



Natural Resources Conservation Service
 Nebraska State Office
 Federal Building, Room 152
 100 Centennial Mall North
 Lincoln, NE 68508-3866
 (402) 437-5300

Agenda Item # 15
 Date 2/23/22

<http://www.ne.nrcs.usda.gov>

SENT VIA USPS ELECTRONIC SIGNATURE CONFIRMATION REQUIRED

February 8, 2022

Fred Mytty
 Dodge County Clerk
 435 N Park
 Fremont, NE 68025

RECEIVED
 2022 FEB 10 PM 2:35
 NEBRASKA DEPARTMENT OF REVENUE
 HYATT REGISTRY CLERK

Conservation Easement Application for Board of Commissioner Action

Dear Mr. Mytty:

Please add the enclosed conservation easement application for Wetlands America Trust, Inc. on the agenda for Board of Commissioner action. This package was previously submitted to Dodge County and placed on the agenda for the November 17, 2021, meeting. At that time, the Board did not offer an opinion on the application, nor did it forward the application to Planning and Zoning. The enclosures include the application, draft warranty easement deed, and easement boundary.

The enclosed conservation easement application is for Dodge County, Section 2, Township 20N, Range 6E. A map of the proposed easement is enclosed as reference, along with the Assessor's Parcel ID Number, to aid in locating the property. A legal boundary survey has been completed and is attached.

Also enclosed is the draft warranty easement deed that describes the future restrictions on the property. These restrictions are found in Part III, A Prohibitions, items 1 through 13. The Nebraska Department of Revenue has advised NRCS that a signed warranty easement deed is not required to review this application, and that the draft copy with landowner name and address is sufficient for governing body review.

Under the Nebraska Conservation and Preservation Easements Act (Neb. Rev. Stat. 76-2,112, et seq.), local governing bodies shall review conservation easements to determine whether they conflict with land-use planning. 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." Reference Neb. Rev. Stat. 76-2,112(3)(c).

Please contact Bryan Euse, at 402.437.4048 (bryan.euse@usda.gov), if you have questions, or want additional information.

Sincerely,



BRYAN EUSE
Easement Program Manager

Enclosures

cc:

Whitney Cole, Office of the General Counsel, Kansas City, MO 64141

David Bichlmeier, Area Easement Specialist, NRCS, Columbus Field Office

Wetlands America Trust, Inc., One Waterfowl Way, Memphis, TN 38102

John Denton, Nebraska Manager of Conservation Programs, 2121 N. Webb Rd, Ste 309, Grand Island, NE 68803

To be filed with
the Appropriate
Governing Body

Conservation Easement Application

Name and Address of Owner of the Land			Name and Address of Holder of the Conservation Easement		
Name Wetlands America Trust, Inc.			Name United States of America c/o Bryan Euse, USDA NRCS		
Street or Other Mailing Address One Waterfowl Way			Street or Other Mailing Address Federal Bldg., Rm 152, 100 Centennial Mall North		
City Memphis	State TN	Zip Code 38102	City Lincoln	State NE	Zip Code 68508
Email Address thorst@ducks.org		Phone Number 402-364-3135	Email Address bryan.euse@usda.gov		Phone Number 402-437-4048
County Name Dodge County			Parcel ID Number 270098098		

Legal Description
Two tracts of land in the North 1/2 of Section Two (2); Township Twenty (20) North; Range Six (6) East, Dodge County, Nebraska: (please see attached map in Legal Boundary Survey Map - 1QX2 - WAT (Haseman)). 113.93 acres.

Description of the Land and Conservation Easement Restrictions
Please see attached Draft Reserved grazing Rights WED - 1QX2 - WAT (Haseman). Restrictions are listed in Part III. A Prohibitions, items 1 -12. Per Nebraska Department of Revenue, a fully executed warranty easement deed (WED) is not required by this application and a draft WED with the owner's name and address is sufficient for governing body review.

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

sign
here

Bryan Euse, Easements Program Manager 2-8-22
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 _____ Reason for Approval/Denial: _____

Approved

Denied

Appropriate Governing Body member, Commissioner, or Chairperson Signature

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.

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 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, or
- The local planning commission if the easement holder is the state, or any state agency or political subdivision other than a city, village, or county.

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.

Notice. This approved or denied Conservation Easement Application is to be sent by the Governing Body to the Owner of the Land and the Holder of the Conservation Easement within seven days of the Governing Body's decision regarding the application.

**WARRANTY EASEMENT DEED
WITH RESERVATION OF GRAZING RIGHTS**

**AGRICULTURAL CONSERVATION EASEMENT PROGRAM –
WETLAND RESERVE EASEMENT
EASEMENT NO. 5465261901QX2**

THIS WARRANTY EASEMENT DEED is made by and between
Wetlands America Trust, Inc _____ of
1 Waterfowl Way, Memphis, TN 38120 (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 or for a period of 30 years, 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.
- G. Grazing. The Landowner reserves the limited right to graze the Easement Area in accordance with the terms and conditions of EXHIBIT E, which is appended to and made a part of this Easement Deed.

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, except for grazing carried out in accordance with EXHIBIT E;
 3. Accumulating or dumping refuse, waste, sewage, or other debris;
 4. Harvesting wood or sod products;
 5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or other 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 developed 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. Disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
 10. 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;

11. 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
12. 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 follow 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 drive 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 (including grazing) 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 co-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 impose 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, explosive 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 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 _____ in fact 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 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.

EXHIBIT E – RESERVATION OF GRAZING RIGHTS

Nebraska Eastern Floodplain Wetlands

This exhibit authorizes the Landowner to reserve grazing rights provided the Natural Resources Conservation Service (NRCS) determines that the reservation of the grazing right is:

- Compatible with the land subject to the ACEP-WRE easement, and
- Consistent with the long-term wetland protection and enhancement goals for which the easement is being established.

THE NEBRASKA EASTERN FLOODPLAIN WETLAND ECOSYSTEM

The wetlands found within the floodplains of Eastern Nebraska consist of a wide variety of plant communities and water regimes. The variables that influence these communities include soil types and hydrologic interaction with the adjacent river or stream system. Often, multiple wetland types will exist within an area and may include wet meadows with influence from a shallow water table, oxbow formed by historic river channels, side channels inundated during peak flow events, and flushed wetlands augmented with rainfall, overland runoff, and out-of-channel flows. In many areas of Eastern Nebraska, these sites were historically dominated by herbaceous vegetation due to the influence of fire, grazing, and flood events. The surrounding landscape has been converted to row crop agriculture or pasture dominated by warm season grass species. The hydrology associated with these rivers, streams, and floodplain wetlands is often highly altered from historic conditions. Wildlife habitat is one of the primary functions provided by this wetland complex which is important to migratory waterfowl and other wetland dependent birds. Other wildlife species also use these wetland habitats extensively including mammals, amphibians, fish, and insects. Notable species would include bald eagle, river otter, and Platte River caddisfly. These wetland systems also provide critical functions related to water quality and flood attenuation by filtering runoff through wetland vegetation and associated buffers before it enters the adjacent waterway and by providing an area that can safely be inundated, allowing floodwaters to slow and spread throughout the wetland area. Another function of these wetland complexes including associated uplands is the production of perennial herbaceous vegetation which in addition to providing wildlife cover and food, also provides forage for livestock in an area with much of the adjacent land being used for the production of agricultural crops. As a result, grazing management in these wetlands may be used to maintain a healthy, diverse composition of native herbaceous plants while providing for desired habitat structure needed by a wide array of wetland dependent species.

DESCRIPTION OF COMPATIBLE EFFECTS OF GRAZING

The Nebraska Eastern Floodplain ecosystem was originally a grassland-dominated landscape that evolved under the influences of grazing by ungulates (bison, deer, pronghorn, and elk) as well as fire, drought, and other climatic forces – primarily flooding. Grazing by livestock in these floodplain wetlands replicates a natural process and can be prescribed to maximize wetland functions and values by maintaining a healthy mix of grassland habitats, including in a diversity of vegetative structure and species, encouraging desirable early successional wetland plants, and creating open water and mud flats. Grazing can also be a tool to help control invasive vegetation which is often a significant threat to wetland functions. For example, grazing undesirable species such as reed canarygrass or phragmites.

A diversity of vegetative structure is desired to maximize habitat functions by providing a variety of habitat conditions needed by different species at different stages in their lifecycle. This desired diversity in vegetative structure, including vegetative height, density, and species composition, that will meet the various habitat requirements of the target wildlife species can be achieved through properly managed grazing. Grazing effects include both what the grazer eats and trampling effects from hoof action.

For example, on some sites, especially those with adequate upland buffer, residual cover from the previous growing season averaging 16 inches in height in April through July may be necessary to attract nesting migratory songbirds. On some sites, short vegetation averaging less than 2 inches in height in March/April during spring migration or in October during fall migration may be appropriate with wetlands to allow migrating waterbirds and shorebirds ready access to shallow water and mud flats for feeding.

Management needed for each wetland will vary, but generally, a high stocking rate and short duration grazing period is preferred. Timing should vary from year to year to accommodate a diversity of plant species. On larger wetlands (i.e. greater than 160 acres), a portion of the enclosed lands should be grazed every year to provide a variety of habitat structure across the area. For smaller tracts (i.e., less than 160 acres), it may be more appropriate to graze the tract as part of a rotational grazing management system with other lands or graze in alternate years. However, annual grazing may occur if timing and intensity are adjusted accordingly to meeting wildlife and vegetation objectives.

Different grazing management prescriptions may be needed for different wetland types and any surrounding uplands.

Each habitat type (temporary wetland, semi-permanent wetland, upland prairie, etc.) has the potential to support different wildlife species, ranging from migratory birds to amphibians and pollinators, and management of these sites will strive to maximize wetland and wildlife habitat benefits on the ACEP-WRE easement area.

The Parties hereby agree that the grazing of the easement area is a management tool necessary to achieve the desired wetland functions and values. The Landowner agrees to conduct grazing activity in accordance with the terms and conditions identified in this exhibit and the grazing management plan which is a component of the Wetland Reserve Plan of Operations (WRPO) developed with NRCS. Increased grazing use beyond that documented in the grazing management plan will require a compatible use authorization (CUA) from NRCS.

To use grazing as a wetland and upland vegetation management tool, the grazing management plan must include the location, timing, intensity, frequency, and duration of grazing necessary to achieve the desired wetland functions and values of the ACEP-WRE easement area as described herein. In particular, the grazing management plan will:

- a. Contain the provisions necessary to further the identified habitat and species goals and objectives described in the ACEP-WRE easement and this Exhibit.
- b. Be compatible with the identified habitat and species goals and objectives, as described under NRCS practice standards Wetland Wildlife Habitat Management (644) and/or Upland Wildlife Habitat Management (645).
- c. Include any livestock water facilities and fencing. This infrastructure will include considerations for wildlife movement.
- d. Include a plan map depicting grazing units, infrastructure (existing and proposed fence), and livestock watering facilities (existing and proposed locations) and the effects analysis for the infrastructure.
- e. Include provisions to evaluate the effect grazing has on the desired habitat and include the flexibility to make annual adjustments in the location, timing, intensity, frequency, and duration of grazing to account for seasonal climatic factors that result in changes in forage production and subsequent impacts of stocking rates on the desired habitat conditions.
- f. Include periodic monitoring of the effects of grazing. NRCS may require changes to the grazing management plan to address appropriate habitat features such as nesting, open water, invasive species control, or other factors that were not adequately addressed in the original grazing management plan but are necessary to achieve the goals and objectives of the ACEP-WRE easement and this Exhibit.

5465261901QX2 NORTH EASEMENT DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTH ½ OF SECTION 2, TOWNSHIP 20 NORTH, RANGE 6 EAST OF THE 6TH P.M., DODGE COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH ¼ CORNER OF SAID SECTION 2, THENCE N87°57'32"E (ASSUMED BEARING) ON THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 2 A DISTANCE OF 797.90 FEET TO THE SOUTH ¼ CORNER OF SECTION 35, TOWNSHIP 21 NORTH, RANGE 6 EAST, THENCE S02°02'08"E A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING AND ALSO BEING ON THE SOUTH RIGHT OF WAY LINE OF A COUNTY ROAD, THENCE N87°58'11"E ON SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 255.46 FEET, THENCE S27°59'40"W A DISTANCE OF 1198.02 FEET, THENCE S78°20'28"W A DISTANCE OF 132.19 FEET, THENCE S78°46'24"W A DISTANCE OF 190.13 FEET, THENCE S75°38'43"W A DISTANCE OF 214.15 FEET, THENCE S11°42'33"E A DISTANCE OF 426.83 FEET, THENCE S83°52'26"W A DISTANCE OF 40.00 FEET, THENCE S87°28'48"W A DISTANCE OF 1065.38 FEET TO THE EAST RIGHT OF WAY LINE OF HIGHWAY NUMBER 275, THENCE N07°07'05"W ON SAID EAST RIGHT OF WAY LINE A DISTANCE OF 1573.99 FEET TO THE SAID SOUTH RIGHT OF WAY LINE OF A COUNTY ROAD, THENCE N87°57'32"E ON SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 2044.28 FEET TO THE POINT OF BEGINNING, CONTAINING 60.15 ACRES MORE OR LESS.

5465261901QX2 SOUTH EASEMENT DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTH ½ OF SECTION 2, TOWNSHIP 20 NORTH, RANGE 6 EAST OF THE 6TH P.M., DODGE COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT CENTER ¼ CORNER OF SAID SECTION 2, THENCE S88°11'17"W ASSUMED BEARING ON THE SOUTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 2 A DISTANCE OF 1027.17 FEET TO THE EAST RIGHT OF WAY LINE OF HIGHWAY NUMBER 275, THENCE N07°07'05"W ON SAID EAST RIGHT OF WAY LINE A DISTANCE OF 928.16 FEET, THENCE N87°29'32"E A DISTANCE OF 1064.42 FEET, THENCE N83°52'22"E A DISTANCE OF 395.22 FEET, THENCE N83°25'25"E A DISTANCE OF 385.39 FEET, THENCE N07°45'05"W A DISTANCE OF 40.20 FEET, THENCE N83°23'59"E A DISTANCE OF 286.46 FEET, THENCE N01°31'45"W A DISTANCE OF 234.13 FEET TO THE NORTH LINE OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SAID SECTION 2, THENCE N87°02'20"E ON SAID NORTH LINE A DISTANCE OF 276.67 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST ¼ OF THE NORTHEAST ¼, THENCE S00°09'59"W A DISTANCE OF 382.63 FEET, THENCE S00°57'10"E A DISTANCE OF 421.10 FEET, THENCE S00°27'02"E A DISTANCE OF 499.96 FEET TO THE SOUTH LINE OF SAID NORTHEAST 1/4, THENCE S88°11'17"W ON THE SOUTH LINE OF THE NORTHEAST ¼ A DISTANCE OF 1274.61 FEET TO THE POINT OF BEGINNING, CONTAINING 53.78 ACRES MORE OR LESS.

5465261901QX2 NORTH ACCESS DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTH ½ OF SECTION 2, TOWNSHIP 20 NORTH, RANGE 6 EAST OF THE 6TH P.M., DODGE COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH ¼ CORNER OF SAID SECTION 2, THENCE S87°57'32"W (ASSUMED BEARING) ON THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 2 A DISTANCE OF 36.47 FEET TO THE POINT OF BEGINNING, THENCE S02°02'28"E PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 33.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF A COUNTY ROAD, THENCE S87°57'32"W ON SAID SOUTH RIGHT OF WAY LINE AND ALSO BEING PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST ¼ A DISTANCE OF 22.00 FEET, THENCE N02°02'28"W PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 33.00 FEET TO THE NORTH LINE SAID NORTHWEST 1/4, THENCE N87°57'32"E ON THE NORTH LINE OF SAID NORTHWEST ¼ A DISTANCE OF 22.00 FEET TO THE POINT OF BEGINNING, CONTAINING 726 SQUARE FEET MORE OR LESS.

5465261901QX2 SOUTH ACCESS DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTH ½ OF SECTION 2, TOWNSHIP 20 NORTH, RANGE 6 EAST OF THE 6TH P.M., DODGE COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER ¼ CORNER OF SAID SECTION 2, THENCE S88°11'17"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 2 A DISTANCE OF 1027.17 FEET TO THE EAST RIGHT OF WAY LINE OF HIGHWAY NUMBER 275, THENCE N07°07'05"W ON SAID EAST RIGHT OF WAY LINE A DISTANCE OF 7.95 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING N07°07'05"W ON SAID EAST RIGHT OF WAY LINE A DISTANCE OF 20.08

FEET, THENCE S88°11'17"W A DISTANCE OF 60.26 FEET, THENCE S07°07'05"E A DISTANCE OF 20.08 FEET, THENCE N88°11'17"E A DISTANCE OF 60.26 FEET TO THE POINT OF BEGINNING, CONTAINING 1205 SQUARE FEET MORE OR LESS.

DRAFT

