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December 11, 2012

CATEGORICAL EXCLUSION DETERMINATION I-435/I-35/K-10 INTERCHANGE (JOHNSON COUNTY GATEWAY)

Project Number: Kansas Department of Transportation (KDOT) Project No. 435-46 KA-1002-03

Route: Interstate Highway I-435, Interstate Highway I-35, and State Highway K-10

County: Johnson County, Kansas

Categorical Exclusion Concurrence

For: FHWA

Date

Purpose and Need

The Johnson County Gateway: I-435/I-35/K-10 interchange is one of the most congested interchanges in the state. In addition to two freeway-to-freeway interchanges, the Gateway includes several freeway-to-local road interchanges embedded within the project limits. Existing problems with the interchange include above-average accident rates, infrastructure that is aging and becoming deficient, substandard highway geometry, and increasing congestion that is expected to reach unacceptable levels by 2040.

The purpose of the Johnson County Gateway interchange project is to provide the region with a safe and efficient transportation system that supports both economic development and quality of life. More specifically, the proposed project is needed to:

1. Reduce congestion and improve mobility, access and connectivity in the study area to meet existing and future travel demands,
2. Improve traffic safety to address high crash locations within the study area,
3. Improve the condition of the existing infrastructure that has reached its useful life, and
4. Maintain all existing access points.

Project Location

The project location is the junction of I-435, I-35, and K-10 in Northeast Johnson County with construction along approximately 11 miles of total mainline length, as depicted in *Figure 1*. It falls within 12 sections of land, listed below:

- Range 24 East, Township 12 South, Sections 32 and 34
- Range 23 East, Township 13 South, Sections 1 and 12
- Range 24 East, Township 13 South, Sections 3, 4, 5, 6, 7, 8, 9, and 10

The portion of the project corridor along I-435, east of Pflumm Road, received previous environmental clearance with the *I-435 & U.S. 69 Design Study Environmental Assessment* and Finding of No Significant Impact (FONSI) in 2004.

Project Description

The project limits extend along K-10 from Woodland Rd. to I-435, along I-435 from 87th St. to Pflumm Road, and along I-35 from College Blvd. to 95th St. This project includes reconstruction of the system interchanges

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at I-435 & K-10 and I-435 & I-35, service interchanges at I-435 & 95th St, K-10 & Ridgeview, K-10 & Renner, and I-435 & Lackman, and expands K-10 from a four lane open-median section to a six lane urban freeway from Woodland to I-435.

A Concept Study that was completed in 2011 determined a Preferred Alternative to address the capacity and safety issues of the interchange. The Preferred Alternative included reconstructing and reconfiguring the existing interchange to redistribute existing access, reduce weaving, and increase roadway capacity. The Preferred Alternative was comprised of three basic elements:

- 1. Mainline Freeway** – Additional lanes would be added to improve through traffic capacity at the system interchanges.
- 2. Collector Distributor (CD) Roads** – CD roads would be added parallel and separate from the mainline traffic to take traffic from one freeway system to another freeway system, thereby eliminating the heavy weaving movements experienced today.
- 3. Local Service Ramps** – Ramps taking traffic from the mainline to the local street system would be redistributed over the length of the entire interchange area. Braided ramps would be utilized to further reduce the weaving of traffic on these ramps and the CD Roads.

Due to financial constraints, all improvements included in the Preferred Alternative cannot be built at one time. The project is planned to be split into a minimum of two phases:

Phase 1 – KDOT T-Works project

Phase 2 – Remainder of Gateway Improvements

Phase 1 is a funded design/build project currently scheduled to be completed in 2017. The final configuration and limits of what improvements will be included in the Phase 1 project will be determined by the contractor selection process. It is anticipated that the Phase 1 project will include the following improvements:

- EB C/D road network from Ridgeview to I-35
- Partial reconfiguration of the I-435 and I-35 Interchange
- Partial reconfiguration of the I-435 and K-10 Interchange
- Reconstruction and expansion of I-435 to 4 through lanes from I-35 to US-69
- Full or partial reconfiguration of the Ridgeview Road, Renner Blvd, Lackman Road, and 95th Street at I-35 interchanges
- Addition of auxiliary lanes on Northbound I-35

In addition to these improvements it is anticipated that contractor proposals may also include reconstruction and expansion of I-435 West of I-35 and addition of an interim WB C/D road from I-35 to K-10. The improvements will be structured to fit into the overall concept of the Preferred Alternative, such that as additional funding becomes available, KDOT will be in a position to complete the remaining improvements.

The Phase 2 schedule is currently unknown but is contained in the Mid-America Regional Council's (the Kansas City Region MPO) Long Range Transportation Plan.

Right-of-Way Required

It is estimated that approximately 30 acres of land will need to be acquired as right-of-way to implement this project, of which the majority is commercial property. Less than 1% of the estimated right-of-way needed is from residential properties. See **Figure 2** for the areas of right-of-way required.

Displacements

The proposed project does not require any residential displacements. It does require the displacement of a commercial property at the southeast corner of I-435 and Lackman Road (see **Figure 2**). The property is 1.4 acres in size and includes a 10,000 square foot building used for office space. The project also requires the total acquisition of a 6.3 acre property at the southwest corner of I-435 and Lackman Road which is undeveloped land with no improvements.

KDOT, under the provisions of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, and the requirements of Title VI of the *Civil Rights Act of 1964*, has developed standards to ensure adequate consideration, compensation and relocation in a timely manner and without discrimination for all persons whose property is acquired.

Social/Economic/Environmental Justice

The proposed project will have no direct impacts on community facilities or existing neighborhoods, thereby keeping community cohesion intact. None of the neighborhoods will be split or separated from public safety facilities or nearby community facilities. The proposed project can be expected to reduce traffic congestion and improve mobility, access and connectivity in the project area, to meet existing and future travel demands, and preserve the economic viability of the area. In addition, response times for police, fire, and ambulance services will improve as a result of providing smoother flowing roadways and relief of traffic congestion in the project area.

The Executive Order on Environmental Justice 12898 states that, to the extent practicable and permitted by law, neither minority nor low income populations may receive disproportionately high or adverse human health or environmental impacts as a result of a proposed project.

The Environmental Protection Agency's "EJ View" website was reviewed to determine locations and percentages of minority and low-income populations adjacent to the project corridor, based on 2010 U.S. Census Bureau information. Demographic information was reviewed at the "census tract level", "block group level" and "block level" for minority populations. For low-income (below poverty level) populations, demographic information was available at the census tract level only.

The majority of the project falls within Census Tract 20091980001, which contains no residential areas, and therefore no minority or low-income populations. However, there are three residential areas adjacent to the project corridor, the minority and low-income demographics of which are described below and shown on exhibits in the **Appendix**.

One residential neighborhood is located southwest of the 95th Street/I-35 interchange on the west side of the Marshall Drive frontage road. One block is indicated as having a minority percentage of 33.9, while two of the other blocks adjacent to Marshall Drive are 16.0 and 16.9 percent, compared to 16.8 percent for all of Johnson County. In addition, the census tract in which this neighborhood is located contains a low-income population of 17.4 percent, compared to 5.5 percent for all of Johnson County.

A second residential area is located northeast of the I-35/I-435 interchange (east side of the I-35 frontage road and north side of I-435). Blocks adjacent to the roadway in this area contain minority populations ranging from a low of 6.2 percent on the south side to a high of 45.4 percent on the north side. Two apartment complexes contain the most minority populations of 45.4 percent and 36.3 percent, compared to 16.8 percent

for all of Johnson County. The census tract in which this neighborhood is located contains a low-income population of 7.1 percent, compared to 5.5 percent for all of Johnson County.

A small portion of the northwest corner of a third residential area is located within the project corridor on the south side of I-435, east of Pflumm Road. The block adjacent to the roadway in this area contains a minority population of 28.0 percent, compared to 16.8 percent for all of Johnson County. The census tracts in which this neighborhood is located contain low-income populations of 2.8 percent and 3.8 percent, compared to 5.5 percent for all of Johnson County.

Based on the results of the review of environmental justice populations discussed above, it is anticipated that there would be no disproportionately high or adverse impacts on minority or low-income populations from this project for the following reasons:

- The proposed project consists of replacing existing infrastructure along the same general alignment as existing infrastructure with improved ramps and collector distributor roads adjacent to the existing highway. All practical solutions to achieve the purpose and need of the project would have similar impacts on adjacent properties.
- The low-income population percentages of the neighborhoods are not substantially greater than those of Johnson County, and although two apartment complexes adjacent to the roadway have substantially greater minority populations than the County percentage, none of those buildings, nor any other residential buildings would be displaced by construction of the project.
- There are only 2 anticipated total property acquisitions needed for the proposed project. One is an office building and the other is a vacant tract with no improvements.
- Any residential property impacts would be partial acquisition only (no building removal) and is anticipated to make up less than 1% of the approximate 30 total acres of right-of-way acquired.

Throughout the concept stage of the planning process, KDOT has held public meetings, created focus groups, and provided project update materials in order to reach any minority or low-income groups. Property acquisition and relocation benefits will be made available to all affected property owners, residents, and tenants, without discrimination, and as provided for by the *Uniform Relocation Act*.

Farmland Impacts

The Farmland Protection Policy Act (FPPA) requires federal agencies to identify the effects of their programs on the conversion of farmland to non-agriculture uses. The project, being wholly within the city limits of Lenexa, Olathe, and Overland Park; is located in an area already in or committed to urban development or water storage as defined by the Farmland Protection Policy Act (FPPA); and as such, the provisions of the FPPA do not apply.

Wetland/Tributary Impacts

Protection of wetlands is mandated under Section 404 of the Clean Water Act as well as by Presidential Executive Order 11990. National Wetlands Inventory (NWI) mapped wetlands and waters of the U.S. are used to identify potential jurisdictional wetlands and tributaries. The NWI map indicates the presence of aquatic bed, emergent, forested, and riverine wetlands. National Wetlands Inventory maps were prepared by the US Fish & Wildlife Service (USFWS) using high altitude aerial photographs. Mapped wetlands may or may not qualify as US Army Corps of Engineers (USACE) jurisdictional wetlands when wetland determinations are performed according to the methods described in the 1987 Corps of Engineers Wetlands Delineation Manual and the Midwest Regional Supplement (Version 2.0, August 2010). Wetlands may have developed in other low or wet areas not shown on the NWI maps. Fill or excavation in USACE jurisdictional wetlands requires Section 404 permits and mitigation.

Field investigations performed by KDOT staff in 2011 identified 50 wetlands located within the project corridor, all of which are the emergent type. The emergent wetlands range in size from 0.002 acre to 0.799 acre, totaling 5.93 acres. The locations of the wetlands are shown on **Figure 3** and more detailed shapes are shown on Plates 1 through 9 in the **Appendix** (The Plates are for showing wetland size and location only, and do not reflect the current design concept). It is anticipated that the project could potentially impact approximately 5.18 acres of these wetlands within the proposed right-of-way. The other 0.75 acres of wetlands are located outside of the proposed right-of-way.

Several of the wetlands are located in upland roadside ditches or within interchange drainage ditches and as such, may not be considered jurisdictional. The USACE will make a Jurisdictional Determination for each wetland during the Section 404 permitting process. Those wetlands that are determined to be non-jurisdictional by the USACE would not be subject to permitting requirements or mitigation, therefore, impacts for the 404 permit may be less than the estimated acreage noted above.

Streams located within the project corridor that could be impacted include Mill Creek, unnamed tributaries to Mill Creek, and one tributary to Indian Creek (Flat Rock Creek). KDOT's Environmental Services Section performed field investigations, checking all of the tributaries and drainage ways within the study corridor. The tributaries shown on **Figure 3** were observed to have defined beds and banks, and ordinary high water marks (OHWMs).

Potential permanent impacts to these tributaries would result from culvert extensions, or fill or excavation where stream relocations would be necessary. Impacts to Mill Creek would be avoided by bridging, however, it is anticipated that other tributary segments would be impacted by the project at 11 other locations. Proposed culvert extensions at 4 tributary segment locations would result in impacts to approximately 650 linear feet of channel within the proposed right-of-way. In addition, proposed fill and/or channel relocations at 7 tributary segment locations would result in impacts to approximately 7500 linear feet of channel within the proposed right-of-way. Therefore, total impacts to tributaries would be approximately 8150 linear feet.

The tributaries with observed OHWMs have not yet been discussed with the USACE. However, this coordination will take place during the Section 404 permitting process, at which time the USACE will provide a Jurisdictional Determination for each tributary to determine which streams are jurisdictional and which are non-jurisdictional, if any. Any non-jurisdictional tributaries would not be subject to permitting requirements or mitigation.

For work (fill or excavation) performed below the OHWM of USACE jurisdictional Waters of the U.S., KDOT will obtain a 404 permit from the USACE as required under Section 404 of the Clean Water Act. During the permitting process, more detailed stream and wetland impacts would be determined based on preliminary plans and may be refined as final plans are developed in the design-build process. Since most of the water resources are within or directly adjacent to the right-of-way, avoidance of impacts is not possible. Appropriate mitigation for unavoidable impacts to jurisdictional streams and wetlands will also be identified and would most likely be provided through mitigation banks.

The Kansas Department of Agriculture, Division of Water Resources (DWR), regulates stream obstructions and channel changes. Since bridges, culverts, and stream channel modifications would be included in the project, DWR stream obstructions and channel changes permits will be needed.

Water Quality Impacts

Located within the west half of the project corridor are unnamed tributaries to Mill Creek and segment 39 of Mill Creek. Located in the east end of the project corridor is a tributary to Indian Creek (Flat Rock Creek). The December 15, 2010 Kansas Department of Health & Environment (KDHE) Surface Water Register classifies

segment 39 of Mill Creek as “expected aquatic life use water” (E). The unnamed tributaries to Mill Creek and the tributary to Indian Creek are not classified in the Surface Water Register.

A stormwater pollution prevention plan (SWPPP), which meets the requirements of the National Pollutant Discharge Elimination System (NPDES) for discharges of stormwater runoff associated with construction activities, will be developed and implemented prior to construction for the proposed project. KDOT has developed standards which will be used in plan development. The NPDES permit will be obtained from the Kansas Department of Health and Environment (KDHE) prior to commencement of any construction activities.

Floodplain Impacts

Executive Order 11900 directs federal agencies to evaluate potential impacts of projects within a floodplain and to determine if any practicable alternatives exist outside the floodplain.

Figure 4 shows the location of 100-year floodplains and floodways within the project corridor. In Johnson County, the DWR requires floodplain fill permits for fills averaging over 1 foot in height placed within the 100-year floodplain of streams having drainage areas in excess of 240 acres. The DWR considers it an unreasonable effect to increase the elevation of the design and base flood profiles within a floodway, or increase the elevation of the design and base flood profiles more than 1 foot at any location outside a floodway without following FEMA’s Conditional Letter of Map Revision (CLOMR) process. Johnson County Planning, Development, and Codes Department require Floodplain Development permits for structures, fills, or stream channel modifications within the 100-year floodplain of streams.

Based on preliminary design, the project will place fill within the floodways of Mill Creek Tributary H and HA. A CLOMR will be submitted prior to construction of the project to meet FEMA regulations. This CLOMR will also address any rises that may occur as part of the project as well as a change to hydrologic conditions upstream on Tributary HA. The fill placed within the floodplain and floodway of Tributary H will result in a rise of less than one foot. Flowage Easements will be acquired from the properties in this area, encapsulating the area affected by the rise in 100-year floodplain elevation.

During project design, further efforts will be made to avoid and minimize floodplain impacts. As required by Division of Water Resources (DWR) rules and regulations, a detailed hydrologic and hydraulic analysis for any floodway fills will be prepared.

Air Quality Impacts

The project is located within a Kansas Metropolitan Urbanized Area as defined in the Environmental Manual. However, it is located outside a non-attainment area, based on the latest U.S. Environmental Protection Agency information. This type of project is included in paragraph (d) of 23 CFR 771.117 concerning categorical exclusions, and therefore, the project is cleared of air quality concerns.

Noise Impacts

HNTB Corporation has performed a Noise Study for the project which is included in the **Appendix**. The noise analysis presents the existing and future acoustical environment at various receptors located along the project area. The determination of probable noise impact and potential abatement measures are in compliance with Title 23, Code of Federal Regulation (CFR), Part 772, and KDOT’s Highway Traffic Noise Analysis and Abatement Policy and Procedures,¹ (Noise Policy).

Based on the results of the Future peak hour 2040 noise levels, abatement measures considered were four noise barriers; one along K-10 and 3 along I-35. Based upon the FHWA and KDOT policy for determining

feasibility and reasonability of noise barriers, the four noise barriers analyzed for this project do not meet the necessary criteria to be considered for construction. The K-10 noise barrier was not feasible as it could not achieve a 5 decibel reduction in noise levels. The 3 noise barriers along I-35 were feasible, but were not determined to be reasonable as the cost per benefited receptor for each noise barrier exceeded \$30,000. Therefore, noise abatement measures are not required for the project. If conditions substantially change during final design, the abatement measures may need to be reassessed.

Historical and Archeological Resources

The project corridor was submitted to the Kansas State Historic Preservation Office (SHPO) for review on June 18, 2009. As documented in the Appendix, The SHPO noted that approximately 30 National Register-listed properties are in Johnson County, but none appear to be within the boundaries of the project corridor. The SHPO recommended an Activity I Survey be conducted to determine if any potentially eligible cultural resources are located within the project corridor.

KDOT Environmental Services Section staff conducted Activity I field investigations and submitted photographs of all structures potentially eligible for listing on the National Register of Historic Places (NRHP) to the SHPO. In a letter dated November 15, 2010, one property, on Blackbob Road, was determined potentially eligible for listing on the NRHP. This property is located east of I-35 between College Boulevard and 119th Street, and would not be affected by the project. Potential impacts to this property were reviewed by the SHPO and cleared by email dated May 10, 2011 under project KA-1002-02.

In consultation with the Kansas State Historical Society (KSHS) archeology office and the Kansas State Historic Preservation Office (SHPO), KDOT determined that the KA-1002-01 corridor included no archeological sites listed, or eligible for listing, on the National Register of Historic Places (NRHP). In a letter dated July 16, 2009 the SHPO archeologist concluded that areas having the best potential for archeological sites have either been previously surveyed without locating any sites or have been destroyed by development. The SHPO had no objection to implementation of the project as defined by the project corridor

Parkland, Public Lands, and Section 4(f) and 6(f) Impacts

The U.S. Department of Transportation (USDOT) refers to publicly-owned parks and recreation areas, wildlife and waterfowl refuges, and historic sites as “Section 4(f) properties” because they have special status under the provisions of Section 4(f) of the USDOT Act of 1966. This Act states that before a transportation project is allowed to encroach on a Section 4(f) property, a specific evaluation must be conducted that tests all proposed alternatives and the evaluation must lead to a finding that there is no feasible and prudent alternative to the taking of the Section 4(f) property. However, if impacts are “minimal”; and as such would not adversely affect the activities, features, and attributes of the 4(f) property; and with consideration of any impact avoidance, minimization, and mitigation or enhancement measures that are included in the project; the Federal Highway Administration (FHWA) can make a determination that the project will result in a *de minimis* impact on the 4(f) property, and an analysis of avoidance alternatives is not required.

The project corridor contains three public parks, two bicycle-pedestrian recreation trails (paved shared use paths) within park property, and one shared use path outside of park property as shown on **Figure 5**. Brief descriptions of these resources, Section 4(f) applicability, and potential impacts are noted below. The Johnson County Parks and Recreation Trail Guide also shows “shared roadways” (with “Share the Road” signs and “on-street bike lanes”) within the project corridor, however, these are transportation uses and, as such, do not qualify as Section 4(f) resources.

Trafalgar Park – Trafalgar Park is a 0.6-acre neighborhood park with an open play area and a playground area, located at 99th Street on the east side of the I-35 frontage road (Lenexa Drive). It is owned and operated by the City of Lenexa, and as such, the Federal Highway Administration

(FHWA) has determined that this park is a Section 4(f) resource. The project improvements will not go beyond the east side of Lenexa Drive and therefore will not impact the Trafalgar Park property.

Flat Rock Creek Park & Trail – The north terminus of Flat Rock Creek Park is a linear parcel located just south of 100th Street, east of the I-35 frontage road (Lenexa Drive). This park parcel contains a paved bicycle-pedestrian (shared use) trail that is owned and maintained by the City of Lenexa. The FHWA has determined that the park and trail qualify as a Section 4(f) resource. The project improvements will not go beyond the east side of Lenexa Drive and therefore will not impact the Flat Rock Creek property or the trail within it.

Mill Creek Streamway Park & Trail – Mill Creek Streamway Park is a linear park with over 17 miles of pedestrian and bicycle trails. It also consists of three miles of equestrian trails and open spaces for leisure activities such as jogging, picnicking, and nature hiking.

The paved bicycle-pedestrian (shared use) trail (Gary L. Haller Trail) within Mill Creek Streamway Park, extends from Nelson Island on the Kansas River, south through the cities of Shawnee and Lenexa, and ending in the City of Olathe. The portion of the trail within the project area was built in 2000 with Transportation Enhancement funds, and in 2010, the trail was designated by Secretary of the Interior Ken Salazar as a National Recreation Trail (NRT). NRT designations were authorized under the National Trail System Act of 1968 (Public Law 90-543) for the creation of a national trail system.

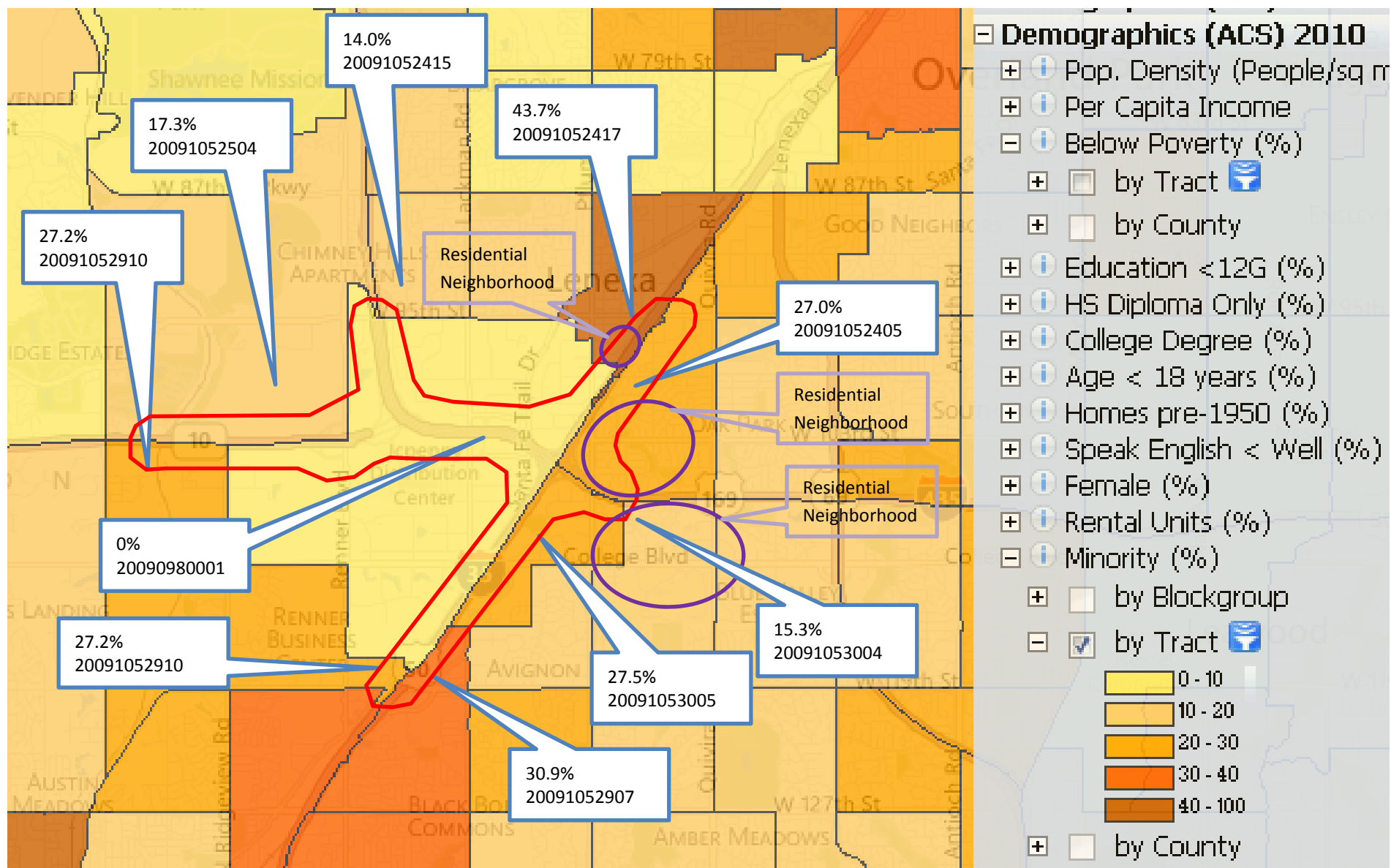
The FHWA has determined that the public park parcels of the Mill Creek Streamway Park are not Section 4(f) resources because the primary function of the trail is transportation. The proposed project improvements would not require the permanent acquisition of any of the park parcels nor a permanent easement on the park parcels. Within the project area, the trail travels under the K-10 bridges over Mill Creek, and is mostly located within KDOT right-of-way. The project improvements would include a new bridge at this location and a temporary closure and reconstruction of the trail. This bridge and trail re-construction will occur primarily within the KDOT right-of-way only, but may require a temporary easement from the Johnson County Parks Department parcel to the South. Coordination with the Johnson County Parks and Recreation District will take place during design and the continuity of the trail will not be impaired when construction is completed.

The National Park Service's (NPS) listing of grants for the Land and Water Conservation Fund 6(f) shows a listing for "D/Mill Creek Streamway Acquisition & Development" in Johnson County, approved in 1992. It has not yet been determined if Section 6(f) funds were applied to the park parcels within the project corridor. However, there would be no land conversion or other impacts on the Mill Creek Streamway park parcels. Therefore, it is anticipated that approvals from the NPS would not be required.

Separate Shared-Use Path – There is one paved shared-use (bicycle-pedestrian) path within the project area that is outside of any park property. It is a 10-foot wide path located within the KDOT I-435 right-of-way, on the north side of 95th Street, at the I-435/95th Street interchange. The FHWA has determined that this path is considered a transportation use (being within KDOT right-of-way rather than being within park property); and therefore is not applicable to the provisions of Section 4(f). Any proposed improvements at this interchange will include temporary closure of the path and reconstruction in the same approximate location to maintain continuity.

Threatened and Endangered Species:

Federal: The U.S. Fish and Wildlife Service list the endangered Pallid Sturgeon and threatened Mead's Milkweed in Johnson County. Designated critical habitat (DCH) has not been established for either species. The Pallid Sturgeon occurs in the Missouri River and possibly in the Kansas River, which are not within the project corridor. Mead's Milkweed may occur in high quality native prairie. However, there are no areas of



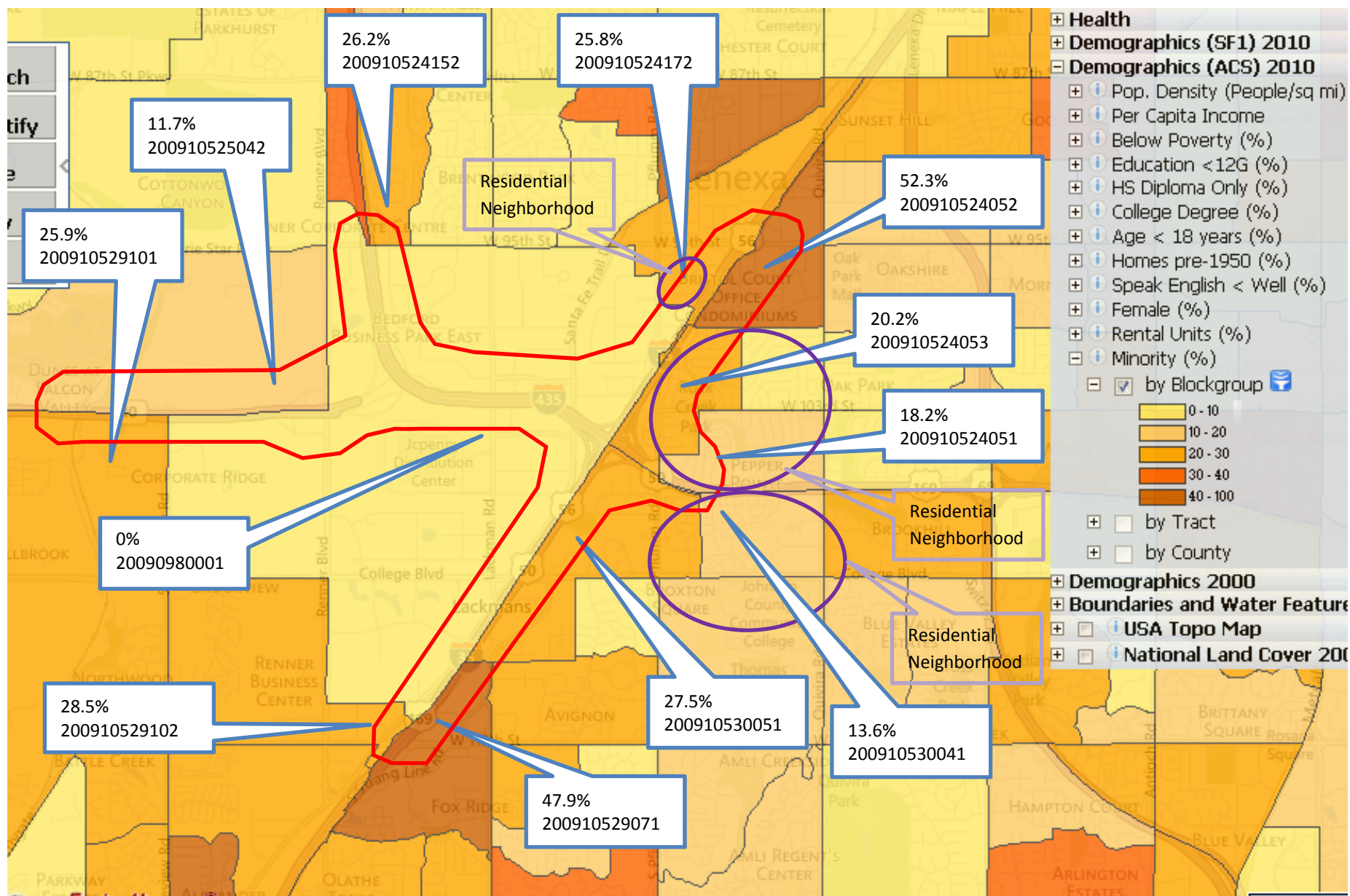
JOHNSON COUNTY GATEWAY

Minority % by Census Tract – 2010 American Community Survey (ACS)

Source: EPA – EJ View website

Note: Minority % for Johnson County was 16.8% for 2010 (American Community Survey)

Exhibit 1



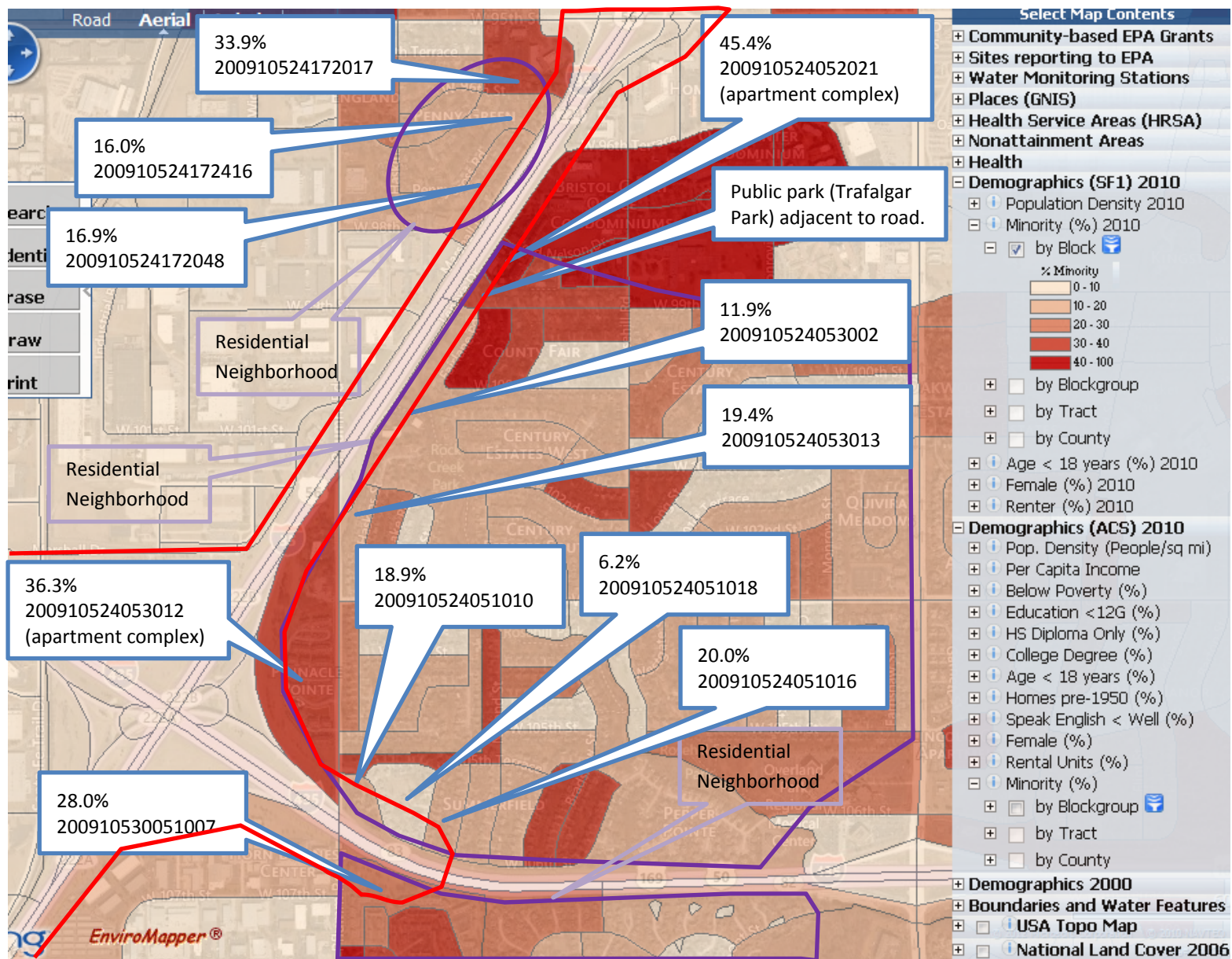
JOHNSON COUNTY GATEWAY

Minority % by Block Group – 2010 American Community Survey (ACS)

Source: EPA – EJ View website

Note: Minority % for Johnson County was 16.8% for 2010 (American Community Survey)

Exhibit 2



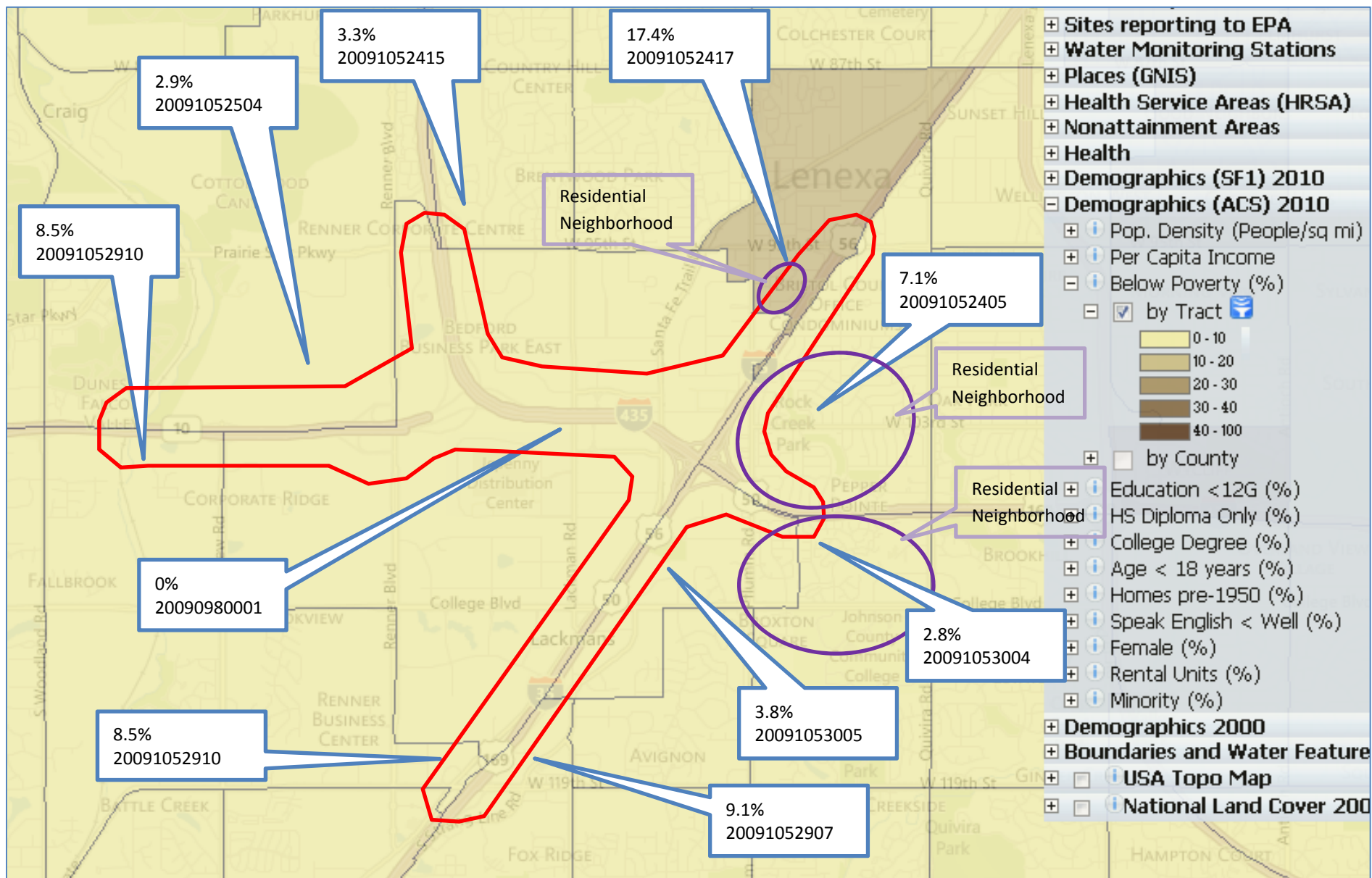
JOHNSON COUNTY GATEWAY

Minority % by Block – 2010 Summary File1 (SF1)

Source: EPA – EJ View website

Note: Minority % for Johnson County was 18.0% for 2010 (SF1)

Exhibit 3



JOHNSON COUNTY GATEWAY

Below Poverty % by Census Tract – 2010 American Community Survey (ACS)

Source: EPA – EJ View website

Note: Below Poverty % for Johnson County was 5.5% for 2010 American Community Survey (ACS)

Exhibit 4