



Hall County Regional Planning Commission

**Wednesday, December 1, 2021
Regular Meeting**

Item F5

**Request for Conservation Easement - Hall County - Concerning a
Conservation Easement for the Wetlands Reserve Program
comprising a part of the South Half (S1/2) of Section Thirty-Six
(36), Township Ten (10) North, Range Nine (9) West of the 6th
P.m.**

Staff Contact:

Agenda Item #9

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

November 17, 2021

SUBJECT: *Conservation Easement C-11-22HC*

PROPOSAL: The Larry L. Brummund Estate has submitted a proposed Wetland Reserve Program conservation easement with the Natural Resources Conservation Service (NRCS) to Hall County for approval. The WRP conservation easement is proposed on property owned by the Larry L. Brummund Estate in the S ½ of the NW ¼ of Section 36 Township 10 N, Range 9 west of the 6th P.M. The property is located south of the Lowry Road east of Shady Bend Road.

The Hall County Board of Supervisors forwarded this matter to the planning commission per statutory requirements at their meeting on November 9, 2021.

OVERVIEW:

The Larry L. Brummund Estate currently owns this property and wishes to transfer a conservation easement on this property to NRCS under the WRP program. They are proposing to place a conservation easement on the property with rights to enforce that easement transferred to NRCS. The owner of the property is agreeable to the easement and subsequent restrictions on use. As defined by NRSS §76-2112, the NRCS 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.

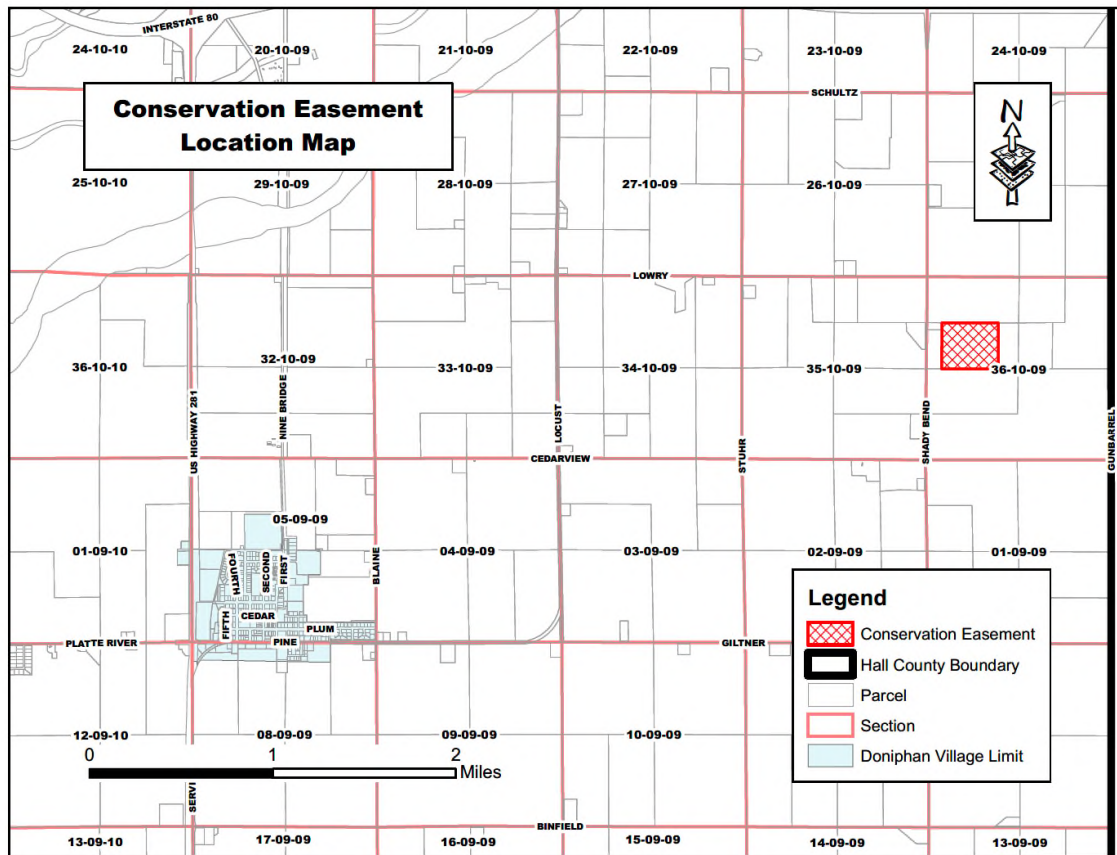
Site Analysis

<i>Current zoning designation:</i>	A-1-Primary Agricultural District
<i>Permitted and conditional uses:</i>	Agriculture and Recreation Related uses
<i>Comprehensive Plan Designation:</i>	Agricultural
<i>Existing land uses:</i>	Row Crop and Wetlands
<i>Site constraints:</i>	Wetlands cover the center of the property

Adjacent Properties Analysis

<i>Current zoning designations:</i>	North, South, East and West: A-1 Primary Agricultural District
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<i>Comprehensive Plan Designation:</i>	North South, East and West: Agriculture
<i>Existing land uses:</i>	Farm Ground/



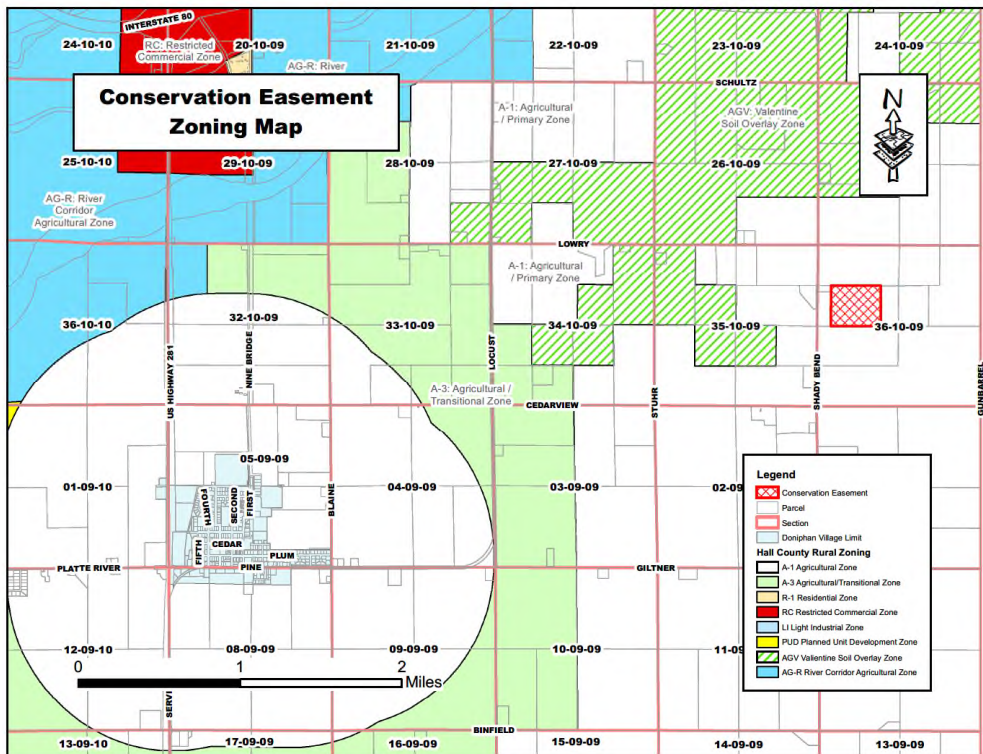


Figure 1 Zoning Map with proposed Easement Highlighted

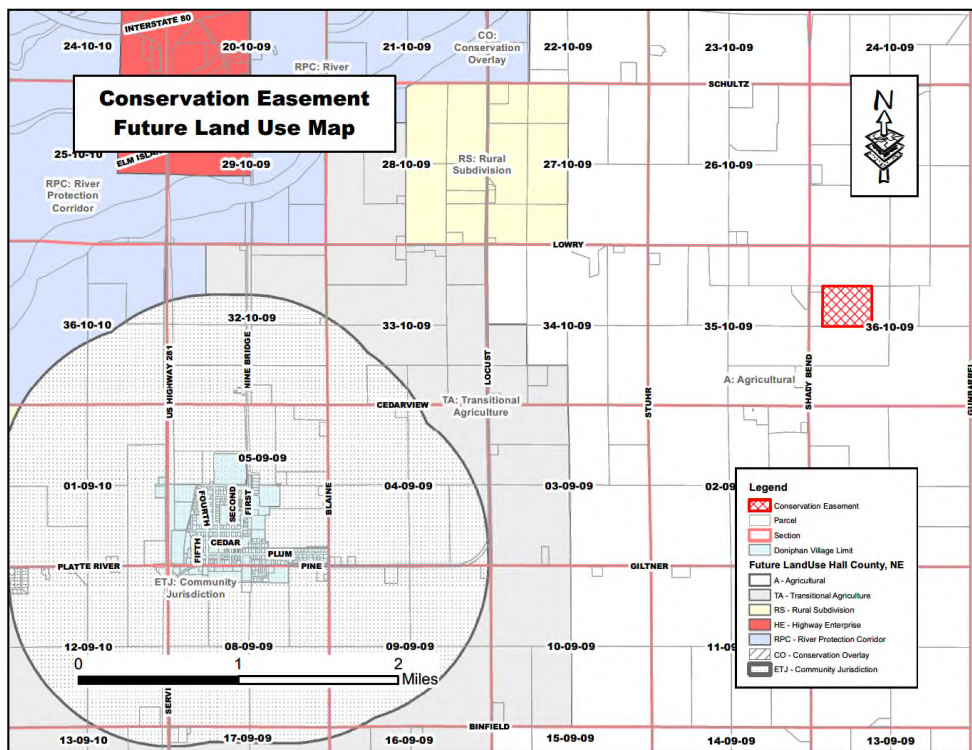


Figure 2 Future Land Use Map with Proposed Easement Highlighted

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. While the property is not in the flood plain the existing of the wetlands across the property does limit the potential for development.

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

Hall County Board of Commissioners
Marla Conley, County Clerk
121 South Pine Street
Grand Island, NE 68801

October 20, 2021

Dear Marla Conley:

As you are likely aware, on June 24, 2021, Governor Pete Ricketts signed Executive Order No. 21-08, "Stop 30 x 30 – Protect Our Land & Water." In this Executive Order, the Governor directed the Nebraska Department of Revenue to host workshops to educate and advise county officials of their rights in reviewing conservation easements pursuant to Nebraska Revised Statute 76-2,112.

Under the Nebraska Conservation and Preservation Easements Act (Neb. Rev. Stat. 76-2,112, et seq.), local governing bodies have the right to review conservation easements to determine whether they conflict with land-use planning. In anticipation for this review, this letter serves as my official notice of intent to file an Agricultural Conservation Easement Program – Wetland Reserve Easement (ACEP-WRE) in the county at the following location:

S1/2 NW1/4 36 – 10 – 9W Hall County (see attached map).

Land eligible for wetland reserve easements includes farmed or converted wetland that can be successfully and cost-effectively restored. Wetland Reserve Easements provide habitat for fish and wildlife, including threatened and endangered species, improve water quality by filtering sediments and chemicals, reduce flooding, recharge groundwater, protect biological diversity and provide opportunities for educational, scientific and limited recreational activities.

Please be advised that you have sixty (60) days to render this easement approved or disapproved. Neb. Rev. Stat. 76-2,112(3). If you do not render a decision within this timeframe, the easement is automatically approved. Local governing authorities may only deny approval upon a finding that the easement is not in public interest when the easement is inconsistent with "(a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land." Neb. Rev. Stat. 76-2,112(3)(c).

Please confirm receipt of this notice. Additionally, I request that you let me know if you have any questions regarding the easement or require any additional information or documentation.

Sincerely,

Larry L. Brummund Estate
C/O Jason Brummund
103 W 8 RD
Doniphan, NE 68832-2111
308-258-3490

October 20, 2021

Larry L. Brummund Estate
C/O Jason Brummund
103 W 8 RD
Doniphan, NE 68832-2111

RE: Executive Order by Governor Ricketts pertaining to conservation easements in Nebraska
and your conservation agreement #5465262101WZ5 in Hall County.

Dear Landowner:

On June 24, 2021, Governor Pete Ricketts signed Executive Order No. 21-08, "Stop 30 x 30 – Protect Our Land & Water." In this Executive Order, the Governor directed the Nebraska Department of Revenue to host workshops to educate and advise county officials of their rights in reviewing conservation easements pursuant to Nebraska Revised Statute 76-2,112; these workshops have now been completed.

Under the Nebraska Conservation and Preservation Easements Act (Neb. Rev. Stat. 76-2,112, et seq.), local governing bodies have the right to review conservation easements to determine whether they conflict with land-use planning. They have 60 days to respond and if they do not respond within 60 days the easement is considered approved.

NRCS has enclosed a request for review letter that was developed for this purpose and has been filled out with your conservation easement information. NRCS is asking the landowners to deliver the requests to their local county clerk's office so the County Boards can begin their review and start the 60-day countdown for their review to be completed.

Please get documentation from the clerk when you have delivered it to their office and send a copy to our office, at the address listed below; you should keep a copy for your records. Our office will record the delivery date as the start of the 60-day period to complete their review.

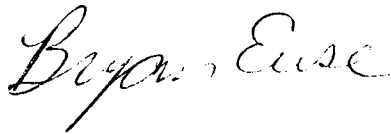
**USDA-NRCS Lincoln State Office
Attn: Bryan Euse
100 Centennial Mall N. RM 152
Lincoln, NE 68508**

*Helping People Help the Land
USDA is an equal opportunity provider, employer, and lender.*

NRCS will not be able to move forward with your ACEP Easement without this approval from the County Board, so it is important that this gets delivered to them as soon as possible. We feel that these conservation easements meet all the requirements necessary to get approval from the county boards, however if your request is not approved please let us know immediately so we can proceed to implement the next steps of our process.

If you have any further questions, please contact Bryan Euse (Easement Program Manager) by phone at (402) 437-4048 or by e-mail at bryan.euse@usda.gov. You may also contact Shawn McVey (Wetland Restoration Specialist) by phone at (402) 437-4148 or by e-mail at shawn.mcvay@usda.gov or contact your local easement staff that assisted you through the application process.

Sincerely,



BRYAN EUSE
Easement Programs Manager

Enclosures:

- A. Review Request for the County Board of Commissioners
- B. Map of Easement Area in Nuckolls County

cc:

Kristi Schleif, Area Easement Specialist, NRCS, Osceola Field Office
Timothy Grosch, Area Easement Specialist, NRCS, Grand Island Area Office



Hall County Clerk
Administration Building
121 South Pine Street- Suite 4
Grand Island, Nebraska 68801

CLERK - Marla Conley

308-385-5080 ♦ FAX 308-385-5184

DEPUTY - Shanda Conley

October 27, 2021

USDA-NRCS Lincoln State Office
Attn. Bryan Euse
100 Centennial Mall N. RM 152
Lincoln, N 68508

Dear Mr. Euse,

Please be advised that Mr. Brummund delivered a copy of the letter regarding the Agricultural Conservation Easement Program – Wetland Reserve Easement for the following described property

S1/2 NW ¼ 36 – 10 – 9W Hall County

This notice will be forwarded to the Hall County Board of Commissioner's for the necessary action and decision.

Sincerely

A handwritten signature in black ink, reading "Marla J. Conley". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Marla J. Conley
Hall County Clerk




Boundary Map

Customer: Larry Brummund
Application #:5465262101WZ5
Approx. Acres: 51 Acres
Legal description: S1/2 NW1/4 36-10-9W, Hall Co.

Date: 11/09/2020
Field Office: GRAND ISLAND
Agency: CPNRD
Assisted By: KRYSTAL BIALAS

Shady Bend Road

Legend

-  Application Boundary
-  Ownership Boundary
-  Access

0 120 240 480 720 960 Feet



Prepared with assistance from USDA-Natural Resources Conservation Service

Updated
10-26-2021

To be filed with
the Appropriate
Governing Body

Conservation Easement Application

Name and Address of Owner of the Land			Name and Address of Owner or Holder of the Conservation Easement		
Name			Name		
Street or Other Mailing Address			Street or Other Mailing Address		
City	State	Zip Code	City	State	Zip Code
Email Address	Phone Number		Email Address	Phone Number	
County Name			Parcel ID Number		
Legal Description					

Description of the Land and Conservation Easement Restrictions

I request that the conservation easement described on this form be approved.

sign
here

Signature of Owner of the Land or the Holder of the Conservation Easement

Date

Appropriate Governing Body Member, Commissioner, or Chairperson Signature

Date

For the Appropriate Governing Body Use Only

Date Reviewed _____

COMMENTS: _____

☐ Approved

☐ Denied

Appropriate Governing Body member, Commissioner, or Chairperson Signature

Instructions

A conservation or preservation easement is an interest in real property, created by an instrument (document) in which the purpose of the easement is clearly stated. The instrument is to be filed, duly recorded, and indexed in the Register of Deeds office in the county where the real property and conservation or preservation easement is located.

Who May File. This form is to be filed with the conservation easement deed by the owner of the land or the owner or holder of the conservation easement.

When and Where to File. To minimize conflicts with land-use planning, this form and applicable deed should be filed with the appropriate governing body for approval prior to filing with the Register of Deeds.

Appropriate Governing Body. The appropriate governing body must first refer the proposed acquisition to and receive comments from the local planning commission that has jurisdiction over the subject property. The local planning commission has 60 days to provide comments; if no comments are received the proposed acquisition will be deemed approved.

The appropriate governing body depends on where the subject property is located as follows:

- The governing body of a city or village if the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village; or
- The county board if the property is located entirely outside the boundaries or zoning jurisdiction of any city or village; or
- Niobrara Council if the property is located in the Niobrara scenic river corridor and is not incorporated within the boundaries of a city or village.

Denial of proposed acquisition. Upon a finding of the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and in force at the time of the conveyance; (b) any national, state, or local program furthering conservation or preservation; or (c) any known proposal by a governmental body for use of the land.

Signature. This form must be signed by the owner of the land or the holder of the conservation easement.

The Governing Body must electronically submit this completed form and conservation easement deed to the Nebraska Department of Revenue, Property Assessment Division. Please electronically submit to: pat.tech@nebraska.gov.

76-2,112. Easement; creation; approval by governing body; when required.

(1) A conservation or preservation easement shall be an interest in real property, created by an instrument in which the purpose for the easement is clearly stated. The instrument shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the conservation or preservation easement is located.

(2) No conveyance of a conservation or preservation easement shall be effective until accepted by the holder.

(3) In order to minimize conflicts with land-use planning, each conservation or preservation easement shall be approved by the appropriate governing body. Such approving body shall first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. If the property is located in the Niobrara scenic river corridor as defined in section 72-2006 and is not incorporated within the boundaries of a city or village, the Niobrara Council approval rather than city, village, or county approval shall be required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land.

(4) Notwithstanding the provisions of subsection (3) of this section, the state, or any state agency or political subdivision other than a city, village, or county, may accept an easement after first referring the proposed acquisition to and receiving comments from the local planning commission with jurisdiction over the property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission.

Source: Laws 1981, LB 173, § 2; Laws 2000, LB 1234, § 12.



STATE *of* NEBRASKA
OFFICE OF THE GOVERNOR
LINCOLN

EXECUTIVE ORDER No. 21-08
STOP 30 X 30 – PROTECT OUR LAND & WATER

WHEREAS, Nebraska's farmers and ranchers care for the land and water and are the original conservationists and good stewards; and

WHEREAS, President Joe Biden signed Executive Order #14008 entitled, "Tackling the Climate Crisis at Home and Abroad;" and

WHEREAS, Executive Order #14008 sets a "goal of conserving at least 30 percent of our lands and waters by 2030;" and

WHEREAS, private property is a fundamental tenet of the American free enterprise system, and critical to the success of Nebraska's top industries, including agriculture and manufacturing; and

WHEREAS, achieving the goal of conserving 30% of the nation's land and water by 2030 would require conserving a land area the size of Nebraska each year for nine years; and

WHEREAS, federal conservation mandates have no constitutional basis, and have great potential to devastate Nebraska's economy; and

WHEREAS, the federal 30 percent conservation goal would interfere with the States' constitutional and traditional power over land and water uses; and

WHEREAS, the people of Nebraska oppose federal overreach and want to protect our state's land and water to continue to make them more productive;

NOW THEREFORE, I, Pete Ricketts, Governor of the State of Nebraska, by virtue of the authority vested in me by the Constitution and laws of Nebraska, order all code agencies to take any necessary step to resist and prevent the federal government's attempt to usurp state authority as they implement the 30 x 30 goal.

Pursuant to this declaration, I hereby order the following:


1. The Nebraska Department of Revenue – Property Assessment Division shall host a minimum of three workshops to help county officials understand the tax consequences of conservation and preservation easements, and to advise counties of their rights in reviewing conservation easements pursuant to Nebraska Revised Statute 76-2,112.
2. The Nebraska Department of Revenue – Property Assessment Division shall work to identify existing conservation easements across the state and will hereby maintain an inventory of conservation easements to assist county assessors in accurately determining land values for the purpose of assessment and taxation.
3. The Nebraska Department of Agriculture shall maintain on its website a list of local units of government that have passed resolutions opposing the goal of conserving 30% of the nation's land and water by 2030.
4. The Nebraska Department of Agriculture shall maintain on its website a list of local units of government that have voted to endorse the goal of conserving 30% of the nation's land and water by 2030.
5. The Governor's Office shall place an 18-month hold on approving any new regulations expanding the definition of endangered species, plants, or wildlife pursuant to Nebraska Revised Statute 37-806.
6. No code agency shall provide any discretionary funding or staff support to projects involving perpetual conservation easements.
7. Exceptions to #6 may be approved by the Governor's Office for projects under multi-state water agreements, infrastructure, water management programs, and other limited purposes.
8. All code agencies shall seek Governor's Office approval to provide discretionary funding or staff resources for projects involving a conservation easement with a term of years.
9. Agencies may seek annual categorical approval under #8 for water management programs for which the code agency offers contracts for a term of years. All code agencies shall seek Governor's Office approval for such provision.
10. The Nebraska Department of Agriculture shall work to coordinate with the U.S. Department of Agriculture (USDA) to ensure that the USDA is seeking proper local approvals for conservation easements related to the Agriculture Conservation Easement Program, Working Lands for Wildlife, Wetlands Reserve Program, and other federal programs.
11. The Nebraska Department of Agriculture Director is hereby designated as Nebraska's State Coordinator for the Climate Task Force recently established by the U.S. Department of the Interior (DOI) in Secretarial Order No. 3399 Section 4(b)(2). The Governor's Office shall notify DOI of the designation and reserves the right to change the designation at any time.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 24th day of June, 2021.



Attest:


Pete Ricketts, Governor
State of Nebraska


Robert B. Evnen, Secretary of State
State of Nebraska

WARRANTY EASEMENT DEED IN PERPETUITY

AGRICULTURAL CONSERVATION EASEMENT PROGRAM – WETLAND RESERVE EASEMENT EASEMENT NO. _____

THIS WARRANTY EASEMENT DEED is made by and between

_____ of
_____ (hereafter referred to as the
“Landowner”), Grantor(s), and **the UNITED STATES OF AMERICA** and its assigns
(hereafter referred to as the “United States”), Grantee. The Landowner and the United States are
jointly referred to as the “Parties.”

The United States of America is acquiring this property by and through the Commodity Credit Corporation (CCC) and the acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of NRCS to give the Landowner the opportunity to participate in the restoration and management activities on the Easement Area.

Authority. This easement deed acquisition is authorized by Subtitle H of Title XII of the Food Security Act of 1985, as amended, for the Agricultural Conservation Easement Program - Wetland Reserve Easement.

NOW THEREFORE, for and in consideration of the terms of these mutual obligations and benefits recited herein to each party and the sum of _____ Dollars

(\$ _____), paid to Grantor(s) subject to commensurate reduction under 7 CFR Part 1400, the receipt of which is hereby acknowledged, Grantor(s) hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns (Grantee), in perpetuity, the lands comprising the Easement Area described in Part I and appurtenant rights of access to the Easement Area, but reserving to the

Landowner only those rights, title, and interest in the lands comprising the Easement Area expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind the Grantor(s), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the Easement Area, are described on EXHIBIT A, which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the Easement Area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B, which is appended to and made a part of this easement deed.

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, including the restoration, protection, management, maintenance, enhancement, and monitoring of the wetland and other natural values of the Easement Area, the Landowner reserves:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. Quiet Enjoyment. The right of the Landowner to enjoy the rights reserved on the Easement Area without interference from others.
- C. Control of Access. The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.
- D. Recreational Uses. The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time. Undeveloped recreational uses may include use of hunting or observation blinds that will accommodate no more than four people and are temporary, nonpermanent, and easily assembled, disassembled, and moved without heavy equipment. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the Easement Area.
- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the Easement Area, provided that any drilling or mining activities are to be located outside the boundaries of the Easement Area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C which is appended to and made a part of this easement deed, if applicable.

- F. Water Rights and Water Uses. The right to water uses and water rights identified as reserved to the Landowner in EXHIBIT D, which is appended to and made a part of this Easement Deed, if applicable.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this Easement, including the following:

- A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to carry out the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited on the Easement Area:
1. Haying, mowing, or seed harvesting for any reason;
 2. Altering of grassland, woodland, wildlife habitat, or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover;
 3. Accumulating or dumping refuse, wastes, sewage, or other debris;
 4. Harvesting wood or sod products;
 5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices, except as specifically set forth in EXHIBIT D, if applicable;
 6. Diverting or causing or permitting the diversion of surface or underground water into, within, or out of the Easement Area by any means, except as specifically set forth in EXHIBIT D, if applicable;
 7. Building, placing, or allowing to be placed structures on, under, or over the Easement Area, except for individual semi-permanent hunting or observation blinds for undeveloped recreational uses, the external dimensions of which will be no more than 80 square feet and 8 feet in height, with the number, locations, and features of blinds approved by NRCS under Part IV;
 8. Planting or harvesting any crop;
 9. Grazing or allowing livestock on the Easement Area;
 10. Disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
 11. Use of the Easement Area for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations, and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;
 12. Any activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the Easement Area; and
 13. Any activities to be carried out on the Landowner's land that is immediately adjacent to, and functionally related to, the Easement Area if such activities will alter, degrade, or otherwise diminish the functional value of the Easement Area.

- B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the NRCS prior to implementation by the Landowner.
- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock are the responsibility of the Landowner. The installation or use of fences which have the effect of preventing wildlife access and use of the Easement Area are prohibited on the Easement Area, easement boundary, or on the Landowner's land that is immediately adjacent to, and functionally related to, the Easement Area.
- D. Restoration. The Landowner shall allow the restoration and management activities NRCS deems necessary for the Easement Area.
- E. Access Maintenance. The Landowner is responsible to maintain any non-public portions of the access route described in Exhibit B such that the access route can be traversed by a standard four-wheel all-terrain vehicle at least annually.
- F. Use of Water for Easement Purposes. The Landowner shall use water for easement purposes as set forth in EXHIBIT D, which is appended to and made a part of this Easement Deed, if applicable.
- G. Protection of Water Rights and Water Uses. As set forth in EXHIBIT D, if applicable, the Landowner shall undertake actions necessary to protect any water rights and water uses for easement purposes.
- H. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.
- I. Reporting. The Landowner shall report to the NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the Easement Area.
- J. Survival. Irrelevant of any violations by the Landowner of the terms of this Easement Deed, this easement survives and runs with the land for its duration.
- K. Subsequent Conveyances. The Landowner agrees to notify NRCS in writing of the names and addresses of any party to whom the property subject to this Easement Deed is to be transferred at or prior to the time the transfer is consummated. Landowner and its successors and assigns shall specifically refer to this Easement Deed in any subsequent lease, deed, or other instrument by which any interest in the property is conveyed.

PART IV. Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions the NRCS may prescribe at its sole discretion, the temporary use of the Easement Area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if, upon a determination by NRCS in the exercise of its sole discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and other natural values of the Easement Area. The NRCS shall prescribe the amount, method, timing, intensity, and duration of the compatible use. Compatible use authorizations do not vest any rights in the Landowner and can be revoked by NRCS at any time.

PART V. Rights of the United States. The rights of the United States include:

- A. Management Activities. The United States has the right to enter the Easement Area to undertake, on a cost-share basis with the Landowner or other entity as determined by the United States, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the Easement Area. The United States may apply to or impound additional waters, in accordance with State water law, on the Easement Area in order to maintain or improve wetland and other natural values.
- B. Access. The United States has a right of reasonable ingress and egress to the Easement Area over the Landowner's property, whether or not the property is adjacent or appurtenant to the Easement Area, for the exercise of any of the rights of the United States under this Easement Deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B. The United States may, in its discretion, conduct maintenance activities on the access route identified in Exhibit B to obtain physical access to the Easement Area for the exercise of any of the rights of the United States under this Easement Deed. The United States also has the right of reasonable ingress and egress across the Easement Area to other adjacent or appurtenant property in which the United States holds real property rights acquired by and through NRCS.
- C. Easement Management. The Secretary of Agriculture, by and through the NRCS, may delegate all or part of the management, monitoring or enforcement responsibilities under this Easement Deed to any Federal or State agencies authorized by law that the NRCS determines to have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities. State or Federal agencies may utilize their general statutory authorities in the administration of any

delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify, subordinate, exchange, or terminate this easement under Subtitle H of Title XII of the Food Security Act of 1985 is reserved to the Secretary of Agriculture in accordance with applicable law. If the United States at some future time acquires the underlying fee title in the property, the interest conveyed by this Easement Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

D. Violations and Remedies – Enforcement. The Parties, Successors, and Assigns, agree that the rights, title, interests, and prohibitions created by this Easement Deed constitute things of value to the United States and this Easement Deed may be introduced as evidence of same in any enforcement proceeding, administrative, civil or criminal, as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this Easement Deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:

1. To enter upon the Easement Area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,
2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART VI. General Provisions.

- A. Successors in Interest. The rights granted to the United States shall accrue to any of its agents or assigns. All obligations of the Landowner under this Easement Deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this Easement Deed shall be jointly and severally liable for compliance with its terms.
- B. Rules of Construction and Special Provisions. All rights in the Easement Area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this Easement Deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this Easement Deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Agricultural Conservation Easement Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.
- C. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, orders, regulations, statutes,

ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials or substance, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Landowner warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any government authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Easement Area. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials on, beneath, near, or from the Easement Area.

- D. General Indemnification. Landowner shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and cost of actions, sanctions asserted by or on behalf of any person or government authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Easement Area, which may arise from, but is not limited to, Landowner’s negligent acts or omissions or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Easement Deed, or violations of any Federal, State, local or municipal laws, including all Environmental Laws.

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the Easement Area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the Easement Area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this Easement Deed.

Dated this _____ day of _____, 2 ____.

Landowner(s): _____

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, known or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

ACCEPTANCE BY GRANTEE:

I _____ (name), _____ (title),
being the duly authorized representative of the United States Department of Agriculture Natural
Resources Conservation Service, do hereby accept this Warranty Easement Deed with respect to
the rights and duties of the United States of America, Grantee.

Dated this _____ day of _____, 2 ____.

Signature

Title

This instrument was drafted by the Office of General Counsel, U.S. Department of Agriculture,
Washington, DC 20250-1400.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.