

FACTSHEET

TITLE: COMPREHENSIVE PLAN AMENDMENT NO. 03016, by the Director of Planning, at the request of Peter Katt, on behalf of Dwaine Rogge, to amend the 2025 Lincoln/Lancaster County Comprehensive Plan to change a portion of property designated "Environmental Resources" to "Industrial" between Salt Creek and Arbor Road, west of No. 70th Street. (See map on p.11).

STAFF RECOMMENDATION: Approval, with revision according to the revised by staff report dated June 9, 2003, maintaining the 500 ft. buffer around the Category II Saline Wetland on the adjoining property to the west, and including the mitigation and preserved wetlands identified by the applicant (See map on p.10).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/21/03, 06/11/03 and 06/25/03
Administrative Action: 06/25/03

RECOMMENDATION: Approval, with amendment to require a 30' vegetated buffer around the mitigation area (See map on p.12). (5-3: Bills-Strand, Larson, Krieser, Duvall and Schwinn voting 'yes'; Steward, Carlson and Taylor voting 'no').

FINDINGS OF FACT:

1. The revised staff recommendation dated June 9, 2003, recommends approval, subject to maintaining the 500' buffer around the Category II Saline Wetland on the adjoining property to the west, and including the mitigation and preserved wetlands identified by the applicant (See map on p.10). This revised staff recommendation is basis upon the "Status/Description", "Comprehensive Plan Implications" and "Conclusion" as set forth on p.2-5, concluding, in part, that the Nebraska Game and Parks Commission request in their letter of May 14, 2003 (p.14-15), that no amendments be made to the Comprehensive Plan at this time. They recommend that the existing buffer be maintained. Upon completion of a review of information provided by the applicant and the U.S. Corps of Engineers, it was determined that wetlands on the applicant's property are not subject to the 500 foot buffer zone, as identified in the 2025 Comprehensive Plan. The U.S. Corp of Engineers noted in their letter of June 3, 2003 that the wetlands were determined to be Category III and IV by an interagency team on October 7, 1999. Category III and IV wetlands are not specifically targeted in the Comprehensive Plan for additional protection. The 2025 Comprehensive Plan states that all wetlands are unique environmental resources and should be afforded the greatest consideration in the long range planning process. The environmental resource located on the adjacent property is designated a Category II Saline Wetlands by the Resource Categorization of Nebraska's Eastern Saline Wetlands and is subject to the 500 foot buffer zone identified in the land use plan.
2. The testimony by Peter Katt, on behalf of the applicant, is found on p.6-9. Mr. Katt suggested that there is no scientific basis for the 500' buffer being required. The additional information submitted by Mr. Katt at the continued public hearing on June 25, 2003, is found on p.16-21.
3. Julie Godberson testified at the continued public hearing on June 11, 2003, on behalf of the Nebraska Game and Parks Commission, stating that Game and Parks does not support an amendment of any kind that would allow industrial buildings, and that the area remain Category II with the 500' buffer.
4. On June 25, 2003, the majority of the Planning Commission disagreed with the revised staff recommendation dated June 9, 2003, and voted 5-3 to recommend approval of the applicant's proposal, with amendment to require a 30' vegetated buffer around the mitigation area (referring to the letter from the Nebraska Game and Parks Commission dated April 17, 2000, submitted by the applicant, p.5). (Also See map on p.12).

FACTSHEET PREPARED BY: Jean L. Walker
REVIEWED BY: _____
REFERENCE NUMBER: FS\CC\2003\CPA.03016

DATE: June 30, 2003
DATE: June 30, 2003

2003 COMPREHENSIVE PLAN ANNUAL REVIEW

Comprehensive Plan Amendment No. 03016
North 70th and Arbor Road

REVISED REPORT June 9, 2003

Applicant	Location	Proposal
Peter Katt, on behalf of Dwaine Rogge	North 70 th and Arbor Road - Lot 32 Irregular Tract, SE 1/4, Section 28, Township 11 North, Range 7 East, Lancaster County, Nebraska	Change portion of property designated "Environmental Resources" to "Industrial"
<p>Recommendation: Approval of Amendment as Revised <u>Review of information provided by the applicant and the U.S. Corp of Engineers determined the wetlands to be Category III and IV, not Category II Saline Wetlands. The 2025 Comprehensive Plan only provides a 500 foot buffer zone around Category I and II Saline Wetlands, not Category III and IV wetlands. The recommended amendment maintains the 500 foot buffer around the Category II Saline Wetland on the adjoining property to the west, and includes the mitigation and preserved wetlands identified by the applicant (See attached map, "Recommended Amendment # 16").</u></p>		

Status/Description

The applicant is proposing to:

1. Amend the Comprehensive Plan's land use map for a portion of the parcel from "Environmental Resources" to "Industrial." The "Environmental Resources" designation should be removed from all areas of the parcel other than the "Mitigation" and "Preserved" areas. (See attached map, "Applicant Proposed Amendment # 16"). The applicant states that the Plan did not have accurate information regarding the locations of the wetlands on the parcel.

The Lincoln-Lancaster County 2025 Comprehensive Plan currently designates this property "Environmental Resources" and "Industrial" on the future land use plan map. The property immediately west of this property is designated "Environmental Resources" and "Commercial."

The "Environmental Resources" land use designation shows a number of sensitive environmental resources that were identified during the development of the 2025 Comprehensive Plan. Areas mapped as saline wetlands received additional discussion, due to the status of the Salt Creek Tiger Beetle, which is listed on the State of Nebraska's Endangered Species list. The U.S. Fish and Wildlife Service has identified the Salt Creek Tiger Beetle as a "candidate species" for potential listing on the Endangered Species list. Saline wetlands also provide habitat for the Saltwort, another species on the State's endangered list. In response to the U.S. Fish and Wildlife Service (USFWS) concern of continued development in the areas close to the Salt Creek Tiger Beetle's habitat, a committee of scientists, environmentalists, development interests and landowners, among others were brought together to assess the situation and provide policy recommendations for adoption in the Plan.

The latest saline wetland information utilized by City of Lincoln and Lancaster County during the development of the 2025 Comprehensive Plan is derived from the Resource Categorization of Nebraska's Eastern Saline Wetlands project, which was completed in 1994 by a coordinating group consisting of the Nebraska Game and

Parks Commission, Nebraska Department of Environmental Quality, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and U.S. Environmental Protection Agency.

The 2025 Comprehensive Plan's future land use map designated specific areas as "Environmental Resources" consisting of Category I and II saline wetlands located outside the city limits, and included a 500 foot buffer zone. Other sensitive natural and environmental resources were also included in the "Environmental Resources" category. This policy, adopted as part of the 2025 Comprehensive Plan in May 2002, is an interim policy measure. The Plan states on page F 58 to: "Identify specifically targeted saline wetlands and accompanying 500 foot buffer zones in the Comprehensive Plan until additional baseline research can be completed."

The "Environmental Resources" designated on the adjacent property are Category II saline wetlands. This wetland is located in close proximity to the west property line of the applicant's land. The Comprehensive Plan requires a buffer of 500 feet from this saline wetland. This buffer is shown on a portion of the applicant's property. No additional information has been provided on the status of the saline wetlands on the abutting property.

Comprehensive Plan Implications

The Lincoln-Lancaster County 2025 Comprehensive Plan provides general policy guidance. The Planning Commission and City Council can judge whether or not the spirit and intent of the Plan are being met on a case-by-case basis without requiring a Plan amendment. On page F 16 of the Plan it states: "Natural and environmentally sensitive areas are preserved and thrive. Wetlands, native prairies and stream (riparian) corridors are preserved to ensure the ecological health of the community."

"Environmental Resources" and saline wetlands are referenced in several places in the Lincoln-Lancaster County 2025 Comprehensive Plan. Statements in the Plan specific to saline wetlands as well as habitat protection policy guidance include the following references:

On page F 22 of the Plan it states: "**Environmental Resources:** Land and water masses which are of particular importance for maintenance and preservation, such as saline wetlands, native prairie, and some floodway and riparian corridors. Such areas may be either publicly or privately owned."

Saline and freshwater wetlands were selected as one of three "Core Resource Imperatives." These imperatives were selected from the thirteen resource features in the Plan as those that should receive the greatest consideration in the long range planning process.

On page F 54 of the Plan it states: "The "Core Resource Imperatives" uniquely contribute to the natural resource heritage of the region and whose safe-guarding for future generations is indispensable."

On page F 54-55 of the Plan it states: "**Saline and Freshwater Wetlands** – Wetlands provide distinctive habitat opportunities for various plants and animals, as well as offering flood control and water filtration benefits. Lancaster County is home to about 1,200 acres of very rare Eastern Nebraska Saline Wetlands. These wetlands offer a specialized habitat to several threatened and endangered species, including the Saltwort and Salt Creek Tiger Beetle. Lancaster County is the only place in the world where the Tiger Beetle exists. Owing to a dwindling Beetle population and the growth of the city, the National Fish and Wildlife Service is considering placing the Beetle on the Federal Threatened and Endangered Species list. The City and County are investigating ways to protect and preserve the unique habitat offered by the saline wetlands. This may include a blend of land uses stressing education, parks, floodplain, and low intensity development."

On page F 56 of the Plan it states: "*Preserve ecological protection areas* - Protect areas that are biologically interconnected to support bird, animal, and insect migration and supporting vegetation. Examples are stream beds and wooded corridors, prairie land, and saline wetlands."

On page F 58 of the Plan it states: “Research and seek implementation of procedures for managing lands containing and that are located near saline wetlands. Desirably this research would be conducted at the watershed level to provide a broad perspective of how area-wide development will interact with this natural resource. A special treatment buffer along the perimeter of saline wetlands could reduce the impact of increased runoff, sedimentation, and other pollutants. Such buffers could also serve to provide support for the preservation of habitat areas for the county’s threatened and endangered species.”

On page F 58-59 of the Plan it states: “*Salt Creek Tiger Beetle* - In conjunction with research into saline wetland preservation, determine measures that could be taken to enhance and maintain these areas as Salt Creek Tiger Beetle habitat. This may include authorizing or soliciting funding for hydrology or hydrogeology research of the habitat area, determining basin-wide impacts of land use and human activities on the wetlands, characterizing the Tiger Beetle’s biology and habitat, and assessing the economic impacts of potential management efforts. A management plan for the Salt Creek Watershed and Tiger Beetle habitat should be prepared by December, 2002.

Identify specifically targeted saline wetlands and accompanying 500 foot buffer zones in the Comprehensive Plan until additional baseline research can be completed. This can be a first step in initiating on-going formal partnerships between the City and other entities to address saline wetland protection. Landowners in the area should be offered assistance concerning existing programs to preserve wetlands and transition lands occurring on private property.

Prioritize land acquisition in the Salt Creek Watershed that protects Tiger Beetle habitat. Also investigate incentives allowing land owners to pursue voluntary purchases, conservation easements, or other similar preservation options.”

The Nebraska Game and Parks Commission is leading an effort to develop an “Implementation Plan for the Conservation of Nebraska’s Eastern Saline Wetlands.” Their work is underway and a report is expected to be distributed in 2003.

On page F 63 of the Plan it states: “**CURRENT PLANNING AND DEVELOPMENT** - Include the consideration of the “Core Resource Imperatives” and other natural resource features in the plan review process — i.e., subdivision plats, changes of zone, use permits, etc. This may involve preparing written guidelines for looking at site vulnerability, habitat fragmentation, long term land manageability, green space connectedness, and other elements that implement the Plan’s natural resources concepts.”

The Plan provides guidance for both the protection of saline wetlands, as well as the appropriate use of adjacent lands where it is demonstrated on a case-by-case basis that the spirit and intent of the Plan is being met.

Conclusion

The Comprehensive Plan allows for additional baseline information to be reviewed in regards to saline wetlands. New information provided through the review of specific development requests may present more accurate data concerning areas identified as “Environmental Resources.” If the information provided by the applicant identifies that the new baseline data accurately reflects the current condition of the saline wetlands, then amending the Plan would be appropriate. However, the buffer on the western most 500 feet to protect the saline wetlands on the abutting property should be maintained.

The applicant’s February 21st, 2003 submittal did not provide the documentation necessary to review the proposal and provide a recommendation. It is also not clear whether the fill and mitigation work in the wetlands has already been completed. On April 23rd, the applicant submitted additional information on the wetlands. Until the review of this information is completed the proposed amendment should be deferred. The reviewing agencies include

the City of Lincoln, Lower Platte South Natural Resources District, Nebraska Game and Parks Commission and the U.S. Fish and Wildlife Service. The U.S. Corp of Engineers may also be consulted.

The Nebraska Game and Parks Commission request in their letter of May 14, 2003 that no amendments be made to the Comprehensive Plan at this time. They recommend that the existing buffer be maintained.

Upon completion of a review of information provided by the applicant and the U.S. Corps of Engineers, it was determined that wetlands on the applicant's property are not subject to the 500 foot buffer zone, as identified in the 2025 Comprehensive Plan. The U.S. Corp of Engineers noted in their letter of June 3, 2003 that the wetlands were determined to be Category III and IV by an interagency team on October 7, 1999. Category III and IV wetlands are not specifically targeted in the Comprehensive Plan for additional protection. The 2025 Comprehensive Plan states that all wetlands are unique environmental resources and should be afforded the greatest consideration in the long range planning process. The environmental resource located on the adjacent property is designated a Category II Saline Wetlands by the Resource Categorization of Nebraska's Eastern Saline Wetlands and is subject to the 500 foot buffer zone identified in the land use plan.

COMPREHENSIVE PLAN AMENDMENT NO. 03016

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 21, 2003

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

Staff recommendation: Deferral

Proponents

1. **Peter Katt** appeared on behalf of the applicant and concurred with the staff recommendation for deferral until June 11th. The property has been reviewed by Olsson Environmental Sciences. There are 404 permits and all of the wetlands mitigation work has been completed. Apparently the confusion between the Army Corps of Engineers, Game and Parks and Fish and Wildlife is that there has been a turnover in those individual departments and the institutional memory has been lost. Katt submitted that this property should be removed from the "environmental resource" designation in that there are no saline wetlands on the site and what does remain is fresh water wetlands. The simplest thing to do is for that process to occur and reach some consensus.

Schwinn stated that he drove out to the site and, looking from Arbor Road, it appears to be mainly farm ground. Katt stated that there were some very small isolated remnants of wetlands down by the creek, and they were consolidated into one large wetland area which adjoins the parcel to the west. They have been consolidated in anticipation of the eventual industrial development on the property.

Duncan Ross of Planning staff agreed to the deferral until June 11th; however, there are other agencies involved that and the issue may not be resolved by June 11th.

There was no testimony in opposition.

Duvall moved to defer, with continued public hearing and administrative action scheduled for June 11, 2003, seconded by Larson.

Carlson stated that he will support the motion but cautioned that the staff is not sure they will have all of the information by then and it may need to be further deferred.

Motion carried 6-0: Carlson, Larson, Duvall, Taylor, Steward and Schwinn voting 'yes'; Krieser and Bills-Strand absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 11, 2003

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

Staff recommendation: Approval, as revised on June 9, 2003.

Ex Parte Communications: None.

Duncan Ross of Planning staff reviewed the revised staff recommendation. The proposal identifies mitigation to preserve wetlands and the request for industrial on the remaining portion currently designated as environmental resources. The staff recommendation includes

the mitigated and preserved wetlands that have been identified; however, it also includes and maintains a 500' buffer from wetlands categorized as Saline and Category II that are on the property to the west.

Proponents

1. Peter Katt appeared on behalf of **Dwaine Rogge**. Since the Planning Commission will lose its quorum in 10 minutes, he suggested another two week deferral to allow him to give an adequate presentation. The discussion that has been ongoing since the deferral is between the environmental professionals and it is really a discussion by the SWAT team (the Saline Wetlands Action Team), and they are still trying to reach consensus about how to treat this amendment. He believes the SWAT team is scheduled to meet tomorrow.

Steward commented that this is an important issue that should have participation from more than just five Commissioners.

Larson moved to defer two weeks, with continued public hearing and administrative action scheduled for June 25, 2003, seconded by Duvall and carried 5-0: Larson, Steward, Carlson, Duvall and Krieser voting 'yes'; Bills-Strand, Taylor and Schwinn absent.

2. Julie Godberson appeared on behalf of the **Nebraska Game and Parks Commission**, and expressed appreciation for the deferral. The Game and Parks Commission supports the SWAT team in terms of their determinations. Ted LaGrange, the wetlands scientist at Game and Parks is one of the chairs on that committee. He was not able to be out on the Rogge property and is not able to be here today. As a representative of an environmental agency that is concerned for the saline wetlands, she stated that Game and Parks does not support an amendment of any kind that would allow industrial buildings to be put on that area. Game and Parks would recommend that the area remain Category II and that the buffer remain as is.

Steward stated that it will enrich the Commission's deliberations if all of the expert testimony is before the Commission at the same time.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 25, 2003

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

Staff recommendation: Approval, as revised on June 9, 2003, maintaining the 500 foot buffer around the Category II Saline Wetland on the adjoining property to the west, and including the mitigation and preserved wetlands identified by the applicant.

Proponents

1. Peter Katt appeared on behalf of **Dwaine Rogge**, the property owner, and referred to the revised staff report, pointing out that it notes that the designations made in the Comprehensive Plan as to the environmental resource were based upon a 1994 map. It wasn't done by on-site field verifications, but rather from a 1994 map created by a coordinating group including Nebraska Game and Parks, DEQ, Army Corps of Engineers, U.S. Fish and Wildlife and U.S. Environmental Protection Agency. When the Comprehensive Plan adopted the environmental

resource designation, it recognized that this 1994 mapping was the best available at the time and that it was important to get something in place.

Katt went on to state that in addition to that 1994 map, in order to provide some additional protection, the boundaries were extended an additional 500' in the off-chance that it was not very accurate. It specifically said they were going to adopt those 500' zones, "until additional base line research can be completed".

Katt then referred to page 3 of the revised staff report. One of the key components and reasonings behind the adoption of the environmental resource was the fear of the Tiger Beetle being designated as an endangered species. One of the important points Katt wanted to point out was that when the Comprehensive Plan was adopted, it states, "a management plan for the Salt Creek Watershed and Tiger Beetle habitat should be prepared by December, 2002." Katt further pointed out that all of these other issues in terms of the designation of habitat have not transpired. We are now six months past the target date and there has been no additional effort to further delineate the environmental resource in this area.

Katt explained that the application of his client is based upon a report that was prepared by Olsson Environmental and paid for by his client. A full copy of the report was submitted to the Planning staff as supplemental material. He handed out an email from one of the individuals at Olsson that was involved in this delineation outlining the history of how and what they did with regard to this specific property. The various governmental entities received this communication. In addition to the Army Corps of Engineers' approval, which allowed the wetland mitigation to be completed, there are letters from Game and Parks and U.S. Department of Interior agreeing with the Army Corps of Engineers' determination allowing this project to proceed.

Katt believes the revised staff recommendation suggests that it is appropriate to change the environmental resource designation to industrial, except for the 500' buffer because the adjoining property has not yet been delineated or further refined. Katt suggested that continuing to include that 500' buffer on his client's property is arbitrary and capricious. The basis by which that is done is the 1994 study, which the studies done for his client on his client's property show is dramatically overstated. His client does not have the legal right to go on the other property and do any work in connection with that—presumably these governmental agencies do. Just having gone through this process, it demonstrates the importance of having accurate information in the Comprehensive Plan because it does significantly impact the speed and ability for someone to come forward and propose projects. To say the 500' environmental resource designation will not have an impact on his client as he moves forward with any specific development proposals is not true because it is one of the first comments that the staff will raise. There is no way for his client to address that issue because they cannot go onto the other property and confirm whether there are or are not any environmental resources.

Katt requested that the applicant's proposal be approved and that the environmental resource designation be removed, except for those areas on the property that will be used as mitigated wetland area.

Steward commented that the Commission received testimony two weeks ago from a representation of Game and Parks that they would continue to prefer to see no change made in the Comprehensive Plan, yet he sees in a letter dated April 17, 2000, that they acknowledge

that your client is following the mitigation guidelines, but they go on to recommend to further protect the area by the establishment of a 30' vegetated buffer around the mitigation area. Steward asked whether Katt's client has taken any of that into account? Katt's response was that the wetlands have been mitigated. The property has not been developed but he has no doubt that when it is developed, the 30' buffer between the mitigated wetlands area and the actual development will be recognized. Steward believes G&P is offering assistance in that regard. Katt pointed out that Game and Parks has changed its position from 2000 to today. Pointing out the date of that letter, Katt suggested that these are the types of things in terms of continual delay and changing rules that cause developers heartburn. But, Steward suggested that it causes concern for new information coming in all the time on unknown environmental context condition. He thinks there are arguments on both sides.

Carlson asked for clarification of the staff recommendation. Duncan Ross of Planning staff stated that the staffs recommendation is to move forward today with the recommended amendment, i.e., not as proposed by the applicant, but by adding the 500' buffer.

There was no testimony in opposition.

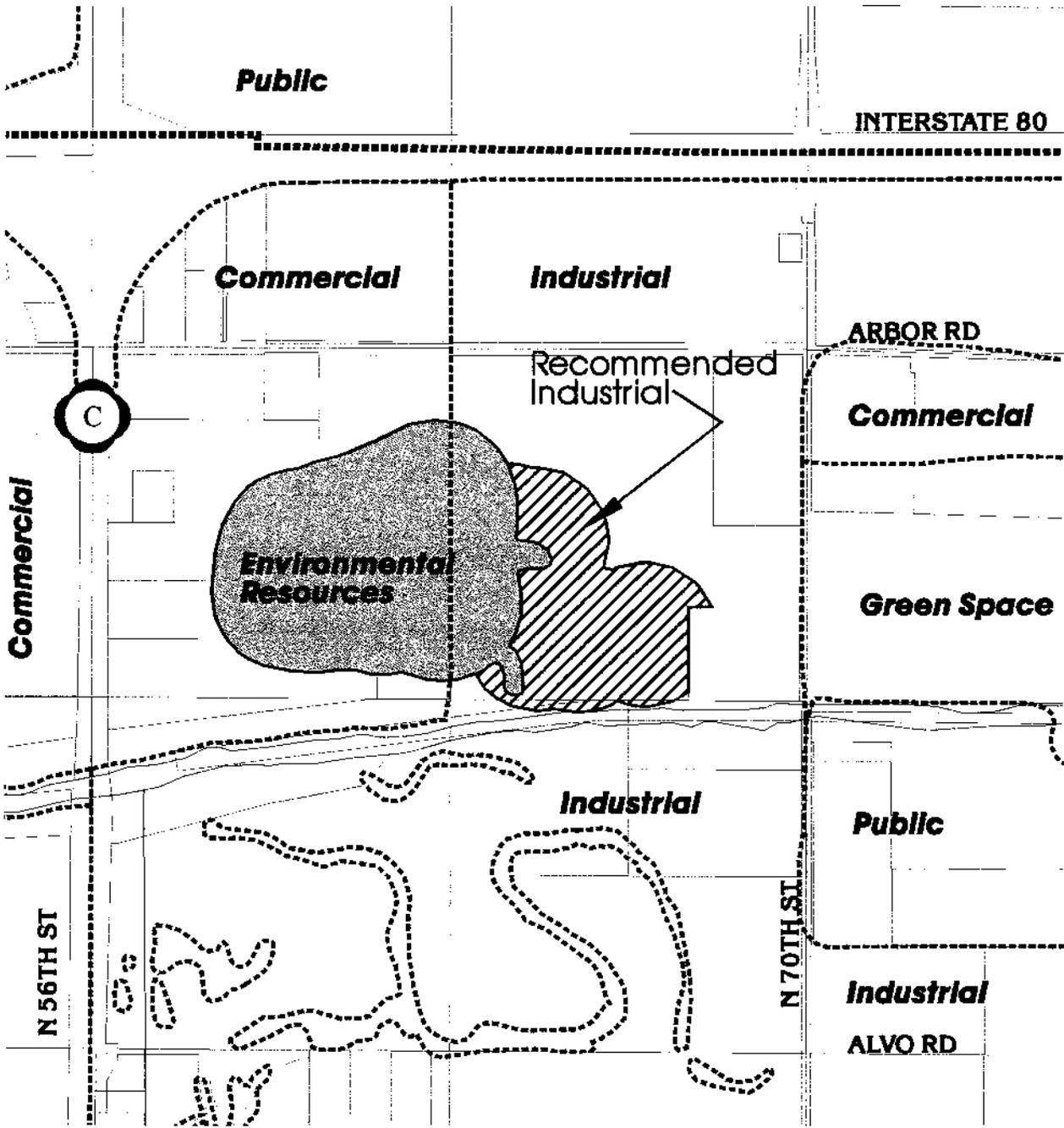
Response by the Applicant

Katt pointed out that there is no scientific basis at all for a 500' buffer—none. The point that he tried to make quickly was that Game and Parks and these other environmental agencies were supposed to have a plan in place by December, 2002. It is now June, 2003. The staff report recognizes that they continue to work on it with an indefinite date, so the question is, at what point is it fair to say “let's move on until there is some scientific basis for a 500' buffer”? Katt submitted that without any basis and scientific fact, and without any basis to believe the 1994 study is valid, goes well beyond what we should be doing. That's why he does not believe the 500' buffer is justified on any reasonable basis.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 25, 2003

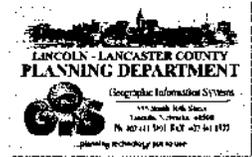
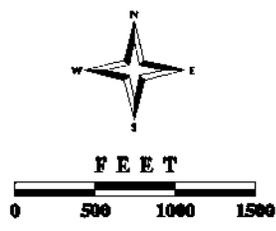
Bills-Strand moved to approve the amendment as requested, changing the buffer to a 30' vegetated buffer zone as recommended by Game and Parks, seconded by Duvall, and carried 5-3 (Bills-Strand, Larson, Krieser, Duvall and Schwinn voting 'yes'; Steward, Carlson and Taylor voting 'no').

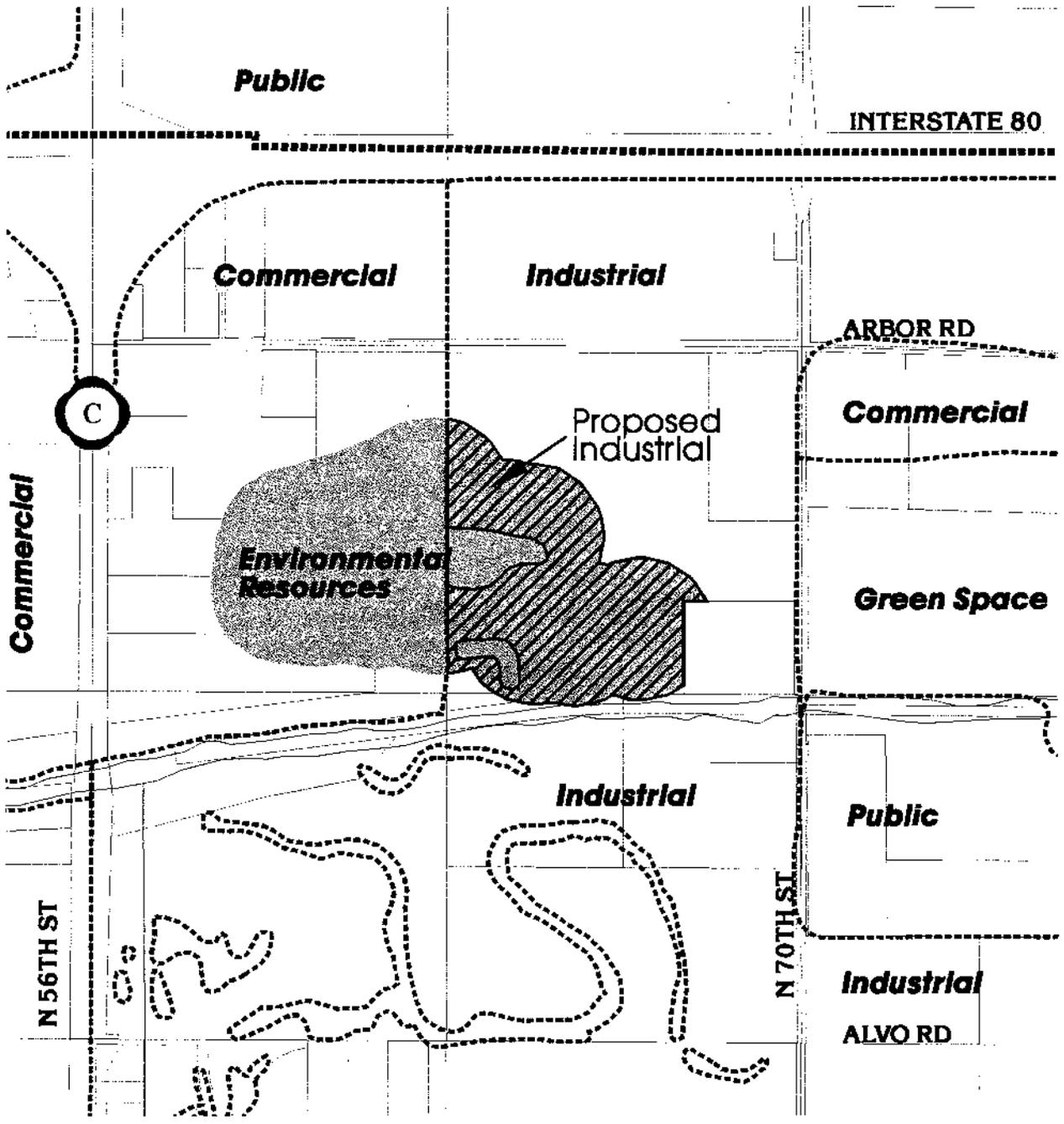


N. 70th & Arbor Rd

Recommended Amendment # 16

- Future Service Limit
- Land Use Boundary
- Res** Land Use Category
-  From Environmental Resources to Industrial
-  Environmental Resources

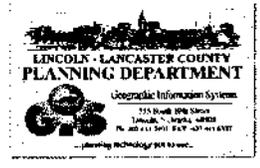
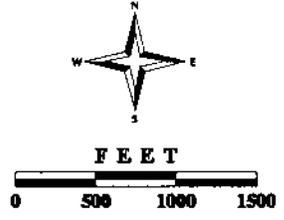




N. 70th & Arbor Rd

Applicant Proposed Amendment # 16

- Future Service Limit
- Land Use Boundary
- Res** Land Use Category
-  From Environmental Resources to Industrial
-  Environmental Resources



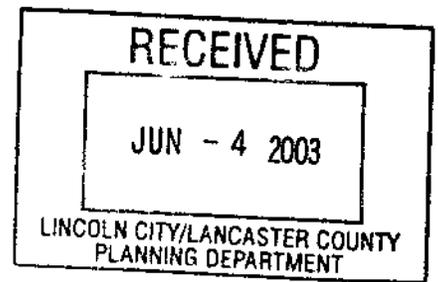
011



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE - KEARNEY
1430 CENTRAL AVENUE SUITE 4
KEARNEY, NE 68847-6856

June 3, 2003



Mr. Dwaine Rogge
850 NBC Center
Lincoln, Nebraska 68508

Dear Mr. Rogge:

This letter is in reference to your permit number NE 00-10181, authorizing the placement of fill material in 1.03 acres of Category III wetlands and .44 acre of Category IV wetland located in the SE ¼ of Section 28, Township 11 North, Range 7 East, Lancaster County, Nebraska. The wetlands were determined to be Category III and IV by an interagency team on October 7, 1999.

Although Corps of Engineers personnel have not done an on-site compliance inspection, your consulting engineer has told me that the fill work is complete and the mitigation site is constructed. He is in the process of putting together a monitoring report.

The Corps will take no further action on this project until a compliance inspection can be scheduled for later this summer or early next spring.

Sincerely,

Barbara J. Friskopp
Environmental Resource Specialist

Copy Furnished:

City of Lincoln (Ross)



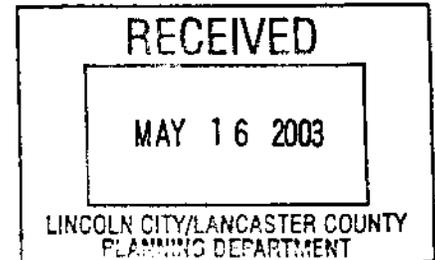
Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641 / Fax: 402-471-5528 / www.outdoornebraska.org

14 May 2003

Duncan Ross
Lincoln-Lancaster Planning Department
555 So. 10th St
Lincoln NE 68508



Dear Mr. Ross,

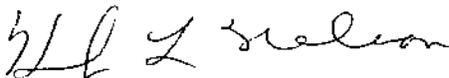
Please make reference to your memorandum dated 28 April 2003 requesting comments on the 2003 Annual Review of the Comprehensive Plan and Amendment #16 (North 70th & Arbor Road). We have reviewed the additional information provided to you by the applicant and offer these comments.

The proposed amendment appears to be based on a change in the categorization of a saline wetland from a Category II (2) to a Category III (3). We are concerned that Mr. Rogge does not understand the process of categorizing saline wetlands or the implications of changing the category will have on this ecosystem. The process of categorizing saline wetlands is done by a team of well-trained wetland biologists who are familiar with the ecology of these saline wetland systems and whom have set guide lines designed to protect these ecosystems. This team, referred to as the Saline Wetland Action Team, is an assembly of different individuals from several agencies including Army Corps of Engineers (USACE), Nebraska Game & Parks Commission, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and Nebraska Department of Environmental Quality. Any changes in saline wetland categorization must be determined by this team in order to be fair and consistent with other determinations made for other land developers. Mr. Rogge will need to contact the Army Corps of Engineers Regulatory office in Omaha Nebraska to ask for the land to be re-categorized by the team. Mr. Rogge's attorney has indicated concurrence by USACE however there is no concurrence noted by the Saline Wetland Action Team.

Further, we stand by our previous letter dated 27 March 2003 requesting that no amendments be made to the Comprehensive Plan at this time. These saline wetland ecosystems are highly imperiled and need to be protected from any further destruction by development. The current 500-foot buffer, which protects the saline wetlands at this site, and helps prevent fresh water and runoff contaminants from polluting the wetland. We recommend this buffer be maintained.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact our office at 402-471-5444.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kirk Nelson".

Kirk Nelson
Assistant Director

Cc: Frank Albrecht (NGPC)
Mark Brohman (NGPC)
Ted LaGrange (NGPC)
Mike Fritz (NGPC)
Rick Schneider (NGPC)
Julie Godberson (NGPC)
Steve Anschutz (USFWS)
Mike Rabbe (USACE)
Terry Hickman (NDEQ)
Larry Long (EPA)

Peter Katt

From: Craig Mielke [cmielke@oaconsulting.com]
Sent: Tuesday, June 10, 2003 12:15 PM
To: knelson@ngpc.state.ne.us
Cc: John_Cochnar@fws.gov; john.bender@ndeq.state.ne.us; jgodberson@ngpc.state.ne.us; rstuth@ngpc.state.ne.us; tlagran@ngpc.state.ne.us; OA GW Domain:"albrecht@ngpc.state.ne.us"@OA GW Domain.GWIA", <barbara.j.friskopp@usace.army.mil>, <randolph.m.rabbe@usace.army.mil>
Subject: New Information Regarding Rogge Property, N70th Street, Lincoln, NE

Kirk,

Here is a run-down of the information that was gathered for the property we spoke about on the phone yesterday evening.

The Rogge site (N70th Street & Arbor Road, Lincoln, NE) was delineated over a period of months in 1999. An agency site visit was held on October 7, 1999, and attended by John Peterson (COE), Frank Albrecht (NGPC), John Cochnar (USFWS), John Bender (NDEQ), and Kurt Twedt (NGPC). The agencies agreed that the wetlands provided very little functionality, and basically agreed with OA's determination that the wetlands were CAT III and CAT IV, instead of CAT II that was mapped on the "Resource Categorization of Nebraska's Eastern Saline Wetlands".

A permit application was submitted, and subsequently the COE sent out a PCN to the agencies asking for review and comment. Both the USFWS and the NGPC responded agreeing to the CAT III and CAT IV determination stating that Mr. Rogge had followed the "Mitigation Guidelines" documentation for mitigation (which was proposed to be CAT III on-site). The COE issued a permit on April 18, 2000, effectively making the final interagency determination on the saline nature of the wetlands on-site.

Mr. Rogge has completed the work authorized by the permit and constructed the mitigation wetland area on-site. The mitigation area is currently being re-worked to increase the amount of area available for emergent wetland establishment, and a monitoring report will be submitted this fall.

I realize that the official SWAT determination process may not have been followed, but I have been informed by NGPC staff that the COE is the lead agency when it comes to re-categorization calls, and as such, the permit that was issued should serve as that call. Therefore, we are requesting a letter from the NGPC, to the City of Lincoln/Lancaster County Planning Commission, describing the events related to this site, and the approvals granted by the agencies for this site. This letter will assist them in making a determination whether Mr. Rogge's site should be subject to the Salt Creek Tiger Beetle buffer zone, proposed in the new Comprehensive Plan.

I have copies of all the letters/correspondences referenced in this e-mail, and can provide you with copies of them if you would like.

Also, to the other agency's staff reading this e-mail, if you feel I have mis-represented anything conveyed to me by your agency, please let me know. I just want to get everyone on the same page.

Thank you Kirk for your prompt response to this matter.

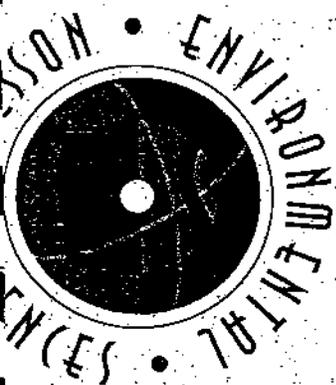
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JURISDICTIONAL WETLAND EVALUATION
&
CONCEPTUAL MITIGATION PLAN

ROGGE DEVELOPMENT
70TH STREET & ARBOR ROAD

LANCASTER COUNTY, NEBRASKA



PREPARED FOR
DWAINE W. ROGGE

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P.O. Box 81307

Lincoln, Nebraska 68501-1307

OES PROJECT NO. 99-0708.02

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JANUARY 2000

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Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370
Phone: 402-471-0641 / Fax: 402-471-5528 / <http://www.ngpc.state.ne.us/>

April 17, 2000

Lisa Peterson
US Corps of Engineers, Regulatory Office
8901 South 154th Street, Suite 1
Omaha, NE 68138-3621

Re: Application # 2000-10181; Nationwide Permit #26, Industrial development located in the SE 1/4 S28, T11N, R7E ; Dwaine Rogge, applicant.

Dear Ms. Peterson:

Nebraska Game and Parks Commission staff have reviewed the information for the proposal identified above. The project will impact 1.47 acres of PEMA (0.44 Cat. IV Freshwater wetlands on non-saline soil) and 1.03 acres of Cat. III wetlands on saline soil).

The eastern Nebraska saline wetlands form a regionally unique wetlands complex located in floodplain swales and depressions. This complex has been subject to extensive losses due to expansion of the city of Lincoln and agricultural activities. Eastern Nebraska saline wetlands provide habitat for a variety of wildlife species, and are particularly important as migrational habitat for shorebirds. The mudflats, usually most prevalent during the spring, provide abundant invertebrate foods for migrating birds. Further, saline wetlands are the sole habitat for salt marsh tiger beetle which is State listed as Endangered. Also, saltwort, which is State listed as Endangered, is dependent on this unique type of wetland.

Therefore, we are concerned with any further development in this ecologically significant area. We would prefer to see restoration and preservation of the wetlands in this area. However, the applicant has followed the *Mitigation Guidelines for Nebraska's Eastern Saline Wetlands* and has proposed to mitigate wetland impacts, on-site, with 3.75 acres of Cat. III Freshwater wetlands on saline soils. To further protect this area, we strongly recommend the establishment of a 30' vegetated buffer around the mitigation area. Staff is willing to provide assistance in seeding recommendations for the vegetated buffer.

We appreciate the opportunity to comment on this project. If you have any questions, please contact me at (402)471-5422.

Sincerely,
Frank J. Albrecht
Frank J. Albrecht
Environmental Analyst Supervisor

CC: John Cochnar (USFWS)
Terry Hickman (NDEQ)

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

April 17, 2000



Ms. Lisa Peterson
U.S. Army Corps of Engineers
Nebraska Regulatory Office-Wehrspan
8901 South 154th Street, Suite 1
Omaha, NE 68138-3621

RE: Pre-construction Notification NE 2000-10181: Dwaine Rogge, Lancaster County, Nebraska

Dear Ms. Peterson:

The U.S. Fish and Wildlife Service (Service) has reviewed Pre-construction Notification (PCN) NE 2000-10181, dated March 24, 2000, regarding a request by Mr. Dwaine Rogge for a Department of the Army (DA) permit under the U.S. Army Corps of Engineer's (Corps) Nationwide Permit (NWP) program (i.e., NWP 26) pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344 *et seq.*). The applicant is proposing to fill 1.47 acres of emergent wetlands for an industrial development adjacent to Salt Creek in Lancaster County (i.e., SE 1/4 of Section 28, Township 11 North, Range 7 East). The wetlands that would be impacted by the proposed project are located in the Saline Wetland Complex (SWC) of eastern Nebraska. Of the 1.47 acres of wetlands that would be impacted, 1.03 acres are Category III and are on saline soils and the remaining 0.44-acre of wetlands are Category IV on non-saline soils. The PCN further identified that the applicant would be mitigating for the 1.47 acres of wetland impacts via the creation of 3.75 acres of Category III wetlands on site. A Service representative accompanied representatives for the applicant, the Corps, Nebraska Game and Parks Commission, and Nebraska Department of Environmental Quality on an October 7, 1999, site inspection.

On March 27, 1996, the Corps authorized work in wetlands associated with the proposed project via DA permit NE 1996-10076. This previously authorized activities impacted 0.27-acre of wetlands. These wetland impacts were mitigated for through the creation of 0.40-acre of wetlands. The 0.27-acre of wetland impacts were not included with the proposed 1.47 acres of impacts. Thus, overall wetland impacts caused by the proposed project would be 1.74 acres.

AUTHORITY

The following comments on the proposed activity have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and the Endangered