



Hall County Regional Planning Commission

Wednesday, July 11, 2007
Regular Meeting

Item -1

Request for Conservation Easement

Concerning a Conservation Easement - Sections 13 and in Township 14 9N, Range 11 West of the 6th P.M. The Nature Conservancy owns the property and is proposing to sell it with the conservation easement.

Staff Contact: Chad Nabity

Agenda Item 4

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

June 25, 2007

SUBJECT: *Conservation Easement C-20-2007HC*

PROPOSAL: John Heaston, Director of the Platte River Program, of the Nature Conservancy has submitted a request to Hall County for the approval of a conservation easement on property owned by the Nature Conservancy in the NE ¼ of 14-9-11 and the NW ¼ 13-9-11. This property is located north of Platte River Drive at 90th Road.

The Hall County Board of Supervisors is expected to forward this matter to the planning commission per statutory requirements at their meeting on July 10, 2007.

OVERVIEW:

The Nature Conservancy currently owns this property and wishes to sell it to a local farmer. The Nature Conservancy is willing to sell the property but wishes for it to remain agricultural property in perpetuity. As such, they are proposing to place a conservation easement on the property with rights to enforce that easement remaining with The Nature Conservancy. The buyer of the property is agreeable to the easement and subsequent restrictions on use. As defined by NRSS §76-2112, The Nature Conservancy is eligible to receive, hold and enforce the conservation easement.

A recommendation on this easement to determine conformity with the Comprehensive Plan is required by State Statutes.

Site Analysis

Current zoning designation:

AG1-Agriculture Primary District
AGV-Valentine Soil Overlay District
AG-R-River Corridor Agricultural District

Permitted and conditional uses:

Agriculture and Agriculture Related Issues with specific limitations based on the zoning district

Comprehensive Plan Designation:

Agriculture and River Protection Corridor

Existing land uses:

Rented Farm Ground Owned by the Nature Conservancy

Site constraints:

Flood Plain over portions of the site

Adjacent Properties Analysis

Current zoning designations:

North and West: AG-R-River Corridor Agricultural District

South and East: AG1-Agriculture Primary District and AGV-Valentine Soil Overlay District

Comprehensive Plan Designation:

North: Commercial/Medium Density Residential

South: Commercial

East: Public

West: Commercial

Existing land uses:

Farm Ground

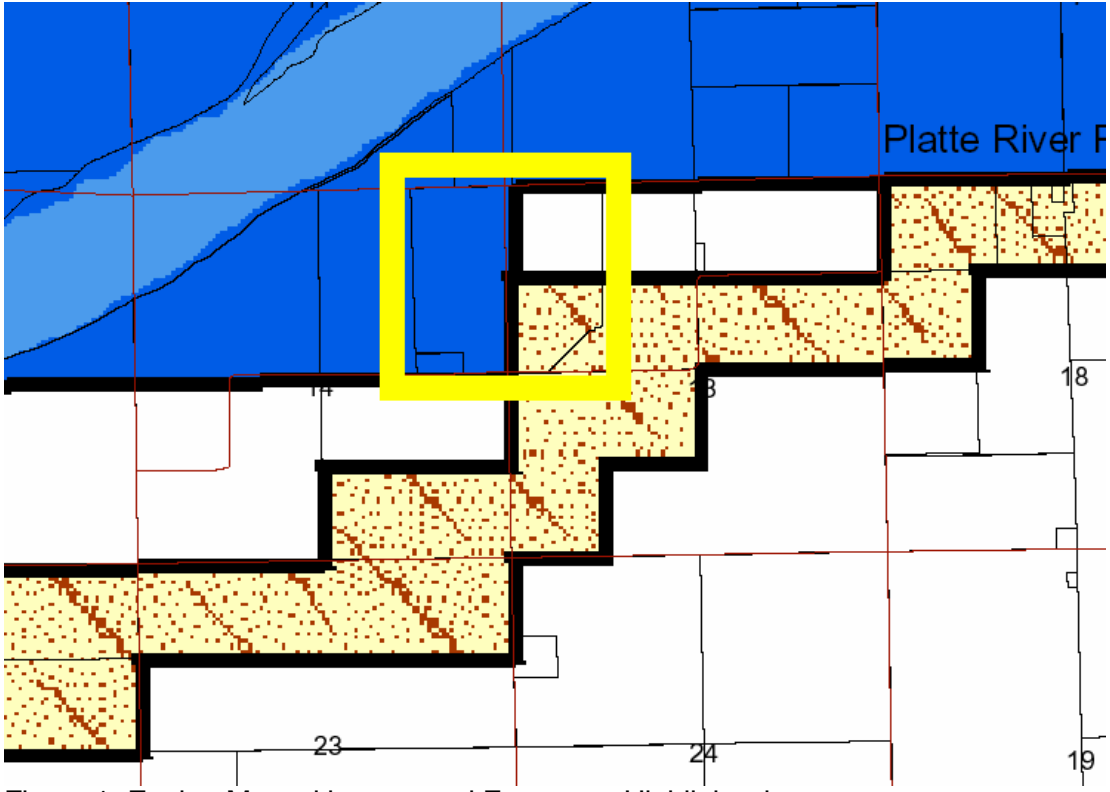


Figure 1. Zoning Map with proposed Easement Highlighted

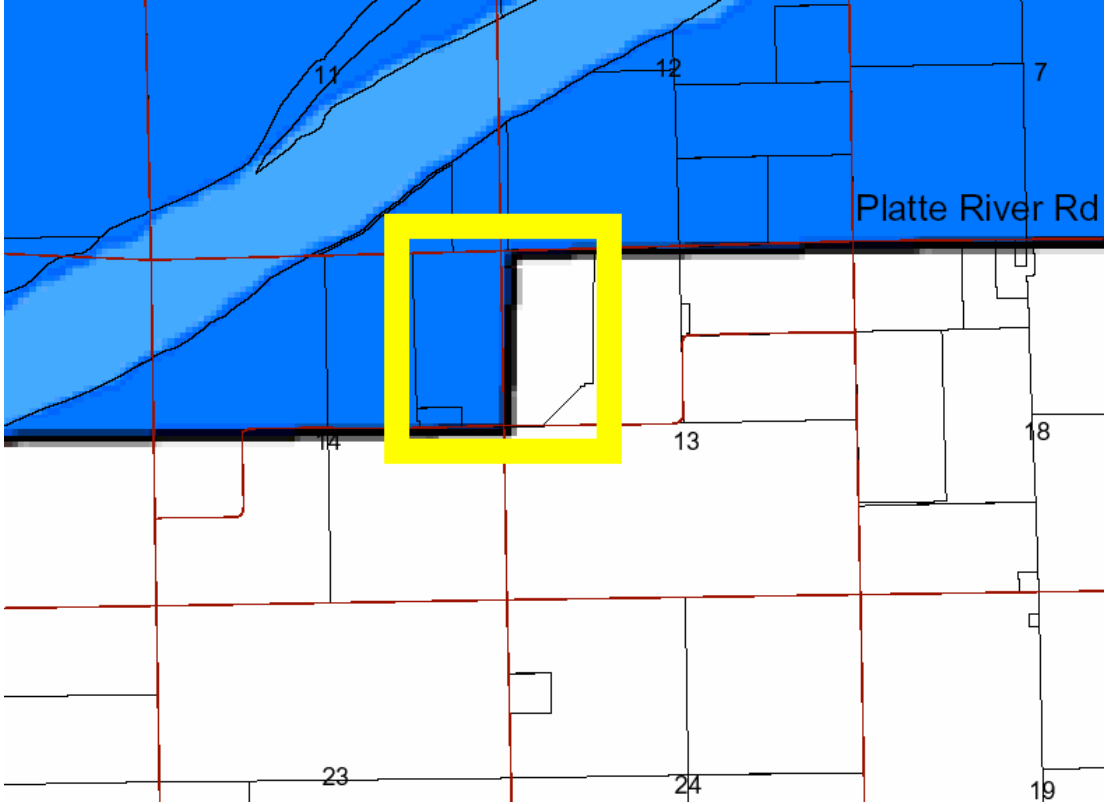


Figure 2. Future Land Use Map with Proposed Easement Highlighted

EVALUATION:

The easement is proposed on property that is zoned for agricultural purposes and planned to be used for agricultural purposes for the foreseeable future. There are some development constraints on the property because a portion of the property is located within the flood plain.

Hall County Comprehensive Plan General Land Use Policies

Goal 1

Hall County should manage the land in a cost-effective and efficient manner while protecting the environment and natural resources, as well as maintaining and increasing land values. Guiding future growth and development in Hall County towards a compact pattern of land uses based upon the efficient and economical expansion of public infrastructure will continue to maintain and improve the quality of life for Hall County residents.

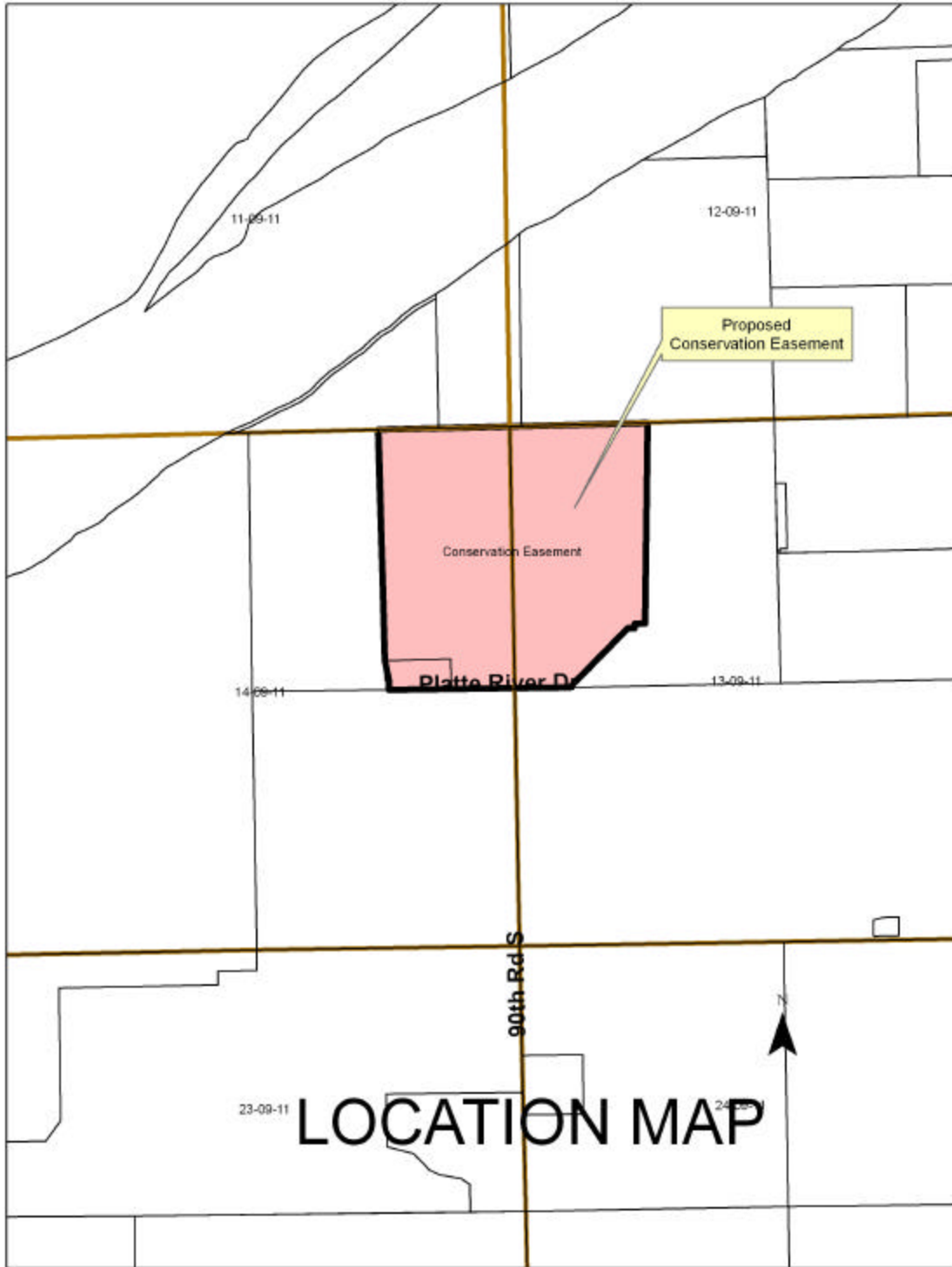
- 1.1.7 Discourage and minimize leapfrog development outside of cities and villages.
- 1.1.8 Hall County should allow agricultural production in all areas in which agricultural uses are appropriate, and non-agricultural development in agricultural areas should be allowed in specifically designated areas which does not negatively impact the agricultural uses.
- 1.2.5 Encourage low to zero non-farm densities in prime farmland areas and other agricultural districts by providing residential lot size requirements and proper separation distances between residential and agricultural uses.

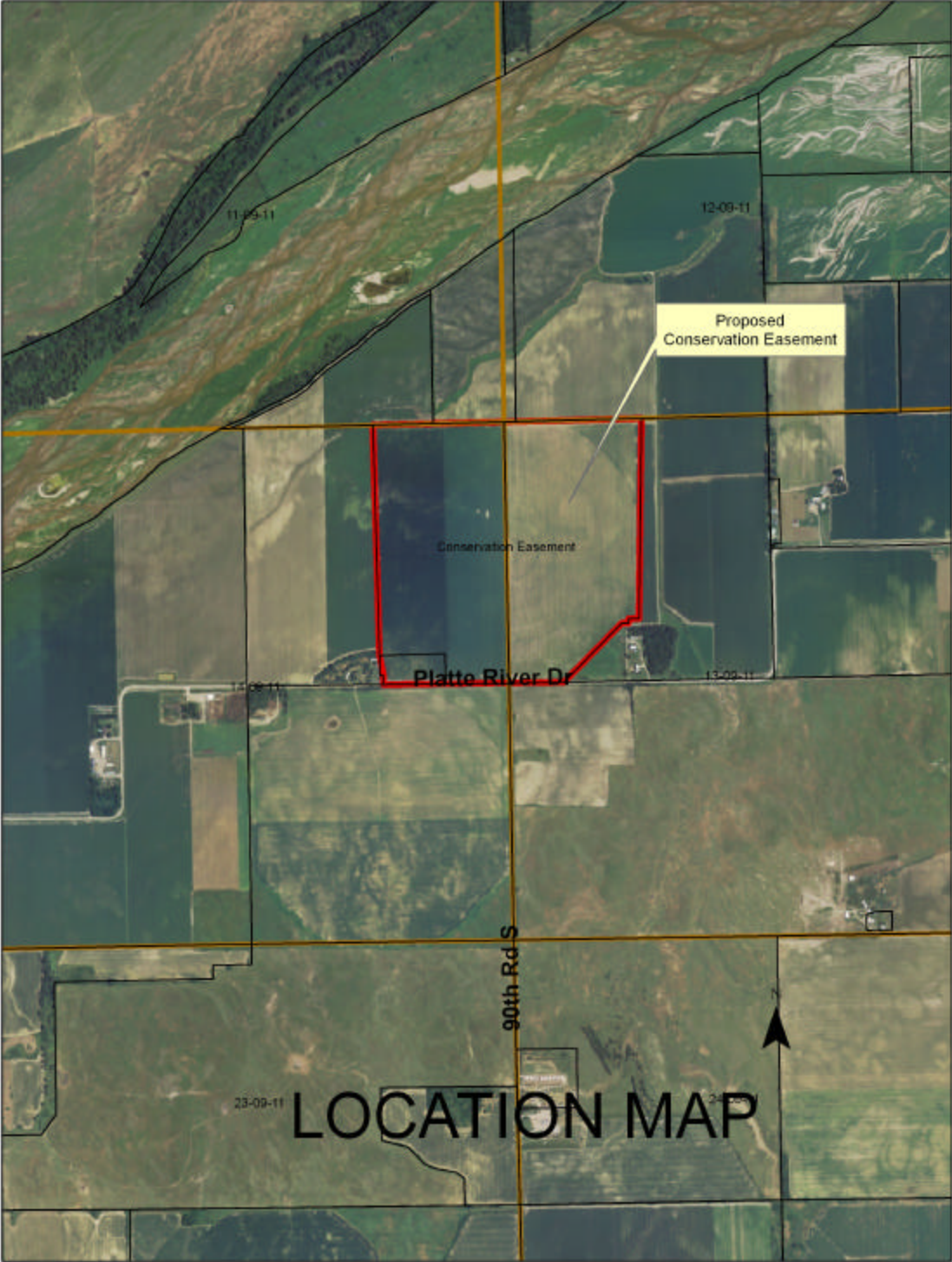
It would appear that based on the current zoning, the future land use plan for the county, the desire of the county as expressed in the comprehensive plan general land use policies 1.1.7, 1.1.8, 1.2.5 that it would be in conformance with the Hall County Comprehensive Plan to permit this conservation easement.

RECOMMENDATION:

That the Regional Planning Commission recommends that the Hall County Board **approve** this request for a conservation easement as presented.

_____ Chad Nabity AICP, Planning Director







APPROXIMATE SCALE
 0 2000 FEET

NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

COUNTY OF
HALL,
NEBRASKA
 (UNINCORPORATED AREAS)

PANEL 125 OF 150

COMMUNITY-PANEL NUMBER
 310100 0125 B

EFFECTIVE DATE:
 AUGUST 1, 1980

U.S. DEPARTMENT OF HOUSING
 AND URBAN DEVELOPMENT
 FEDERAL INSURANCE ADMINISTRATION

This is an official record of a section of the above referenced flood map. It was extracted from FIRM Version 1.0. The user does not reflect changes or annotations which may have been made subsequent to the date on the title block. Further information about National Flood Insurance Program flood hazard maps is available at www.fema.gov/viflood

Platte River Project Office
PO box 144
Cozad, NE 69130
308-784-5336 (p)
308-784-5326 (f)

June 21, 2007

Chad Nabity
Planning Director
Regional Planning Commission of Hall County
100 E. 1st Street
P.O. Box 1968
Grand Island, NE 68802-1968

Dear Mr. Nabity,

Please find enclosed a copy of a proposed conservation easement that The Nature Conservancy proposes to hold over a tract of land in Hall County. The legal description of the property, currently owned by the Conservancy but to be transferred to a private party subject to the terms of the conservation easement, is as follows:

A tract of land comprising a part of the East Half of the Northeast Quarter (E1/2NE1/4) of Section Fourteen (14); And part of the West Half of the Northwest Quarter (W1/2NW1/4) of Section Thirteen (13), all in Township Nine (9), Range Eleven (11) West of the 6th P.M., in Hall County, Nebraska more particularly described as follows:

Beginning at a point on the South line of said Northeast Quarter (NE1/4) of said Section Fourteen (14), said point being Twenty-eight (28) feet East of the Southwest corner of said E1/2NE1/4; thence Northerly parallel to the West line of said E1/2NE1/4, a distance of One Hundred Sixteen (116.0) feet; thence Westerly parallel to the South line of said NE1/4, a distance of twenty-eight (28.0) feet to the West line of said E1/2NE1/4; thence Northerly along the West line of said E1/2NE1/4 a distance of Two Thousand Five Hundred Seven and Seven Hundredths (2,507.07) feet to the northwest corner of said E1/2NE1/4; thence Easterly along the North line of said Section Fourteen (14), a distance of One Thousand Three Hundred Twenty (1,320.0) feet to the Northwest corner of said Section Thirteen (13); thence Easterly along the North line of said Section Thirteen (13), a distance of One Thousand Three Hundred Twenty One (1,321.0) feet to the Northeast corner of said W1/2NE1/4; thence Southerly along the East line of said W1/2NW1/4, a distance of Two Thousand Thirty-two and Forty-two Hundredths (2,032.42) feet; thence Westerly parallel to the South line of said Northwest Quarter (NW1/4) a distance of One Hundred Twenty-eight and Ninety-five Hundredths (128.95) feet; thence Southerly parallel to the East line of said W1/2NW1/4, a distance of Forty-Five (45.0) feet; thence Westerly parallel to the South line of said Northwest Quarter (NW1/4) a distance of Sixty-five and One Tenth (65.1) feet; thence deflecting left 45° 25' 55" and running Southwesterly, a distance of Seven Hundred Eighty-eight and Fifteen Hundredths (788.15) feet to the South line of said Northwest Quarter (NW1/4); thence Westerly along the South line of said Northwest Quarter (NW1/4), a distance of Five Hundred Seventy-four and Ninety-four Hundredths (574.94) feet to a Southwest corner of said Northwest Quarter (NW1/4); thence Westerly along the South line of said Northeast Quarter (NE1/4) of Section Fourteen (14), a distance of One Thousand Two Hundred Eighty-Four and Thirty-Eight Hundredths (1,284.38) feet to the place of beginning.

Pursuant to Nebraska law, the Conservancy is submitting this legal instrument for review by the local planning authority. Under Neb. Rev. Stat Section 76-2,112 (3), the local authority has 60 days after submission of the easement within which to review the conservation easement to determine whether it is in conformity with local comprehensive planning and to provide comments or approval to the submitting party. If you have any questions please feel free to contact me via email @ jheaston@tnc.org or by phone 308-784-5336.

Sincerely

A handwritten signature in black ink, appearing to read 'J. Heaston', written over a horizontal line.

John T. Heaston
Director, Platte River Program
The Nature Conservancy, Nebraska Chapter

cc. Troy Rainforth

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted this ___ day of _____, 2007,
by _____ (the "Grantor"), to
The Nature Conservancy, a non-profit corporation of the District of Columbia.

RECITALS:

A. **PROTECTED PROPERTY.** Grantor is the owner in fee simple of approximately 153.25 acres of real property in Hall County, Nebraska, which is legally described in Exhibit A attached hereto and incorporated by reference herein ("Protected Property").

B. **CONSERVATION VALUES.** The Protected Property, in its present state, has significant natural, aesthetic, scientific and educational values as a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder (collectively, "Conservation Values").

In particular, the Protected Property is located in the Central Platte River conservation area. The Platte River and its associated riparian lands contains critical migratory bird habitat for over 230 species of migratory birds each spring and fall. Migratory waterbirds that pass through the conservation area include ducks, geese and herons. The continent's largest population of sandhill cranes utilizes this portion of the Platte River each spring. The area also provides critical migratory stopover habitat for whooping cranes. The Protected Property, which consists primarily of crop fields adjacent to grasslands and the Platte River channel, is important as buffer that contributes to the ecological viability of core conservation lands adjacent to and in the vicinity of the Protected Property and also as a daytime use area for migratory bird species. Migrating bird species, including migratory sandhill cranes and whooping cranes, use this type of land during the day for activities such as loafing, courting and consumption of waste grains. Thus, the Protected Property is an important part of the ecological system as it and other similar lands provide much needed use and feeding opportunities for wide-ranging species. Maintenance

functional integrity of river roost areas on adjacent and nearby properties from the types of human disturbance and activity that would affect use of both the Protected Property and the adjacent and nearby natural areas by sandhill and whooping cranes. Preservation of the Protected Property as open space/agricultural land also ensures a lack of visual obstruction that would hamper the natural habitat of nearby natural property and use of that habitat by migratory birds. Further, the maintenance of the Protected Property in its current agricultural state also allows nearby conservation lands to be managed in ways that might not be possible with more intensive human use of the Protected Property, such as with prescribed fire. Primary threats to the current use of the Protected Property are conversion to incompatible uses such as rural residential housing, mining for sand and/or gravel, and construction of aerial obstructions, and it is these types of uses this Conservation Easement is designed to prohibit. In summary, the goal of preserving the Protected Property in its current state as agricultural land is to protect the Property as open space/agricultural land for the values it provides to wildlife as highly used day use areas, as secondary roost areas, and as buffers to roost sites.

C. EXISTING USES AND IMPROVEMENTS: The Protected Property has historically been used for production agriculture, grazing and haying, which shall continue to be permitted uses. Improvements on the Protected Property consist of two irrigation wells and a center pivot irrigation system.

The Conservation Values of the Protected Property have not been and are not likely to be adversely affected to any substantial extent by uses of the Protected Property for production agriculture purposes to include grazing and haying which presently exist on the Protected Property or which are authorized under this Easement.

D. QUALIFIED ORGANIZATION. The Conservancy is a non-profit corporation created to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes and is an organization qualified under Section 170(h) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder, to receive qualified conservation contributions.

GRANT OF CONSERVATION EASEMENT:

For and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and pursuant to the laws of the State of Nebraska and in particular Nebraska Code Sections 76-2,111 to 76-2,118, the Grantor hereby grants and conveys unto the Conservancy, its successors and assigns forever a Conservation Easement in perpetuity over the Protected Property consisting of the following terms and conditions (“Easement”):

1. PURPOSE. It is the purpose of this Easement to assure that the Protected Property will be retained forever substantially undisturbed in its agricultural, open space and buffer condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to activities that are consistent with the

purpose of this Easement.

2. **PROHIBITED USES/RESTRICTIONS.** Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

2.1. **Commercial Activity.** There shall be no industrial or commercial activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

2.2. **Structures.** There shall be no construction or placing of any house, garage, barn or other building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those permitted, required or allowed by the Conservancy for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on the Protected Property. Additionally, there shall be no placing of wind-generation turbines on the protected property.

2.3. **Subdivision.** The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration as an entity.

2.4. **Mining.** There shall be no mining, drilling, exploring for or removal of minerals, including sand and gravel, from the Protected Property.

2.5. **Topography.** There shall be no ditching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner except in conjunction with activities otherwise specifically authorized herein.

2.6. **Water.** There shall be no manipulation or alteration of drainage courses, surface or subsurface springs or any activities on or uses of the Protected Property detrimental to water purity or quality.

2.7. **Dumping.** There shall be no dumping of trash, noncompostable garbage, hazardous or toxic substance or other unsightly or offensive material.

2.8. **Roads.** There shall be no building of new roads or other rights of way.

2.9. **Animals.** There shall be no confined animal feedlots permitted on the Protected Property.

2.10. **Density.** Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws,

regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferrable development rights scheme, cluster development arrangement or otherwise.

3. **GRANTOR'S RESERVED RIGHTS.** The Grantor reserves for Grantor, Grantor's heirs, successors and assigns, all rights as owners of the Protected Property to use the Protected Property for all purposes that are not expressly prohibited herein and are not inconsistent with this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

3.1. Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Conservancy in accordance with paragraph 6.5 below.

3.2. Agricultural Uses. Notwithstanding the foregoing, the Protected Property may be used for grazing cattle; cutting, baling and removing hay; and other agricultural uses, including row crop agriculture, and passage may be allowed across or upon the Protected Property in conjunction with this permitted activity. Grantor may enroll the Property in appropriate governmental farm programs that are not inconsistent with the purposes of this Conservation Easement, including but not limited to the Conservation Reserve Program, the Wetland Reserve Program or any other program of the United States Department of Agriculture, and may enter into additional agreements or grant additional easements as required for enrollment in such programs.

3.3. Signs. Grantor may place interpretive signs and "no hunting," "no trespassing" or similar signs on the Protected Property.

3.4. Native Species. Grantor may undertake to restore and enhance the native plant and animal communities on the Protected Property under an ecological management plan which has received the prior written approval of the Conservancy.

3.5. Fences, Water Pipelines, Windmills, Tanks and Corrals. Grantor may, but shall not be obligated to install, repair, replace, maintain, improve or remove any fencing located on the Protected Property as of the date of this Easement. Newly constructed boundary or pasture-division fences must allow for reasonable wildlife passage through the Protected Property, but other fencing may exclude wildlife from haystacks, newly-seeded areas, and temporary vegetative restoration areas. Grantor may install, repair, replace, maintain, improve, or remove existing agricultural water facilities (including wells, water pipelines, and tanks) and develop new water resources and facilities for wildlife habitat enhancement and other uses provided for herein; provided that any maintenance, repair, reconstruction, construction or development activities may not cause impairment of the Conservation Values of the Protected Property.

3.6. Preservation. Grantor may, but shall not be obligated to, undertake any activity reasonably necessary to maintain the Protected Property in the condition in which it exists on the

date of this Conservation Easement.

4. **NOTICE OF EXERCISE OF GRANTOR'S RESERVED RIGHTS.** Although the Grantor need not obtain approval of the Conservancy in order to exercise any reserved right, unless otherwise stated herein, the Grantor hereby agrees to notify the Conservancy in writing before exercising any reserved right which may have an adverse impact on the conservation interests associated with the Protected Property.

5. **CONSERVANCY'S RIGHTS AND REMEDIES.** In order to accomplish the conservation purposes of this Easement, the Conservancy shall have the following rights and remedies:

5.1. **Remedies.** The Conservancy shall have the right to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of this Easement, subject to the reserved rights of the Grantor set forth herein. The conservancy, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act.

Nothing herein shall be construed to entitle the Conservancy to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that the Grantor shall notify Conservancy of any occurrence which would adversely affect or interfere with the conservation purpose of the Easement, whether caused by the acts or omissions of the Grantor or third parties.

The Conservancy shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and the Grantor waives any bond requirement otherwise applicable to any petition for such relief. The Conservancy shall have the right to report to regulatory authorities any environmental conditions, or any potential or actual violations of environmental laws, with respect to the Protected Property.

All reasonable costs incurred by the Conservancy in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

5.2. **Right of Entry.** The Conservancy shall have the right to enter the Protected Property, in a reasonable manner and at reasonable times, but always upon prior notice to the Grantor, for the purposes of:

- a. Inspecting the Protected Property to determine if the Grantor, or Grantor's heirs,

successors or assigns, is complying with the provisions of this Easement;

- b. Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;
- c. Making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor;
- d. Posting regulatory signs on selected portions of the Protected Property for purposes of promoting the provisions of this Easement;
- e. Monitoring and management as described below.

The Conservancy's rights do not include the right, in the absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act.

5.3 Smoke Easement. Grantors acknowledge that the Conservancy owns and manages substantial land holdings in the vicinity of the Protected Property. Furthermore, Grantors acknowledge that the Conservancy uses various stewardship tools in managing these holdings. Such stewardship tools include: grazing by large ungulates (bison and cattle), the harvest of timber using power equipment, and the use of fire through prescribed burns. These stewardship tools may create smoke, odors, ash, or noise which may affect the Protected Property.

The Grantors further acknowledge that one of the prime considerations of the Conservancy in securing this Conservation Easement over the Protected Property is to restrict the development and location of recreational homes and cottages on the Protected Property. The underlying premise in these restrictions is to allow the continued use of the above-described stewardship tools on the Conservancy's property.

Grantor, for itself, successors, assigns, lessees, and licensees, hereby acknowledges that the grant of this Conservation Easement contains a grant of a smoke easement, authorizing the creation and presence of smoke over and across the Protected Property in connection with prescribed burning activities conducted on land owned by the Conservancy in the vicinity of the Protected Property. The Grantors, its successors and assigns, shall be deemed to have expressly consented to the prescribed burning and other stewardship activities on the Conservancy's nearby property and to have waived any claims they may have against the Conservancy for personal injury or property damage caused by the presence of smoke, ash, odor, or noise on the Protected Property. All parties shall be deemed by such acknowledgement and consent to waive any and all claims arising out of smoke from the prescribed burns.

5.4. Limitation of Conservancy Rights. Nothing contained herein shall give rise, in the absence of a judicial decree, to any right or ability of the Conservancy to become the operator of the Protected Property within the meaning of the Comprehensive Environmental Response,

Compensation and Liability Act by exercising physical control over the day-to-day operations of the Grantor or becoming involved in management decisions of the Grantor regarding the generation, handling or disposal of hazardous substances.

5.5. Discretionary Consent. The Conservancy's consent for any activities requiring the Conservancy's consent under paragraph 2 or 3 above may be given under the following conditions and circumstances. Requests for permission for activities requiring the Conservancy's consent under paragraph 2 or 3 shall be in writing and shall describe the proposed activity in sufficient detail to allow the Conservancy to judge the consistency of the proposed activity with the purpose of this Easement. The Conservancy may give its permission only if it determines, in its sole discretion, that such activities (a) do not violate the purpose of this Easement; (b) either enhance or do not impair any significant Conservation Values of the Protected Property; and (c) do not adversely affect the qualification of this Easement or the status of the Conservancy under applicable laws, including §§ 170(h) or 501(c)(3) of the Internal Revenue Code, successor provisions thereof, and regulations issued pursuant thereto. Notwithstanding the foregoing, the Grantee and the Conservancy have no right or power to agree to any activities that would result in the termination of this Easement or to allow residential, commercial or industrial activities not provided for herein.

Other than circumstances described in paragraphs 2 or 3 herein, it is the Conservancy's presumption that this Conservation Easement will not be amended or modified. In the event of truly unforeseen circumstances or exceptional situations, the Conservancy may in its sole discretion agree to amend or modify this Easement, but in no event shall such amendment be made without compliance with both the Conservancy's internal procedures and standards for such modification and any state laws regarding the amendment of conservation easements. Any amendment must also meet the requirements described in (a) through (c) above.

6. GENERAL PROVISIONS.

6.1. Perpetual Burden. This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor, Grantor's heirs, successors and assigns.

6.2. Easement Documentation. The Grantor and the Conservancy agree that the natural characteristics, the ecological and aesthetic features, the physical condition and the Conservation Values of the Protected Property at the time of this grant are documented in an Easement Documentation Report, prepared by the Conservancy and signed and acknowledged by the Grantor and a representative of the Conservancy, establishing the condition of the Protected Property at the time of this grant and including reports, maps, photographs and other documentation.

6.3. Access. Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

6.4. Assignment. This Easement is in gross and may be assigned or transferred by the

Conservancy. The Conservancy agrees that, if it transfers or assigns its interest in this Easement:

a. The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder; and

b. The transferee or assignee will be required to carry out in perpetuity the conservation purposes which this Easement was originally intended to advance.

6.5. Subsequent Transfers by Grantor. Unless this Easement is extinguished, as set forth below, the Grantor agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests himself of any interest in all or part of the Protected Property. The Grantor agrees to notify the Conservancy, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

6.6. Extinguishment. The Grantor agrees that this donation of a perpetual Easement gives rise to a property right, immediately vested in the Conservancy, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Protected Property as a whole at that time. The proportionate value of the Conservancy's property rights shall remain constant.

If a subsequent unexpected change in the conditions of or surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes described herein, and if the restrictions of this Easement are extinguished by judicial proceedings (including, but not limited to, eminent domain proceedings), then upon the sale, exchange or involuntary conversion of the Protected Property, the Conservancy shall be entitled to a portion of the proceeds at least equal to the proportionate value of the Easement described above. The Conservancy will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.

6.7. Title Warranty. Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and have good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances and that the Conservancy and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

6.8. Hazardous Waste. The Grantor represents and warrants that no hazardous

substance or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

Subject to the limitations of Grantor's liability contained in paragraph 5.1, Grantor, Grantor's successors and assigns shall indemnify, defend and hold the Conservancy harmless from any liability related to Grantor's representations and warranties in this paragraph or related to the use, deposit or release of any hazardous substance or toxic waste on the Protected Property after the date of this Easement.

6.9. Real Estate Taxes. The Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property and that the Conservancy shall have no duty or responsibility to manage or maintain the Protected Property. The Grantor agrees that if any real property taxes or assessments are levied against the Conservancy as a result of this Easement for which exemption cannot be obtained, the Grantor agrees to donate a sum of money to the Conservancy equal to the amount of said taxes and the Conservancy shall pay the taxes.

6.10. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Conservancy's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

6.11. Re-recording. The Conservancy is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Grantor appoints the Conservancy Grantor's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Grantor's behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

6.12. Definitions. The terms "Grantor" and "Conservancy" as used herein shall be deemed to include, respectively, the Grantor, Grantor's heirs, successors and assigns in title to the Protected Property, and the Conservancy, its successors and assigns.

6.13. Notices. Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to the following address or such address as may be hereafter specified in writing:

The Nature Conservancy
4245 North Fairfax Drive
Suite 100
Arlington, VA 22203-1606
ATTN: General Counsel

Notary Public
My Commission Expires:

Notary Public
My Commission Expires:

ACCEPTANCE

The foregoing Conservation Easement is hereby duly accepted by The Nature Conservancy effective the _____ day of _____, 2007.

THE NATURE CONSERVANCY

By:_____

Title:_____

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by _____, the _____ of The Nature Conservancy, a non-profit corporation under the laws of the District of Columbia, on behalf of said corporation.

Notary Public
My Commission Expires:

LEGAL DESCRIPTION

EXHIBIT A

A tract of land comprising a part of the East Half of the Northeast Quarter (E1/2NE1/4) of Section Fourteen (14); And part of the West Half of the Northwest Quarter (W1/2NW1/4) of Section Thirteen (13), all in Township Nine (9), Range Eleven (11) West of the 6th P.M., in Hall County, Nebraska more particularly described as follows:

Beginning at a point on the South line of said Northeast Quarter (NE1/4) of said Section Fourteen (14), said point being Twenty-eight (28) feet East of the Southwest corner of said E1/2NE1/4; thence Northerly parallel to the West line of said E1/2NE1/4, a distance of One Hundred Sixteen (116.0) feet; thence Westerly parallel to the South line of said NE1/4, a distance of twenty-eight (28.0) feet to the West line of said E1/2NE1/4; thence Northerly along the West line of said E1/2NE1/4 a distance of Two Thousand Five Hundred Seven and Seven Hundredths (2,507.07) feet to the northwest corner of said E1/2NE1/4; thence Easterly along the North line of said Section Fourteen (14), a distance of One Thousand Three Hundred Twenty (1,320.0) feet to the Northwest corner of said Section Thirteen (13); thence Easterly along the North line of said Section Thirteen (13), a distance of One Thousand Three Hundred Twenty One (1,321.0) feet to the Northeast corner of said W1/2NE1/4; thence Southerly along the East line of said W1/2NW1/4, a distance of Two Thousand Thirty-two and Forty-two Hundredths (2,032.42) feet; thence Westerly parallel to the South line of said Northwest Quarter (NW1/4) a distance of One Hundred Twenty-eight and Ninety-five Hundredths (128.95) feet; thence Southerly parallel to the East line of said W1/2NW1/4, a distance of Forty-Five (45.0) feet; thence Westerly parallel to the South line of said Northwest Quarter (NW1/4) a distance of Sixty-five and One Tenth (65.1) feet; thence deflecting left 45° 25' 55" and running Southwesterly, a distance of Seven Hundred Eighty-eight and Fifteen Hundredths (788.15) feet to the South line of said Northwest Quarter (NW1/4); thence Westerly along the South line of said Northwest Quarter (NW1/4), a distance of Five Hundred Seventy-four and Ninety-four Hundredths (574.94) feet to a Southwest corner of said Northwest Quarter (NW1/4); thence Westerly along the South line of said Northeast Quarter (NE1/4) of Section Fourteen (14), a distance of One Thousand Two Hundred Eighty-Four and Thirty-Eight Hundredths (1,284.38) feet to the place of beginning.