

City Council Introduction: **Monday**, October 14, 2002
Public Hearing: **Monday**, October 21, 2002, at **1:30 p.m.**

Bill No. 02R-238

FACTSHEET

TITLE: RESOLUTION ACCEPTING AND APPROVING THE ACQUISITION OF A CONSERVATION EASEMENT (Comprehensive Plan Conformance No. 02005) requested by ESP, Inc. on behalf of Interstate Land, L.L.C., over approximately 4.09 acres of delineated wetlands, generally located northeast of the intersection of I-80 and Oak Creek.

STAFF RECOMMENDATION: A finding of conformance with the Comprehensive Plan

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/21/02
Administrative Action: 8/21/02

RECOMMENDATION: A finding of conformance with the Comprehensive Plan (8-0: Carlson, Taylor, Bills-Strand, Larson, Krieser, Duvall, Steward and Schwinn voting 'yes'; Newman absent).

FINDINGS OF FACT:

1. The purpose of this request to accept and approve the acquisition of a conservation easement over an area consisting of approximately 4.09 acres generally located northeast of the intersection of I-80 and Oak Creek is to protect the existing wetlands and floodplain.
2. The staff recommendation to find the proposed conservation easement to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.3-4, concluding that the proposed easement will protect the delineated wetlands and is not an obstacle to any planned action. Acquisition of the conservation easement by the City of Lincoln is in conformance with the Comprehensive Plan and directly supports several goals of the Plan.
3. The applicant's testimony is found on p.5.
4. There was no testimony in opposition.
5. On August 21, 2002, the Planning Commission agreed with the staff recommendation and voted 8-0 to adopt Resolution No. PC-00762, finding the proposed acquisition of conservation easement to be in conformance with the Comprehensive Plan. (See p.12-15).
6. The associated Conservation Easement Agreement is found on p.16-26.
7. It has been determined that the site has been brought into compliance with the terms of the Conservation Easement Agreement.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: October 7, 2002

REVIEWED BY: _____

DATE: October 7, 2002

REFERENCE NUMBER: FS\CC\2002\CPC.02005 Conservation Easement

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.#: Comprehensive Plan Conformity No. 02005
NE of I-80 and Oak Creek Conservation Easement

Date: August 2, 2002

PROPOSAL: Request by Interstate Land, L.L.C., to find that the acquisition of a permanent conservation easement over approximately 4.09 acres of delineated wetlands on property generally located northeast of the intersection of I-80 and Oak Creek conforms with the 2025 Comprehensive Plan.

LAND AREA: 4.09 acres more or less.

CONCLUSION: The proposed easement will protect the delineated wetlands and is not an obstacle to any planned action. Acquisition of the conservation easement by the City of Lincoln is in conformance with the Comprehensive Plan and directly supports several goals of the Plan.

RECOMMENDATION: In conformance with the Comprehensive Plan.

GENERAL INFORMATION:

LEGAL DESCRIPTION: An approximately 4.09 acre area located in the SW 1/4 of Section 15, T10N, R6E and in the SE 1/4 of Section 16, T10N, R6E of the 6th PM., Lancaster County, Nebraska (metes and bounds description attached).

LOCATION: Northeast of the intersection of I-80 and Oak Creek just north of Capitol Beach.

APPLICANT/: Interstate Land, L.L.C.
OWNER

CONTACT: Reed Schwartzkopf
ESP, Inc.
601 Old Cheney Road Suite A
Lincoln, NE 68512

EXISTING ZONING: I-1 Industrial District

EXISTING LAND USE: Wetlands, Agriculture

SURROUNDING LAND USE AND ZONING:

North: I-1 Industrial Agriculture, with a utility substation and commercial approximately 1,000' to the north.
South: R-2 Residential Residential (Capitol Beach)
East: I-1 Industrial Agriculture
West: I-1 Industrial Agriculture

ASSOCIATED APPLICATIONS: None.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan designates this area roughly bounded by I-80, Cornhusker Highway, Northwest 4th Street, and Oak Creek as Industrial. The following references from the 2025 Comprehensive Plan are applicable:

- Comprehensive Plan Vision - Environmental Stewardship, Page F55.
- Core Resource Imperatives, Page F59 - 'Saline and Freshwater Wetlands'.
- The Greenprint Challenge Implementation Principles 1-4, Page F62 - 1. Seek early identification of areas to be preserved; 2. Obtain reasonably constrained regulations; 3. Provide biological interconnection; 4. Promote diversity of vegetation.
- The Greenprint Challenge Implementation Strategy Environmental Resources Features, Page F63 - Wetlands: Saline and Fresh Water

UTILITIES: This area is within the future urban service area shown in the Comprehensive Plan and utilities are generally available.

TOPOGRAPHY: Generally flat across the easement area.

REGIONAL ISSUES: Preservation of wetlands, and potential development in an area that contains wetlands, a creek and a lake.

ENVIRONMENTAL CONCERNS: Preservation of wetlands, and maintenance of the natural habitat and water quality in adjacent water features.

ANALYSIS:

1. The Nebraska state 'Conservation and Preservation Easement Act' (NE State Statute 76-2000-112) requires that the acquisition of conservation easements be referred to the local planning commission having jurisdiction over the properties for approval prior to the acquisition. Planning Commission action is final. Therefore, prior to the filing of a conservation easement with the Register of Deeds, the Planning Commission must find that the acquisition of an easement is in conformance with the Comprehensive Plan.
2. The purpose of this Comprehensive Plan Conformity item is to determine whether a permanent conservation easement is in conformance with the Comprehensive Plan.
3. The applicant has applied to the Army Corps of Engineer's for a 404 permit to allow modifications to the Oak Creek channel that will remove areas of the applicants land from the floodway. It is a requirement of the 404 permit that a conservation easement over the area shown be granted to the City prior to approval.

4. The wetlands on this site occupy an area formed by an oxbow in the former Oak Creek channel. The intent of the conservation easement is to preserve the wetlands in their present state, and reduce the impact of future development.
5. During a site visit to the area, City staff identified conditions within the delineated area that do not comply with the terms of the conservation easement agreement. These items include felled trees and baled hay within the delineated easement area, and stands of noxious weeds that may require removal and re-seeding with native plants. The City can and may require these items to be corrected prior to acceptance of the agreement.
6. The City of Lincoln can accept the conservation easement after the Planning Commission determines the easement conforms to the Comprehensive Plan.

Prepared by:

Brian Will, AICP
Planner

COMPREHENSIVE PLAN CONFORMANCE NO. 02005

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 21, 2002

Members present: Carlson, Taylor, Bills-Strand, Larson, Krieser, Duvall, Steward and Schwinn; Newman absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Steward.

Proponents

1. Reed Schwartzkopf of ESP appeared on behalf of **Interstate Land, L.L.C.** In general, this proposed conservation easement is to secure an area of wetlands as well as drainageway that exist on the property to try and hold it from any harm in the future by any sort of potential development or land use or anything that might be done in this general area. This application has been through multiple progressions. It has been reviewed by the Army Corps of Engineers, somewhat with the NRD, city staff, ESP and the owners. It is his understanding that everyone is very satisfied.

Steward noted that in looking at the map, it appears that there is another section lying to the east of the proposed easement that has regularly been farmed around. If that is the case, is it not a part of this same ecosystem? Schwartzkopf advised that it is not included because it did not meet the level of substantiation for wetlands—hydrology, soils and plants. That particular area does not sustain all three of those things. The area of the proposed easement is twice as large as the physical wetland area. The area to which

Steward alluded was not determined to be wetlands. The only other wetlands on the site that were determined to be true wetlands actually exist in Oak Creek channel and are being addressed under separate issue.

Steward sought confirmation that any future development, drainage or other circumstances could easily be mitigated to not harm what is in the easement. Schwartzkopf responded in the affirmative. He must maintain hydrology without the sediment problems and this has already been discussed with the city.

Steward commended the applicant for working with the city to create this easement.

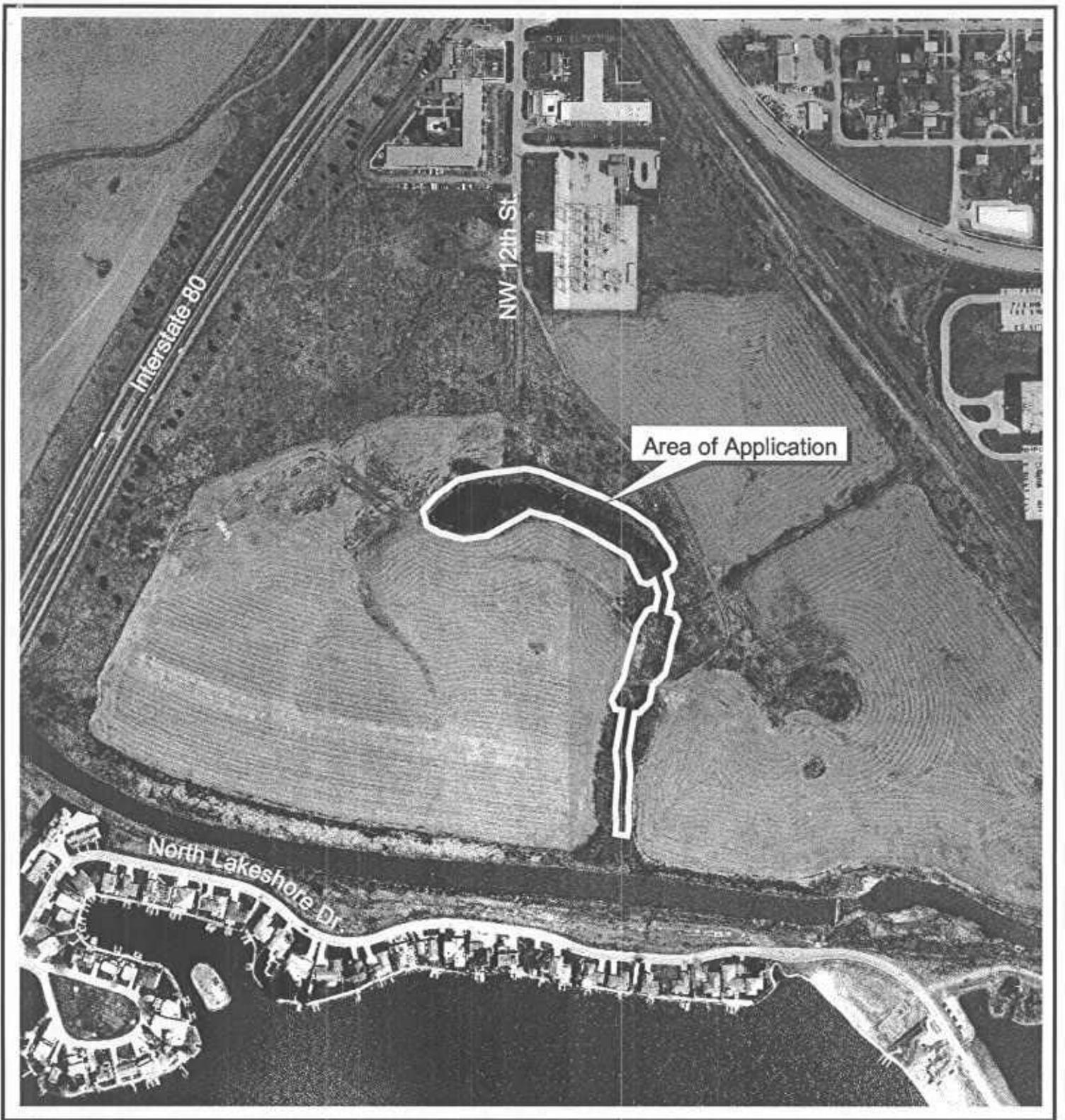
There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 21, 2002

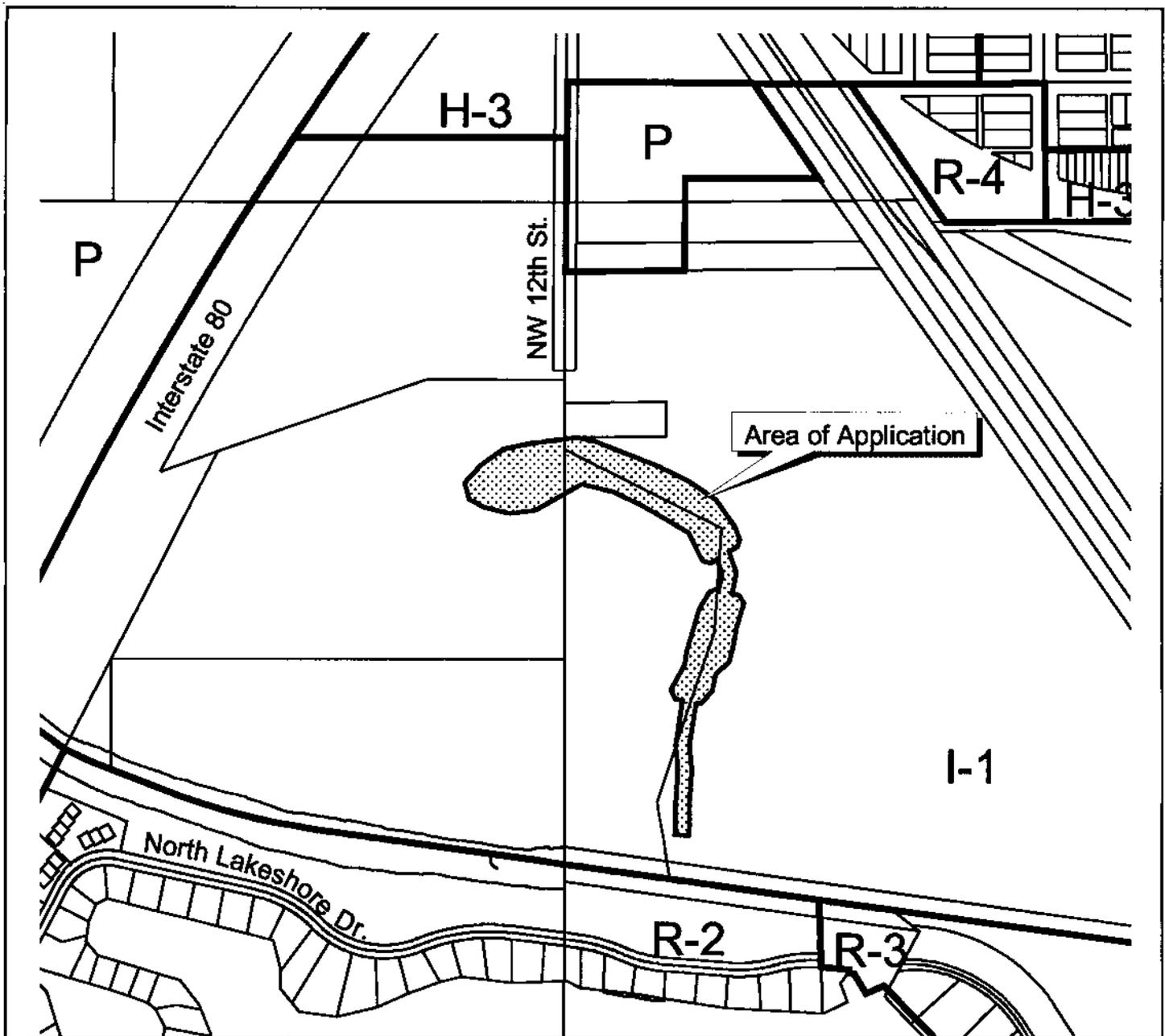
Steward moved to approve the staff recommendation to find the proposed conservation easement to be in conformance with the Comprehensive Plan, seconded by Bills-Strand and carried 8-0: Carlson, Taylor, Bills-Strand, Larson, Krieser, Duvall, Steward and Schwinn voting 'yes'; Newman absent.



**Comp. Plan Conformance #02005
NE of I-80 and Oak Creek**



007

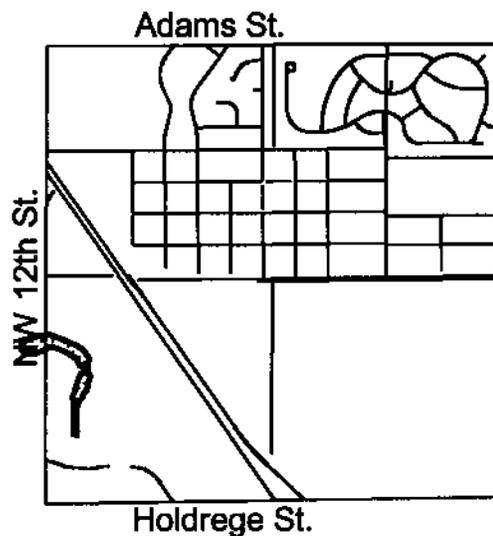
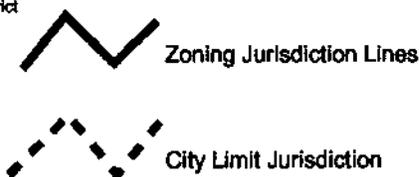


**Comp. Plan Conformance #02005
NE of I-80 and Oak Creek**

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
Sec. 15 T10N R6E



Revised Conservation Easement (Originally Filed December, 2001)

Interstate Land; Lincoln, NE

June 25, 2002

A tract of land for Conservation Easement purposes consisting of parts of Lots 14, 44, and 45, all of Irregular Tracts, in the Southwest Quarter of Section 15, Township 10 North, Range 6 East, and Lot 38 and 49, of Irregular Tracts, located in the Southeast Quarter of Section 16, Township 10 North, Range 6 East, of the 6th Principal Meridian, Lancaster County, Nebraska, having been originally filed with Lancaster County, Nebraska, in December, 2001, including an original 2.80 acres, more or less, and being herein revised to include the additional area required by the U. S. Army Corps of Engineers, being more particularly described by metes and bounds as follows:

Commencing at the East ¼ corner of Section 16, Township 10 North, Range 6 East, of the 6th Principal Meridian, Lancaster County, Nebraska; Thence South 00° 21' 03" East on the East line of the Southeast Quarter of Section 16, a distance of 489.98 feet to a point on the South line of Northwest 12th Street; Thence North 89° 47' 16" East on the South line of Northwest 12th Street a distance of 33.00 feet, to a point on the East Right of Way of Northwest 12th Street; Thence South 00° 21' 03" East a distance of 196.43 feet, to the POINT OF BEGINNING; Thence South 82° 59' 25" West a distance of 138.66 feet; Thence South 77° 59' 18" West a distance of 83.03 feet; Thence South 54° 08' 35" West a distance of 81.32 feet; Thence South 42° 41' 19" West a distance of 69.37 feet; Thence South 14° 56' 00" East a distance of 49.79 feet; Thence South 62° 20' 16" East a distance of 47.95 feet; Thence South 75° 47' 09" East a distance of 78.86 feet; Thence North 81° 41' 45" East a distance of 78.17 feet; Thence North 61° 04' 43" East a distance of 155.75 feet; Thence South 76° 20' 11" East a distance of 94.52 feet; Thence South 65° 12' 08" East a distance of 95.41 feet; Thence South 59° 54' 45" East a distance of 157.84 feet; Thence South 25° 57' 47" East a distance of 89.17 feet; Thence South 73° 31' 19" East a distance of 26.44 feet; Thence North 58° 55' 09" East a distance of 22.18 feet; Thence South 18° 45' 37" East a distance of 43.57 feet; Thence South 11° 18' 10" West a distance of 49.06 feet; Thence North 74° 51' 18" West a distance of 8.53 feet; Thence South 68° 14' 13" West a distance of 20.02 feet; Thence South 31° 19' 44" West a distance of 58.85 feet; Thence South 16° 17' 35" West a distance of 130.38 feet; Thence South 10° 33' 01" West a distance of 38.92 feet; Thence South 28° 42' 09" West a distance of 83.20 feet; Thence South 24° 16' 41" East a distance of 29.90 feet; Thence South 77° 15' 31" East a distance of 23.72 feet; Thence South 9° 39' 41" West a distance of 130.78 feet; Thence South 5° 48' 50" East a distance of 72.34 feet; Thence South 3° 42' 22" West a distance of 111.20 feet; Thence South 2° 49' 31" East a distance of 48.00 feet; Thence South 6° 39' 25" West a distance of 30.33 feet; Thence South 81° 39' 23" East a distance of 40.19 feet; Thence North 6° 39' 25" East a distance of 34.83 feet; Thence North 2° 49' 31" West a distance of 49.04 feet; Thence North 3° 42' 22" East a distance of 112.24 feet; Thence North 5° 48' 50" West a distance of 70.23 feet; Thence North 9° 39' 41" East a distance of 123.20 feet; Thence North 81° 28' 38" East a distance of 15.89 feet; Thence North 44° 26' 12" East a distance of 44.97 feet; Thence North 11° 48' 33" East a distance of 54.60 feet; Thence North 47° 39' 01" East a distance of 52.34 feet; Thence North 15° 12' 11" East a distance of 53.21 feet; Thence North 8° 56' 19" East a distance of 47.36 feet; Thence North 16° 21' 35" East a distance of 76.77 feet; Thence North 29° 14' 51" West a distance of 25.23 feet; Thence North 74° 51' 18" West a distance of 22.36 feet; Thence North 11° 18' 10" East a distance of 62.49 feet; Thence North 18° 45' 37" West a distance of 63.05 feet; Thence North 58° 55' 09" East a distance of 27.57 feet; Thence North 18° 46' 56" East a distance of 21.92 feet; ; Thence North 21° 21' 16" West a distance of 38.81 feet; Thence North 35° 02' 38" West a distance of 98.84 feet; Thence North 55° 50' 27" West a distance of 97.73 feet; Thence North 64° 42' 29" West a distance of 100.79 feet; Thence North 68° 41' 48" West a distance of 195.34 feet; ; Thence North 78° 00' 44" West a distance of 55.09 feet; to the POINT OF BEGINNING; Containing a calculated area of 178,367 Square Feet, or 4.09 Acres, more or less.



July 22, 2002

Mr. Mike Dekalb
Interim Planning Director
555 South 10th Street, Room 213
Lincoln, NE 68508

RE: Interstate Land
Conservation Easement

LYLE L. LOTH, P.E./L.S.

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

Phone (402) 421-2500
Fax (402) 421-7096

Email: lyle@espeng.com

Mike,

On behalf of our client, Interstate Land, LLC, I have attached three (3) signed copies of the final Conservation Easement for the above noted project. This document is being provided for your use to place it into the agendas of the Lancaster County Planning Commission and City Council over the coming weeks. According to my discussions with Nichole, this submittal should allow us to gain a place on the Planning Commission agenda for August 21st, 2002, and the City Council agenda for September 9th, 2002.

We have worked with Nicole Fleck-Tooze, the City's Special Projects Administrator, and the U.S. Army Corps of Engineers (COE) to finalize this Easement, and we believe that the Easement now meets or exceeds the expectations of the various reviewing and approving agencies. As such, we do anticipate approval of this document by the County and the City.

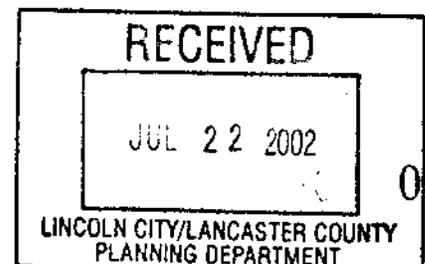
We also wanted to take this opportunity to thank the various members of the City Staff who have assisted us in this endeavor. Further, we pledge to continue to work closely with you, Lancaster County, the COE and the various City departments during the remaining development and planning stages of this project. With your help, guidance and assistance, we feel confident that we can look forward to the successful approval of the Preliminary Plat for this project.

Should you have any questions or require additional information, please let me know.

Respectfully,
E-S-P Inc.

Reed O. Schwartzkopf, PE

cc: Jim Sherrets & Marv Cople - Interstate Land LLC
Larry Lewis; Speece-Lewis Engineers
Barb Friskopp - COE



**PLANNING COMMISSION FINAL ACTION
NOTIFICATION**

TO : Mayor Don Wesely
Lincoln City Council

FROM : Jean Walker, Planning 

DATE : August 22, 2002

RE : **Comprehensive Plan Conformance No. 02005**
(Conservation Easement - Northeast of the intersection of Interstate 80
and Oak Creek)
Resolution No. PC-00762

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, August 21, 2002:

Motion made by Steward, seconded by Bills-Strand, to find the proposed acquisition of a permanent conservation easement over approximately 4.09 acres of delineated wetlands, requested by ESP, Inc. on behalf of Interstate Land, L.L.C., on property generally located northeast of the intersection of I-80 and Oak Creek, to be in conformance with the 2025 Lincoln City-Lancaster County Comprehensive Plan. Motion carried 8-0: Steward, Carlson, Bills-Strand, Taylor, Duvall, Krieser and Schwinn voting 'yes'; Newman absent.

A request for resolution accepting the conservation easement will be scheduled for public hearing before the City Council on **Monday, September 16, 2002**, 1:30 p.m.

Attachment

cc: Building & Safety
Rick Peo, City Attorney
Nicole Fleck-Tooze, Public Works
Reed Schwartzkopf, ESP, Inc., 601 Old Cheney Road, Suite A, 68512

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RESOLUTION NO. PC-00762

Comprehensive Plan Conformity No. 02005

1 WHEREAS, Interstate Land, L.L.C. desires to grant a permanent
2 conservation easement to the City of Lincoln, Nebraska, over approximately 4.09 acres of
3 delineated wetlands on property generally located northeast of the intersection of I-80 and
4 Oak Creek, and legally described in Attachment "A" attached hereto, to preserve the flood
5 storage capacity; and

6 WHEREAS, the City of Lincoln is authorized to accept and hold conservation
7 easements under the terms of the Conservation and Preservation Easement Act (Neb.
8 Rev. Stat. §§ 76-2,111 to 76,2,118); and

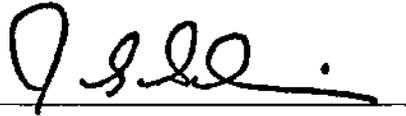
9 WHEREAS, Neb. Rev. Stat. § 76-2,112 requires that, in order to minimize
10 conflicts with land use planning, the conservation easement must be submitted to the
11 Lincoln City - Lancaster County Planning Commission for comments regarding the
12 conformity of the conservation easement to the Lincoln City Comprehensive Plan prior to
13 acceptance of the easement by the City of Lincoln; and

14 WHEREAS, the Director of Planning, on behalf of Interstate Land, L.L.C.,
15 has submitted a request designated as Comprehensive Plan Conformity No. 02005 to find
16 the proposed granting of a permanent conservation easement to the City of Lincoln to be
17 in conformity with the Comprehensive Plan.

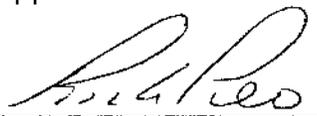
18 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster
19 County Planning Commission of Lincoln, Nebraska:

1 That the proposal of Interstate Land, L.L.C. to grant and convey a permanent
2 conservation easement to the City of Lincoln, Nebraska to preserve the flood storage
3 capacity on approximately 4.09 acres generally located northeast of the intersection of I-80
4 and Oak Creek as described in Attachment "A", is found to be in conformance with the
5 Lincoln City Comprehensive Plan.

6 The foregoing Resolution was approved by the Lincoln City-Lancaster
7 County Planning Commission on this 21st day of August, 2002.

ATTEST:


Chair

Approved as to Form & Legality:


Chief Assistant City Attorney

Revised Conservation Easement (Originally Filed December, 2001)

Interstate Land; Lincoln, NE

June 25, 2002

A tract of land for Conservation Easement purposes consisting of parts of Lots 14, 44, and 45, all of Irregular Tracts, in the Southwest Quarter of Section 15, Township 10 North, Range 6 East, and Lot 38 and 49, of Irregular Tracts, located in the Southeast Quarter of Section 16, Township 10 North, Range 6 East, of the 6th Principal Meridian, Lancaster County, Nebraska, having been originally filed with Lancaster County, Nebraska, in December, 2001, including an original 2.80 acres, more or less, and being herein revised to include the additional area required by the U. S. Army Corps of Engineers, being more particularly described by metes and bounds as follows:

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**REVISED CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodplains and Wetlands)**

THIS REVISED CONSERVATION EASEMENT AGREEMENT is entered into as of the _____ day of _____, 2002, by and between Interstate Land L.L.C., a Nebraska limited liability company, (hereinafter referred to as "Owner") and the City of Lincoln, Nebraska ("City").

RECITALS

I.

Owner is the owner in fee simple of a portion of Lots 14, 44, and 45 of Irregular Tracts, located in the Southwest Quarter of Section 15, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, and Lots 38 and 49 of Irregular Tracts located in the Southeast Quarter of Section 16, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("Easement Area"). Said Easement Area is more particularly described on Attachment A, attached hereto and incorporated herein by reference.

II.

The U.S. Army Corps of Engineers (hereinafter referred to as "COE") required Owner to issue a Conservation Easement to the City of Lincoln ("City") as a condition for obtaining a 404 Permit to perform channel work adjacent to the south line of their property.

III.

The Owner granted such a Conservation Easement to the City in December, 2001, covering an area of 2.80 acres, more or less.

IV.

The COE and the City have requested that the Conservation Easement area be expanded and that the previous easement territory be incorporated into a new grant to encompass an additional area of approximately 1.29 acres, for a total area within the revised Conservation Easement of 4.09 acres, more or less.

V.

The Owner has agreed to provide this Conservation Easement as well as to execute by way of other instruments a Drainage Easement covering the area of channel work adjacent to the south line of their property.

VI.

The City is authorized to accept and hold this Revised Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act.

VII.

This Agreement has been submitted to the Lincoln-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Revised Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

VIII.

The City Council of the City of Lincoln, Nebraska, has approved and accepted this Revised Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual value to the Owner and City and to protect and preserve the wetlands and the natural floodplain values and functional integrity of the 100 year floodplain, the City and Owner agree as follows:

1. Grant of Conservation Easement. Owner hereby creates, establishes, grants, and conveys to City for its benefit and the benefit of the public a conservation easement over the Easement Area to protect and preserve the wetlands, and the natural floodplain values, including flood storage capacity, conveyance and functional integrity of the Easement Area relative to the floodplain and to restrict development and future use of the Easement Area subject to the following terms and conditions:

A. Compatible Uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices.

B. Non-Compatible Uses. Except as otherwise provided herein, the following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, signs, billboard or other advertising material, or any other structure.
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting any work requested by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- vi. Commercial development of any nature;
- vii. Human introduction of non-native animal species which may compete with and result in decline or elimination of native animal species;
- viii. Any other act which, in the opinion of the City, would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area;
- ix. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- x. The broadcast application of pesticides at any time. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- xi. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum;
- xii. Removal of tree masses;
- xiii. Changing the hydrology of the Easement Area or the land upstream, except as may be approved by the City with respect to the construction of improvements to N.W. 12th Street.

- xiv. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area.

C. Notwithstanding subparagraph 1.B. above, the following practices, and any practices or activities meeting the intent of this paragraph, will be allowed:

- i. Periodic removal of built-up sediments and silt deposits which, in the opinion of the City of Lincoln, the Lower Platte South Natural Resources District or the United States Army Corps of Engineers, could be deleterious to the generally condition and health of the wetlands. Such removal shall be accomplished at the direction and approval as to equipment and techniques, of one of the noted agencies, and shall be performed to produce the minimum amount of disruption and disfigurement to the Easement, its plant species and animal species, with no discharge of soils into the Easement.
- ii. Periodic removal, as required, of any wind-deposited or illegally dumped materials, which may prove deleterious to the general condition and health of the wetlands. Such removal shall be performed by the Owner on an as-needed basis, by hand methods.
- iii. Boring or trenching and their associated excavation and grading required to maintain the existing utility crossings, to accommodate up to 5 additional below-ground utility crossings, and to allow for the construction of a culvert and drop structure(s) into Oak Creek, will be allowed under the following conditions: No portions of the areas within the Conservation Easement that are delineated as wetlands, noted as area "A1" and "A2" in the report from Speece-Lewis Engineers, dated October 24, 2001, are allowed to be disturbed; any disturbance in any other area within the Conservation Easement shall be only temporary in nature, and the City shall be notified prior to any such disturbance; the excavation, filling and shaping shall be minimized to affect only the area required to complete the construction and maintenance activities proposed; erosion and silt control measures in accordance with the City of Lincoln Drainage Criteria Manual shall be employed during the entire period of said construction and maintenance activities; the disturbed areas shall be returned to their original grade, fine graded and re-seeded with a native grass seed mix, fertilized and mulched immediately after completion of any work disturbing these areas; and no discharge of site soils will be allowed into Oak Creek without obtaining prior approval for such work and discharge, from the COE.
- iv. A roadway crossing of the Conservation Easement, and its associated excavation and grading, will be allowed under the following conditions: The location of the roadway crossing will not be allowed over any portion

of the areas within the Conservation Easement that are delineated as wetlands, noted as areas "A1" and "A2" in the report from Speece-Lewis Engineers, dated October 24, 2001. The crossing should be located in the southern portion of the easement and, inasmuch as is practical, clear-span the 40-foot wide non-wetlands area of the Easement in the location noted, with minimal encroachment into the Easement area; erosion and silt control measures in accordance with the City of Lincoln Drainage Criteria Manual shall be employed during the entire period of any construction activities; the disturbed areas shall be returned to their original grade, fine graded and re-seeded with a native grass seed mix, fertilized and mulched immediately after completion of any work disturbing these areas; and no discharge of site soils will be allowed into Oak Creek without obtaining prior approval for such work and discharge from the COE. Revisions to these conditions will only be allowed provided that the Owner obtains the necessary approval from the COE and the City.

D. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

2. Condition of the Easement Area at Time of Grant. The wetlands and flood storage capacity of the Easement Area without limiting the generality of the terms is defined to mean the condition of the Easement Area at the time of this grant as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

3. Protection and Maintenance of the Easement Area.

A. Owner agrees to continuously and permanently maintain the Easement Area in its condition at the time of this grant.

B. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein.

C. Owner shall cooperate with and assist the City at City's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

4. **Inspections and Access by City.** The City shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, protecting or enhancing the wetlands within the Easement Area as the City may deem necessary or desirable.

5. **Enforcement.** Owner agrees that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that the City may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should owner undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the City's cost of suit, including reasonable attorney fees, shall be paid by Owner.

6. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner and City.

STATE OF NEBRASKA)
) ss.
 COUNTY OF LANCASTER)

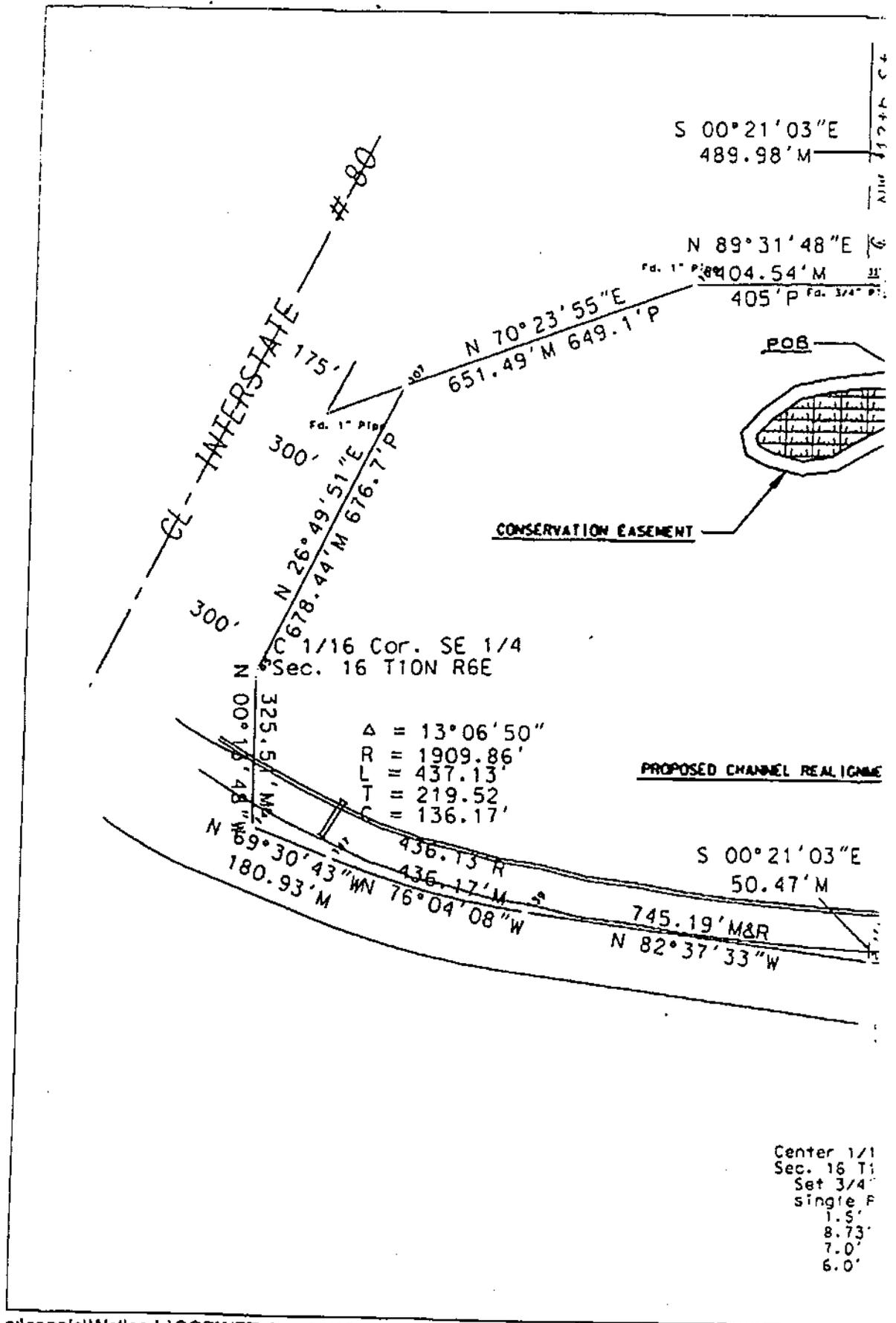
The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by Don Wesely, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

 Notary Public

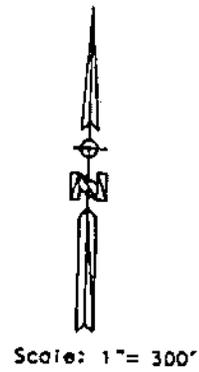
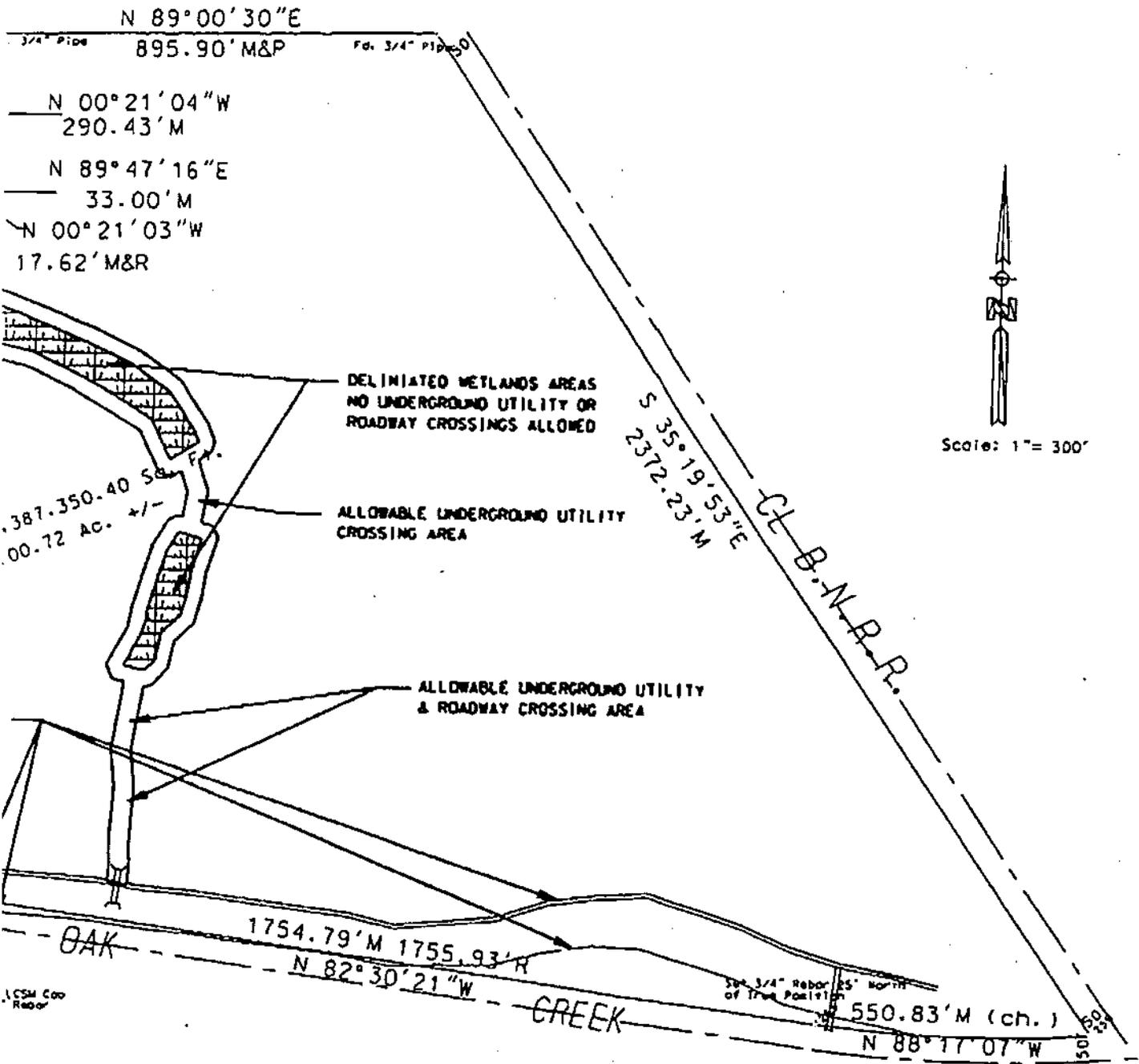
Revised Conservation Easement (Originally Filed December, 2001)
Interstate Land; Lincoln, NE **June 25, 2002**

A tract of land for Conservation Easement purposes consisting of parts of Lots 14, 44, and 45, all of Irregular Tracts, in the Southwest Quarter of Section 15, Township 10 North, Range 6 East, and Lot 38 and 49, of Irregular Tracts, located in the Southeast Quarter of Section 16, Township 10 North, Range 6 East, of the 6th Principal Meridian, Lancaster County, Nebraska, having been originally filed with Lancaster County, Nebraska, in December, 2001, including an original 2.80 acres, more or less, and being herein revised to include the additional area required by the U. S. Army Corps of Engineers, being more particularly described by metes and bounds as follows:

Commencing at the East $\frac{1}{4}$ corner of Section 16, Township 10 North, Range 6 East, of the 6th Principal Meridian, Lancaster County, Nebraska; Thence South $00^{\circ} 21' 03''$ East on the East line of the Southeast Quarter of Section 16, a distance of 489.98 feet to a point on the South line of Northwest 12th Street; Thence North $89^{\circ} 47' 16''$ East on the South line of Northwest 12th Street a distance of 33.00 feet, to a point on the East Right of Way of Northwest 12th Street; Thence South $00^{\circ} 21' 03''$ East a distance of 196.43 feet, to the POINT OF BEGINNING; Thence South $82^{\circ} 59' 25''$ West a distance of 138.66 feet; Thence South $77^{\circ} 59' 18''$ West a distance of 83.03 feet; Thence South $54^{\circ} 08' 35''$ West a distance of 81.32 feet; Thence South $42^{\circ} 41' 19''$ West a distance of 69.37 feet; Thence South $14^{\circ} 56' 00''$ East a distance of 49.79 feet; Thence South $62^{\circ} 20' 16''$ East a distance of 47.95 feet; Thence South $75^{\circ} 47' 09''$ East a distance of 78.86 feet; Thence North $81^{\circ} 41' 45''$ East a distance of 78.17 feet; Thence North $61^{\circ} 04' 43''$ East a distance of 155.75 feet; Thence South $76^{\circ} 20' 11''$ East a distance of 94.52 feet; Thence South $65^{\circ} 12' 08''$ East a distance of 95.41 feet; Thence South $59^{\circ} 54' 45''$ East a distance of 157.84 feet; Thence South $25^{\circ} 57' 47''$ East a distance of 89.17 feet; Thence South $73^{\circ} 31' 19''$ East a distance of 26.44 feet; Thence North $58^{\circ} 55' 09''$ East a distance of 22.18 feet; Thence South $18^{\circ} 45' 37''$ East a distance of 43.57 feet; Thence South $11^{\circ} 18' 10''$ West a distance of 49.06 feet; Thence North $74^{\circ} 51' 18''$ West a distance of 8.53 feet; Thence South $68^{\circ} 14' 13''$ West a distance of 20.02 feet; Thence South $31^{\circ} 19' 44''$ West a distance of 58.85 feet; Thence South $16^{\circ} 17' 35''$ West a distance of 130.38 feet; Thence South $10^{\circ} 33' 01''$ West a distance of 38.92 feet; Thence South $28^{\circ} 42' 09''$ West a distance of 83.20 feet; Thence South $24^{\circ} 16' 41''$ East a distance of 29.90 feet; Thence South $77^{\circ} 15' 31''$ East a distance of 23.72 feet; Thence South $9^{\circ} 39' 41''$ West a distance of 130.78 feet; Thence South $5^{\circ} 48' 50''$ East a distance of 72.34 feet; Thence South $3^{\circ} 42' 22''$ West a distance of 111.20 feet; Thence South $2^{\circ} 49' 31''$ East a distance of 48.00 feet; Thence South $6^{\circ} 39' 25''$ West a distance of 30.33 feet; Thence South $81^{\circ} 39' 23''$ East a distance of 40.19 feet; Thence North $6^{\circ} 39' 25''$ East a distance of 34.83 feet; Thence North $2^{\circ} 49' 31''$ West a distance of 49.04 feet; Thence North $3^{\circ} 42' 22''$ East a distance of 112.24 feet; Thence North $5^{\circ} 48' 50''$ West a distance of 70.23 feet; Thence North $9^{\circ} 39' 41''$ East a distance of 123.20 feet; Thence North $81^{\circ} 28' 38''$ East a distance of 15.89 feet; Thence North $44^{\circ} 26' 12''$ East a distance of 44.97 feet; Thence North $11^{\circ} 48' 33''$ East a distance of 54.60 feet; Thence North $47^{\circ} 39' 01''$ East a distance of 52.34 feet; Thence North $15^{\circ} 12' 11''$ East a distance of 53.21 feet; Thence North $8^{\circ} 56' 19''$ East a distance of 47.36 feet; Thence North $16^{\circ} 21' 35''$ East a distance of 76.77 feet; Thence North $29^{\circ} 14' 51''$ West a distance of 25.23 feet; Thence North $74^{\circ} 51' 18''$ West a distance of 22.36 feet; Thence North $11^{\circ} 18' 10''$ East a distance of 62.49 feet; Thence North $18^{\circ} 45' 37''$ West a distance of 63.05 feet; Thence North $58^{\circ} 55' 09''$ East a distance of 27.57 feet; Thence North $18^{\circ} 46' 56''$ East a distance of 21.92 feet; ; Thence North $21^{\circ} 21' 16''$ West a distance of 38.81 feet; Thence North $35^{\circ} 02' 38''$ West a distance of 98.84 feet; Thence North $55^{\circ} 50' 27''$ West a distance of 97.73 feet; Thence North $64^{\circ} 42' 29''$ West a distance of 100.79 feet; Thence North $68^{\circ} 41' 48''$ West a distance of 195.34 feet; ; Thence North $78^{\circ} 00' 44''$ West a distance of 55.09 feet; to the POINT OF BEGINNING; Containing a calculated area of 178,367 Square Feet, or 4.09 Acres, more or less.



s:\copper\Wetlands\COPWET.dgn 06/25/2002 11:31:01 AM



E 1/4 Cor. Sec. 16 T10N R6E
 Fd. 2" alum LCSM cap on
 pipe in monument well
 W to 1" pipe
 SE to 3/4" rebar
 SE to "+" in base of Steel Electrical
 SE to "+" in base of Steel
 Electrical
 Structure

$\Delta = 11^{\circ}13'49''$
 $R = 2814.79'$
 $L = 551.71'$
 $T = 276.74'$
 $C = 550.83'$