

**CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodplain/Floodprone Area)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the _____ day of _____, 20____, by and between **Cardwell Reserve Homeowner's Association, Inc.**, a **Nebraska Non-Profit Corporation**, ("Owner"), the City of Lincoln, Nebraska ("City"), and the Lower Platte South Natural Resources District ("NRD").

RECITALS

I.

Owner is the owner in fee simple of certain land ("Real Property") legally described as:

37.31 acres, more or less, in the South Part of Outlots A and B, Cardwell Reserve Addition, located in the Northeast Quarter of Section 21, Township 9 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska

including the portions thereof referred to herein as the "Easement Area"; the Easement Area is 31.48 acres, more particularly described as follows:

Commencing at the East Half Section Corner of said Section 21, thence North 89° 35' 51" West a distance of 59.89 feet; thence North 89° 58' 27" West a distance of 211.81 feet along the north side of Outlot A, Foreman Ridge 4th Addition to the Point of Beginning; thence North 56° 55' 00" West a distance of 120.64 feet; thence North 19° 02' 20" West a distance of 77.48 feet; thence North 03° 54' 10" East a distance of 87.90 feet; thence North 22° 50' 12" West a distance of 55.14 feet; thence North 21° 37' 47" East a distance of 51.82 feet; thence North 55° 13' 20" West a distance of 99.75 feet; thence North 48° 48' 51" West a distance of 72.58 feet; thence South 88° 15' 51" West a distance of 75.14 feet; thence North 75° 34' 45" West a distance of 164.49 feet; thence North 30° 15' 23" West a distance of 94.85 feet; thence North 45° 00' 00" West a distance of 90.12 feet; thence South 43° 57' 30" West a distance of 88.52 feet; thence North 88° 05' 27" West a distance of 68.31 feet; thence North 12° 48' 15" West a distance of 102.69 feet; thence North 67° 37' 12" West a distance of 83.68 feet; thence South 87° 59' 26" West a distance of 259.61 feet; thence South 10° 43' 30" East a distance of 175.52 feet; thence South 21° 33' 14" West a distance of 84.61 feet; thence South 07° 07' 03" East a distance of 85.99 feet; thence South 22° 45' 56" East a distance of 39.81 feet; thence South 42° 01' 02" East a distance of 87.01 feet; thence South 68° 29' 11" East a distance of 87.02 feet; thence South 79° 11' 27" East a distance of 39.35 feet; thence South 25° 03' 24" East a distance of 218.17 feet; thence North 89° 53' 31" West a distance of 256.75 feet;

thence North 00° 28' 48" West a distance of 135.97 feet; thence North 88° 25' 45" West a distance of 193.34 feet; thence North 53° 47' 17" West a distance of 96.58 feet; thence North 45° 56' 25" West a distance of 31.76 feet; thence North 59° 10' 20" West a distance of 55.85 feet; thence North 81° 23' 45" West a distance of 70.52 feet; thence North 65° 04' 45" West a distance of 202.22 feet; thence North 68° 45' 58" West a distance of 115.02 feet; thence North 83° 31' 32" West a distance of 121.49 feet; thence South 89° 57' 57" West a distance of 139.96 feet; thence North 81° 17' 44" West a distance of 87.33 feet; thence South 68° 37' 46" West a distance of 65.86 feet; thence South 04° 30' 09" East a distance of 133.33 feet; thence South 16° 19' 51" West a distance of 264.83 feet; thence North 89° 53' 31" West a distance of 149.24 feet; thence North 00° 39' 32" West a distance of 771.36 feet; thence North 78° 13' 17" East a distance of 122.08 feet; thence South 85° 41' 30" East a distance of 118.92 feet; thence North 88° 27' 35" East a distance of 262.08 feet; thence South 40° 53' 56" East a distance of 133.48 feet; thence North 54° 26' 26" East a distance of 237.04 feet; thence South 52° 05' 51" East a distance of 274.89 feet; thence North 51° 17' 03" East a distance of 315.96 feet; thence North 84° 45' 06" East a distance of 250.15 feet; thence North 74° 44' 47" East a distance of 42.61 feet; thence North 77° 21' 19" East a distance of 51.24 feet; thence North 80° 19' 50" East a distance of 51.24 feet; thence North 83° 18' 21" East a distance of 51.24 feet; thence North 86° 16' 52" East a distance of 51.24 feet; thence North 89° 15' 22" East a distance of 51.24 feet; thence South 87° 46' 30" East a distance of 51.02 feet; thence South 86° 13' 17" East a distance of 31.75 feet; thence South 85° 08' 06" East a distance of 93.48 feet; thence South 83° 32' 13" East a distance of 90.77 feet; thence South 84° 06' 47" East a distance of 34.84 feet; thence South 86° 50' 32" East a distance of 47.83 feet; thence South 90° 00' 00" East a distance of 47.83 feet; thence North 86° 50' 32" East a distance of 47.83 feet; thence North 83° 43' 28" East a distance of 46.61 feet; thence North 81° 19' 41" East a distance of 14.64 feet; thence North 78° 21' 11" East a distance of 36.15 feet; thence North 74° 07' 04" East a distance of 36.15 feet; thence North 69° 52' 56" East a distance of 36.15 feet; thence North 65° 38' 49" East a distance of 36.15 feet; thence North 61° 24' 42" East a distance of 36.15 feet; thence North 57° 10' 35" East a distance of 36.15 feet; thence North 52° 56' 28" East a distance of 36.39 feet; thence North 50° 25' 38" East a distance of 93.54 feet; thence South 00° 19' 22" East a distance of 940.45 feet; thence North 89° 59' 57" West a distance of 88.88 feet; thence South 28° 43' 45" West a distance of 103.18 feet; thence South 59° 56' 29" West a distance of 83.74 feet to the Point of Beginning.

Said Easement Area is generally located within the 100-year floodplain/floodprone area as designated by the Cardwell Branch Floodprone Areas and revised Floodway adopted by the Lincoln City Council on January 9, 2006. The Easement Area is shown on the attached Exhibit "A", which is made a part of this agreement by this reference.

II.

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Easement Area.

NOW, THEREFORE, in consideration of **ONE HUNDRED THOUSAND FOUR HUNDRED THIRTY-FIVE AND NO/100 DOLLARS, (\$100,435.20)**, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby grants and

conveys to City and NRD for their benefit and the benefit of the public a conservation easement over the Easement Area to restrict the use of the Easement Area to open space to protect and preserve the floodplain/floodprone area, drainageway, wetlands, and tree masses that occur on the land, to protect other water resources and biologic resources of the floodplain/floodprone area as identified on Exhibit B, and to restrict development and future use of the Easement Area that will significantly impair or interfere with the open space values and natural resources of the Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

1. Use of Easement Area.

A. Compatible Uses. The Easement Area shall be used only for purposes compatible with open space, recreational, or wetlands management practices. Notwithstanding subsection B, "Non-Compatible Uses," below, the following uses are compatible with the purposes of the Easement Area:

- i. Areas already in agricultural use at the time this easement is dedicated may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- iii. Public sanitary sewer lines along the stream alignment necessary for the functional use of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the corridor is restored following disturbance to the maximum extent practicable.
- iv. Trails or other public recreational components as approved in advance by the Director of Public Works & Utilities.
- v. Stream rehabilitation, water quality projects, or protection/restoration of other natural resources listed in Exhibit B as approved in advance by the Director of Public Works & Utilities.
- vi. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of adjacent lands.

B. Non-Compatible Uses. 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 the maintenance of foot trails or 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 or residential development of any nature;
- vii. Human introduction of non-native plant or animal species which may compete with and result in decline or elimination of native animal species;
- viii. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- ix. The broadcast application of pesticides at any time, except for that which is needed for areas already in agricultural use at the time this easement is dedicated. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not already in agricultural use at the time

of the dedication of this easement;

- xi. Removal of tree masses, except that the removal of dead branches, the minor pruning of tree canopies on the perimeter of the Easement Area, and the transplanting of trees 3" or less in diameter to areas outside the Easement Area within the subdivision shall be permitted.
- xii. Changing the hydrology of the Easement Area or the land upstream in a way that negatively impacts the easement area;
- xiii. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area;
- xiv. Any other act which would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area.

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

- i. By the City and NRD 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.

3. Condition of the Easement Area at Time of Grant. The condition of the Easement Area without limiting the generality of the terms is defined to mean the open space, drainageway, wetlands, tree masses, and the functional integrity of other water resources and biologic resources of the floodplain/floodprone area identified on Exhibit B, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

4. Protection and Maintenance of the Easement Area.

A. 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. Owner retains the right to challenge the assessed value of the property and to challenge the validity of an any such tax or assessment.

B. Owner shall cooperate with and assist the City and NRD at the City or NRD'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.

C. The Owners shall, at Owners' sole cost and expense, maintain the Easement Area. Maintenance shall consist of routine noxious weed control, routine weed and brush control, routine removal of trash and debris, and routine non-structural maintenance of stream bed and bank stability measures following installation. If Owners fail to maintain the Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owners. Owners shall pay said cost within thirty days from receipt of said billing.

5. Inspections and Access by City. The City and NRD 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 revegetating and for inspecting, maintaining, protecting or enhancing the floodplain/floodprone area within the Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent properties.

6. Enforcement. Owner agrees that the City and NRD 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 or NRD may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City or NRD may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City and NRD do not waive

or forfeit the right to take any action as they deem 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 and NRD without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City and NRD 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 and/or NRD's cost of suit, including reasonable attorney fees, shall be paid by Owner.

7. **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.

8. **Transfer of Interest.**

A. **Owner's Title to Easement Area.** If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Owner to a third party, Owner shall notify the City and NRD in writing prior to the transfer of the land and the document transferring the interest shall be made subject to this Conservation Easement Agreement.

B. **City and NRD's Conservation Easement.** The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Conservation Easement Agreement.

9. **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, City and NRD.

10. **Approvals.** Any approval required under this Agreement shall not be unreasonably withheld.

11. **Recordation.** The parties agree that this Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

12. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by **Chris Beutler, Mayor** of the City of Lincoln, Nebraska on behalf of the **City of Lincoln, Nebraska**.

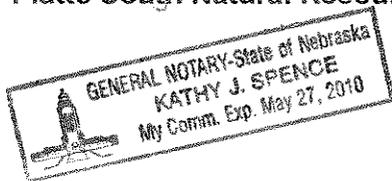
(SEAL)

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

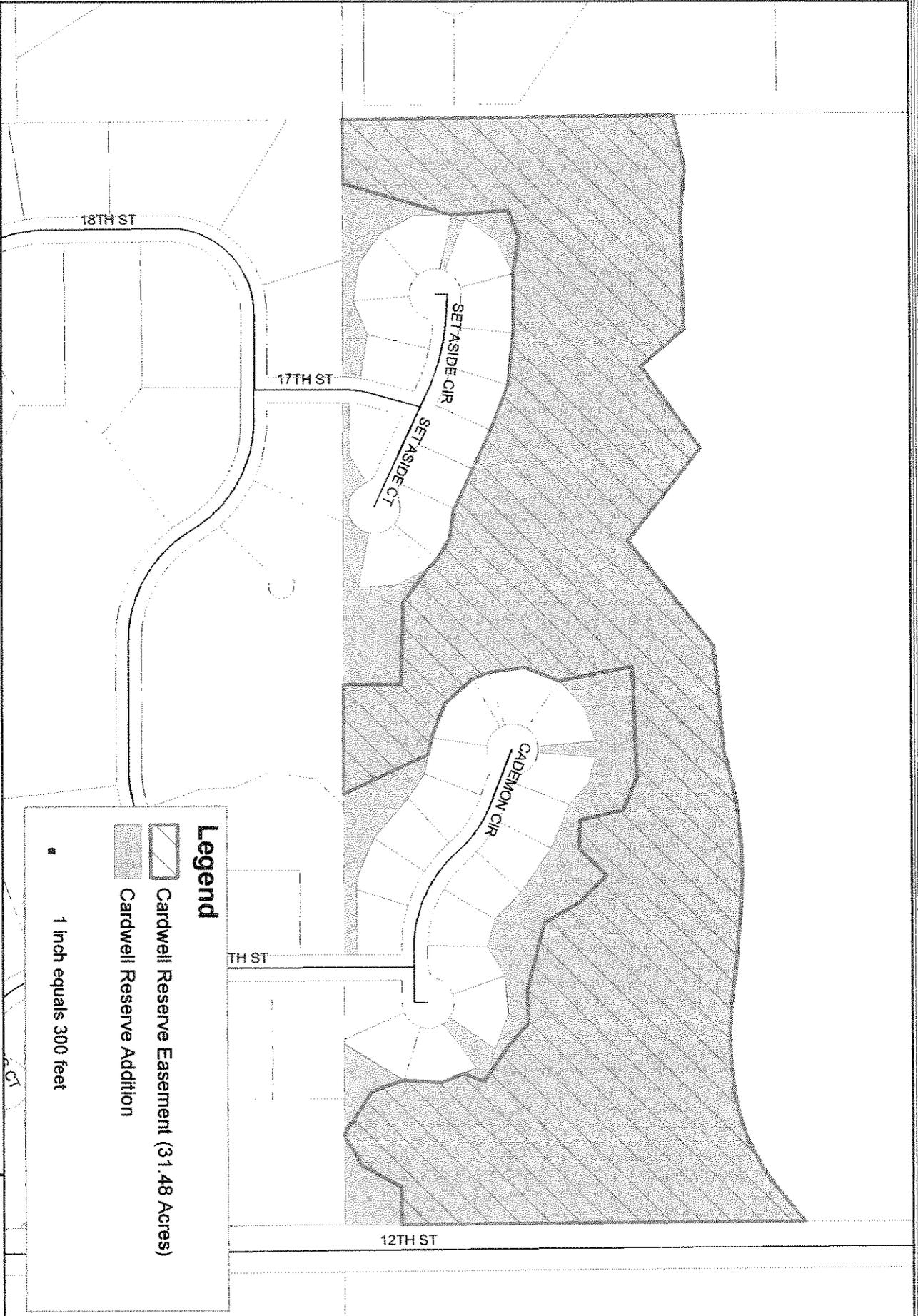
The foregoing instrument was acknowledged before me this 21 day of May, 2008, by **Glenn D. Johnson, General Manager**, on behalf of the **Lower Platte South Natural Resources District**.

(SEAL)



Kathy J. Spence
Notary Public

EXHIBIT A: CARDWELL RESERVE



Legend

-  Cardwell Reserve Easement (31.48 Acres)
-  Cardwell Reserve Addition

1 inch equals 300 feet

APPENDIX A

NATURAL RESOURCES OF FLOODPLAINS

Floodplains that are relatively undisturbed (or have been restored to a nearly natural state) provide a wide range of benefits to both human and natural systems. These benefits take many forms: some are static conditions (like providing aesthetic pleasure) and some are active processes (like filtering nutrients). There is some ambiguity over which of these benefits are properly termed "functions," which are "resources," and where the terms overlap. A fairly well accepted (but not necessarily comprehensive) list follows. The resources and functions have been loosely grouped into three categories, and the categories have been labelled according to the primary recipient of the benefit or its relationship to a larger system. That is, "water resources" include those resources and functions of floodplains that are part of or provide a benefit to the hydrologic cycles on the earth's surface and below ground; "biologic resources" are floodplain resources and functions that benefit plants and animals; and "societal resources" are floodplain resources and functions that directly benefit human society. Throughout the Unified National Program document, the term "natural resources" is used to refer to any or all of the resources and functions listed here.

Water Resources

Natural Flood & Erosion Control

- Provide flood storage and conveyance
- Reduce flood velocities
- Reduce flood peaks
- Reduce sedimentation

Water Quality Maintenance

- Filter nutrients and impurities from runoff
- Process organic wastes
- Moderate temperature fluctuations

Groundwater Recharge

- Promote infiltration and aquifer recharge
- Reduce frequency and duration of low surface flows

Biologic Resources

Biological Productivity

- Support high rate of plant growth
- Maintain biodiversity
- Maintain integrity of ecosystem

Fish and Wildlife Habitats

- Provide breeding and feeding grounds
- Create and enhance waterfowl habitat
- Protect habitats for rare and endangered species

Societal Resources

Harvest of Wild & Cultivated Products

- Enhance agricultural lands
- Provide sites for aquaculture
- Restore and enhance forest lands

Recreational Opportunities

- Provide areas for active and passive uses
- Provide open space
- Provide aesthetic pleasure

Areas for Scientific Study and Outdoor Education

- Contain cultural resources (historic and archaeological sites)
- Provide opportunities for environmental and other studies