8-95  
DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

2. PROJECT NAME OR TITLE (see instructions) Route 13 Corridor - Lexington to Clinton, Missouri FHWA MO EIS 95-06-D MHTD Project No. I4P1234B, I4P1235, and I4P1119	
3. NAME OF WATERBODY, IF KNOWN (if applicable) Numerous -- See EIS	14. PROJECT STREET ADDRESS (if applicable)
5. LOCATION OF PROJECT Lafayette, Johnson & Henry COUNTY MO STATE	

6. OTHER LOCATION DESCRIPTIONS, IF KNOWN. (see instructions)

7. DIRECTIONS TO THE SITE  
The highway corridor is accessible from Kansas City area via U.S. 24, I-70, U.S. 50 and Route 7

18. Nature of Activity (Description of project, include all features)

The Route 13 Corridor Project is a proposed 70-mile transportation improvement within the Route 13 Corridor, extending from U.S. 24 in Lexington, Missouri, to the north shore of Truman Reservoir south of Clinton, Missouri. This project also includes an improvement to Route 7 in the area of Clinton, Missouri, from two miles west to 0.6 miles east of Clinton.

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

The project purpose will improve the safety and system efficiency of the existing routes, and provide for an alternate entrance to Whiteman Air Force Base.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

New construction associated with project, new bridges and box culverts and culverts. Some stream/channel modification and alignment will be required.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

(Unknown at this time)

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

As per DEIS documentation, the 600-foot wide preferred alternative corridor crosses 43 stream and includes up to 371 acres of potential wetlands and riparian areas, 114 ponds containing 186 surface acres. Actual construction will only affect an area about 250 to 350 feet wide.

23. Is Any Portion of the Work Already Complete? Yes  No  IF YES, DESCRIBE THE COMPLETED WORK allowing shift to avoid and minimize impact

24. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (If more than can be entered here, please attach a supplemental list).

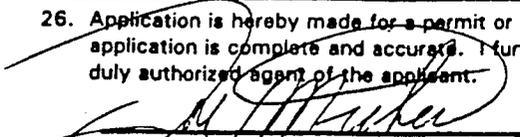
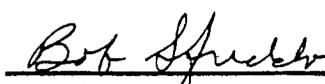
This information is currently being collected from county plat books and will be used for owner notice and right-of-way entry notice.

25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
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\*Would include but is not restricted to zoning, building and flood plain permits

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

	<u>9-8-95</u>		<u>9/8/95</u>
SIGNATURE OF APPLICANT	DATE	SIGNATURE OF AGENT	DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.



DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

REPLY TO  
ATTENTION OF:

PRELIMINARY SECTION 404(B)(1) EVALUATION  
ROUTE 13 CORRIDOR - PREFERRED ALTERNATIVE  
LEXINGTON TO CLINTON, MISSOURI  
MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT  
APPLICATION NO. 94-01524

This preliminary evaluation pertains to the preferred alternative presented in the Draft Environmental Impact Statement, Route 13 Corridor, MHTD Project No. J4P1234B, J4P1235, & J4P1119 (DEIS). This evaluation is based on the level of design illustrated, and information available, in the DEIS. At this time, a wetland delineation to verify the extent of jurisdictional wetlands has not been prepared for the preferred alternate alignment. However, the DEIS discusses the methods used and estimated amount of potential wetland to be impacted relative to each alternative considered. The amount of wetland potentially impacted for the alternatives considered, including the preferred alternative, is expected to be less than those numbers identified in the screening protocol. It is assumed that unavoidable impacts to jurisdictional wetlands will occur as a result of the project based on preliminary screening and off-site analysis of study alternatives and the preferred alignment alternative.

The final evaluation will consider additional data developed as part of the Corps of Engineers application evaluation, comments regarding the DEIS and permit application, and further study by the applicant as part of its location study, wetland delineation, and preliminary design. This preliminary evaluation is not a complete evaluation because sufficient, reliable data are not available for some determinations required by 40 CFR 230.

1. Review of Compliance (40 CFR 230.10 (a)-(d))

a. Practicable Alternatives. 40 CFR 230.10 (a) states "...no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem...." The Corps of Engineers uses the basic project purpose in its Clean Water Act (CWA) permit review to guide the identification of practicable alternatives, as required by Subpart B of the Section 404 (b)(1) guidelines, found at 40 CFR 230.10. If a less damaging practicable alternative is available, a Section 404 permit cannot be granted. (See 40 CFR 230.10 for exceptions to this rule.)

The basic project purpose will be established by the Corps with input by the applicant or project sponsor. The basic project purpose will not be defined narrowly by the applicant in order to preclude the existence of practicable alternatives. On the other hand, the Corps will define the basic purpose for each Section 404 permit application in a manner which is reasonable and equitable for the specific case.

The Corps must not give too much deference to local plans or requirements that, however legitimate, are not relevant to the Section 404(b)(1) guidelines' definition of practicable alternatives. In this regard, the Missouri Highway and Transportation Department (MHTD) 15-year right-of-way acquisition plan and Regional Highway System plan does not dictate the basic purpose of this project for CWA purposes, although it is certainly relevant to the NEPA purpose and is a legitimate reason for the MHTD to pursue specific projects. To the extent that projects are included on these plans for substantive reasons, they serve as an indication of the need for, and priority of, specific projects. However, the CWA alternatives analysis must determine there is no alternative that is less damaging to the aquatic environment irrespective of such restrictive definitions of the basic project purpose. In a letter to the MHTD's agent dated August 2, 1994, the Kansas City District defined the basic purpose as follows:

**The basic purpose of the project is to provide a safe, efficient, and economical transportation facility that responds to traffic needs between the identified termini near Lexington and Clinton.**

As stated, the basic purpose does not predispose the Section 404(b)(1) alternatives analysis to any particular road or interchange configuration, design speed, or alignment, except as may be justified by traffic analysis, engineering requirements and/or environmental considerations.

Cost to construct or operate should not alone eliminate any alternatives. Therefore, although cost is a consideration for identifying practicable alternatives, the basic purpose statement does not say that the project will be the least expensive or most cost effective. The reference to an "economical transportation facility" refers to a facility whose capital cost, maintenance and environmental costs are generally commensurate with the projected travel costs and type of facility.

Our stated basic purpose does not include the phrase: "improve economic development opportunities within the region." We believe this is not part of the basic purpose of the project. Undoubtedly, economic development benefits may accrue, and economic development may legitimately be a reason MHTD or local interests want to build the project. However, it is not appropriate for the statement of basic purpose because it may unnecessarily restrict the identification of practicable alternatives. Also, identifying alternatives that satisfy this purpose would be subjective and controversial.

In addition to the requirement for the Corps to determine if there is a less damaging practicable alternative, 40 CFR 230.10(a)(3) establishes a rebuttable presumption against discharges into "special aquatic sites" for non-water dependent activities. A non-water dependent activity does not require access or proximity to or siting within a special aquatic site to fulfill its "basic purpose." Practicable alternatives to non-water dependent activities are presumed to be available and to result in less environmental loss unless clearly demonstrated otherwise by the applicant. In such cases, the burden of demonstrating that no practicable alternative is available is the responsibility of the applicant, not the Corps of Engineers or reviewing agencies. We have determined that this project (Route 13 Corridor) is not water dependent. Although the highway must cross numerous creeks and streams, the discharge of dredged or fill material in wetlands or other special aquatic sites is not required to achieve the basic project purpose stated above.

Based on the data currently available, the preferred alternative will likely involve discharges into special aquatic sites. Therefore, the rebuttable presumption from 40 CFR 230.10(a)(3) presumes a less damaging alternative is available. We have evaluated the alternatives presented in the DEIS and concur that impacts to wetlands are not avoidable. This preliminary evaluation indicates that there are no practicable alternatives available that would result in less damage to the aquatic ecosystem than the preferred alternative alignment. Also, we reviewed the other alternatives eliminated from further review by initial screening and concurred that those alternatives were not practicable, not available or would not have resulted in less adverse impact to the aquatic ecosystem. Therefore, we have made a preliminary determination that the requirements of this restriction are met. Any modification of this preferred alignment that results in increased impacts to wetlands or other special aquatic sites will be subject to the rebuttable presumption found at 40 CFR 230.10(a)(3) and it will be MHTD's responsibility to demonstrate why the preferred alternative shown in the DEIS is not practicable and/or available.

b. State Water Quality Standards, Toxic Effluent Standards, Endangered Species Act. The proposed discharges must not violate applicable Missouri water quality standards or the Toxic Effluent Standards of Section 307 of the Clean Water Act. Before we complete this compliance evaluation, Missouri Department of Natural Resources must certify that the discharges will not violate applicable state water quality standards as required by Section 401 of the Clean Water Act (33 USC 1341).

The applicant has consulted with the U.S. Fish and Wildlife Service and Missouri Department of Conservation to identify threatened and endangered species listed under authority of the Endangered Species Act that may occur in the Route 13 corridor. No Critical habitat for Federally-listed species has been

identified in the corridor. Known locations of the species and potential habitat have been identified within and in the vicinity of the corridor. Our preliminary determination is that the preferred alternative will not affect species designated as threatened or endangered or affect critical habitat. We are soliciting comments from the U.S. Fish and Wildlife Service and other interested agencies as part of our public interest review.

c. Significant Degradation of Waters of the U.S. Based on the information in DEIS, Environmental Consequences, the proposed discharges apparently will not result in significant degradation of waters of the U.S., individually or cumulatively. Our final evaluation will consider all information obtained during our public interest review regarding adverse effects on human health and welfare, life stages of aquatic life and other wildlife, aquatic ecosystem diversity, productivity and stability and recreational, aesthetic and economic values. Mitigation to avoid or reduce any unavoidable adverse effects will be considered.

d. Measures to Minimize Adverse Impacts. The DEIS indicates that design and construction will incorporate measures to minimize potential adverse impacts of the discharges on the aquatic ecosystem. A construction water pollution control program (Sedimentation and Erosion Control Program) would be implemented to protect the adjacent environment from sedimentation and construction pollutants. Impacts to waters of the U.S. may be avoided by crossing streams on bridge structures and/or designing crossings that require no discharges riverward of the ordinary high water mark. The DEIS states that impacts to flood plains will be minimized by following standard stream crossing design criteria, avoiding direct impacts to stream channels, and adjusting alignments where possible. Other appropriate and practicable measures will be considered and specific measures may be required by the Department of the Army permit, if issued.

## 2. Technical Evaluation Factors

See DEIS, Environmental Consequences for discussion of many of the factors listed in Subparts C through F of 40 CFR 230. Our final evaluation will consider all information obtained during our public interest review.

## 3. Evaluation of Dredged or Fill Material

Fill material sources are not known at this time. However, the applicant has identified potentially hazardous waste sites within the corridor and will avoid them to the extent possible. Remediation of solid and hazardous waste sites, and any related contamination, would be conducted prior to construction where such sites are unavoidable. Only suitable, uncontaminated fill material will be used in roadway construction, particularly where material is discharged into waters of the U.S. Also, acceptable

constraints will be employed to reduce or contain contamination to acceptable levels. Appropriate testing will be required where testing exclusion criteria in Subpart G of 40 CFR 230 do not apply. Our final evaluation will consider all information obtained during our public interest review.

4. Preliminary Findings

Based on the information in the DEIS, the Section 404(b) guidelines would not prohibit the proposed discharges.

ROBERT E. MORRIS  
Colonel, Corps of Engineers  
Commanding

BY: *Lawrence M. Cavin* SEP 13 1995  
LAWRENCE M. CAVIN  
Chief, Regulatory Branch  
Construction-Operations Division

