MEMO

Date: **November 27, 2012**

To: **Governance Committee**

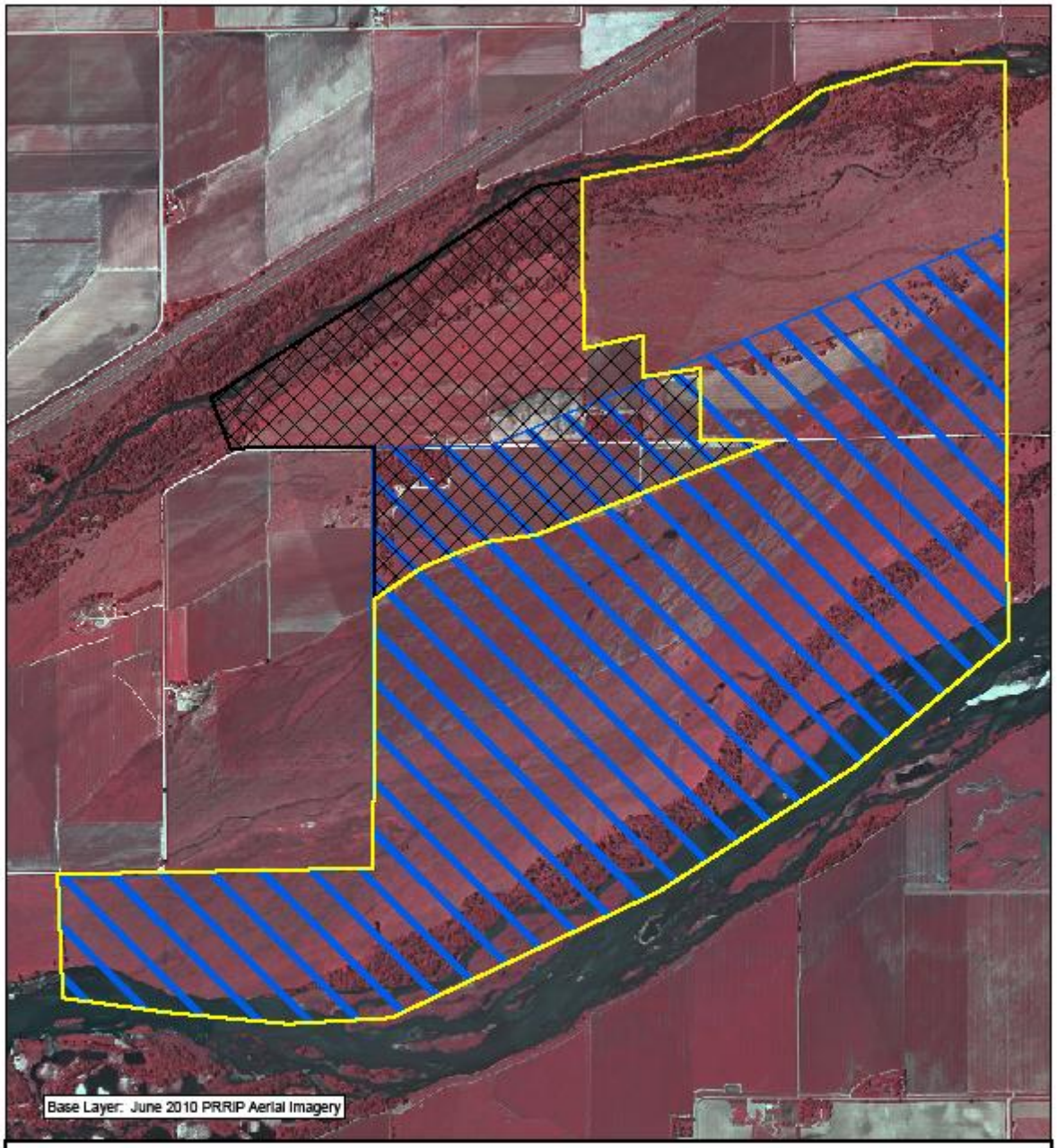
From: **Bruce Sackett, Land Specialist**

Ref: **Tract 1219**

Staff is requesting the extinguishment of an easement from 1982 in favor of the Platte River Whooping Crane Maintenance Trust in exchange for a first right of refusal to the Platte River Whooping Crane Maintenance Trust should the program sell this property in the future. The easement applies to a portion of the Binfield tract #2010004. (Area in blue hashed zone inside the yellow boundary) The original easement is included in this memo.

No money is involved in the exchange. The final papers are being drawn by the attorneys for both sides. We ask for the approval of this exchange and the authority to sign the needed papers to make the transfer occur. This will be a recombination of rights severed before PRRIF purchased the land and will be complex habitat with all the fee simple absolute land rights after this easement is extinguished.

Staff recommends approval of this action.



Legend

- Offering Boundary
- Part of tract NOT offered
- PRWCT Conservation Easement

N

0.5 Miles

TRACT 0918
OFFERING MAP

Date: 10/05/10
By: JDB

Figure 1

82-002833

COPY

EASEMENT GRANT

In consideration of Ten Dollars ($10.00), the exchange of property and other valuable consideration, receipt of which is hereby acknowledged, BINFIELD CORPORATION, a Nebraska Corporation, Grantor, does hereby grant, bargain, sell and convey unto PLATTE RIVER WHOOPING CRANE MAINTENANCE TRUST, INC., a Nebraska non-profit corporation ("Grantee"), a perpetual easement over and upon the following-described real estate:

TRACT I

Lot One (1) Island, in the Northeast Quarter (NE¼), Section Sixteen (16); Lots One (1), Two (2), and Three (3) Island, Section Fifteen (15); Lot Two (2) Island, (sometimes referred to as the Southeast Quarter of the Southeast Quarter (SE¼SE¼), Section Ten (10); the Northwest Quarter of the Northeast Quarter (NW¼NE¼), and Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7), Section Eleven (11), All Township Nine (9) North, Range Eleven (11), and also that Part of the East Half (E½) of Section Ten (10) and Part of the Southeast Quarter (SE¼) of Section Two (2), and Part of the Northwest Quarter (NW¼) of Section Eleven (11), All Township Nine (9), North, Range Eleven (11), West of the 6th P.M., Hall County, Nebraska, more particularly described as follows:

All that Part of the East Half (E½) of Section Ten (10), the Northwest Quarter (NW¼) of Section Eleven (11), and the Southeast Quarter (SE¼) of Section Two (2), lying South of a line which commences 1,976.25 ft. South of the Northwest Quarter of the Northeast Quarter (NW¼NE¼) of said Section Ten (10), thence running Northeasterly along a line which forms an angle in the Northeast quadrant of 67°44'30" a distance of 5,457.04 ft. to a point on the South line of Section Two (2); thence Easterly along and upon the South line of said Section Two (2), a distance of 232.95 ft. to the South Quarter (S¼) corner of the Southeast Quarter (SE¼) of said Section Two (2); thence proceeding Easterly along the South line of Section Two (2), a distance of 425.19 ft., thence deflecting left 41°10'33" and running in a Northeasterly direction a distance of 3,078.45 ft. to a point on the East line of Section Two (2), All Township Nine (9) North, Range Eleven (11), West of the 6th P.M., Hall County, Nebraska, as shown on plat of Benjamin & Associates dated 3/19/82 hereto attached, marked Exhibit A and made a part hereof.

7-9-82

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TRACT II

A Tract of Land comprising a part of the Northeast Quarter (NE¼) of Section Ten (10); part of the Southeast Quarter (SE¼) of Section Three (3); part of the South Half (S½) of Section Two (2); and part of the Northwest Quarter of Section Eleven (11), all in Township Nine (9) North, Range Eleven (11) West of the 6th P.M. in Hall County, Nebraska, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter (NE¼) of said Section Ten (10); thence Easterly along the North line of said Section Ten (10), a distance of One Thousand Three Hundred Eighty-Eight and Sixty-Three Hundredths (1,388.63) feet; thence deflecting left 20°16'53" and running Northeasterly, a distance of Seven Thousand Sixty-Three and Nine Tenths (7,063.9) feet to the East line of said Section Two (2); thence Southerly along the East line of said Section Two (2), a distance of Four Hundred Twenty-Three and Forty-Five Hundredths (423.45) feet; thence deflecting right 47°36'52" and running Southwesterly, a distance of Three Thousand Seventy-Eight and Forty-Five Hundredths (3,078.45) feet to the South line of said Section Two (2); thence Westerly along the South line of said Section Two (2), a distance of Four Hundred Twenty-Five and Nineteen Hundredths (425.19) feet to the South One Quarter (S¼) corner of said Section Two (2); thence Westerly along the South line of said Section Two (2), a distance of Two Hundred Thirty-Two and Ninety-Five Hundredths (232.95) feet; thence deflecting left 21°30'30" and running Southwesterly, a distance of Five Thousand Four Hundred Fifty-Seven and Four Hundredths (5,457.04) feet to the West line of the Northeast Quarter (NE¼) of said Section Ten (10); thence Northerly along the West line of said Northeast Quarter (NE¼), a distance of One Thousand Nine Hundred Seventy-Six and Twenty-Five Hundredths (1,976.25) feet to the place of beginning and containing 249.193 acres more or less, together with all accretions to the above-described Tracts I and II (said real estate and all accretion thereto being hereafter referred to as the "Premises"),

upon the following terms and conditions:

I. COVENANTS RELATING TO THE ENTIRE PREMISES (TRACT I and II).

A. Grantor hereby grants and conveys unto Grantee an easement of ingress and egress over and upon the above-described Premises for the following purposes:

1. To inspect the Premises to determine whether the covenants and conditions contained in this Easement Grant are being performed and complied with by the Grantor;

2. To conduct scientific tests, inspections, experiments, investigations and research relating to the maintenance and enhancement of habitat for Whooping Cranes, Sandhill Cranes and other migratory birds, provided that such activities do not unreasonably interfere with the permitted agricultural uses hereinafter described;

3. To manage vegetation and other wildlife habitat in the Platte River, such management practices to include plowing, discing, burning, cutting, use of chemical herbicides, dredging, damming, diversion of water, and such other management practices as Grantee deems reasonably necessary or advisable for the preservation, maintenance and enhancement of the Platte River and the islands and sandbars therein as habitat for Whooping Cranes, Sandhill Cranes and other migratory birds. All responsibility for the costs and expenses of carrying out the aforesaid management activities and obtaining the necessary local, state and federal permits therefor shall be borne by the Grantee. Grantee's use will not unreasonably interfere with Grantor's use of the Premises.

B. There shall be no mining or other extraction of sand, gravel, or other materials.

C. There shall be no hunting of Whooping Cranes or Sandhill Cranes.

D. There shall be no hunting of other migratory waterfowl, except by the present owners of the Premises and their invited guests. There shall be no leasing of waterfowl hunting rights after 1987 without the prior written consent of the Grantee.

E. Notwithstanding the provisions of Subparagraph D, immediately above, there shall be no hunting or trapping of any kind, if at any time or from time to time the Grantee reasonably determines that such hunting or trapping might be detrimental to the value or utility of the Premises as habitat for migrating Whooping Cranes or Sandhill Cranes.

F. Except for hunting rights referred to in Subparagraph 1.D and 1.E hereof, there shall be no other public access to the Premises without the prior written consent of the Grantor.

G. Except as herein specifically permitted, there shall be no development of the Premises for industrial, commercial, recreational or residential purposes.

H. There shall be no operation of motorized vehicles or equipment on the Premises, from February 15 to May 1 of each year and anytime that whooping cranes occupy the Premises except as necessary to carry out the activities which are expressly permitted herein.

I. The Grantor shall cooperate with and assist the Grantee in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges relating to the Premises which the Grantee shall deem necessary or desirable for the management, maintenance or development of the Premises for the purposes enumerated in Subparagraph 1.A hereof. All expenses necessarily incurred by the Grantor in the performance of the covenants contained in this Subparagraph 1 shall be paid by the Grantee.

J. The Grantor shall pay all regular and special real estate taxes levied against the Premises.

II. COVENANTS RELATING TO TRACT I. (SOUTH PORTION-PERPETUAL GRASS LANDS)

A. Tract I of the Premises is legally described as follows:

> Lot One (1) Island, in the Northeast Quarter (NE¼), Section Sixteen (16); Lots One (1), Two (2), and Three (3) Island, Section Fifteen (15); Lot Two (2) Island, (sometimes referred to as the Southeast Quarter of the Southeast Quarter (SE¼SE¼), Section Ten (10); the Northwest Quarter of the Northeast Quarter (NW¼NE¼), and Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7), Section Eleven (11), All Township Nine (9) North, Range Eleven (11), and also that Part of the East Half (E½) of Section Ten (10) and Part of the Southeast Quarter (SE¼) of Section Two (2), and Part of the Northwest Quarter (NW¼) of Section Eleven (11), All Township Nine (9) North, Range Eleven (11), West of the 6th P.M., Hall County, Nebraska, more particularly described as follows:
>
> > All that Part of the East Half (E½) of Section Ten (10), the Northwest Quarter (NW¼) of Section Eleven (11), and the Southeast Quarter (SE¼) of Section Two (2), lying South of a line which commences 1,976.25 ft. South of the Northwest Quarter of the Northeast Quarter (NW¼NE¼) of said Section Ten (10), thence running

Northeasterly along a line which forms an angle in the Northeast quadrant of 67°44'30" a distance of 5,457.04 ft. to a point on the South line of Section Two (2); thence Easterly along and upon the South line of said Section Two (2), a distance of 232.95 ft. to the South Quarter (S¼) corner of the Southeast Quarter (SE¼) of said Section Two (2); thence proceeding Easterly along the South line of Section Two (2), a distance of 425.19 ft., thence deflecting left 41°10'33" and running in a Northeasterly direction a distance of 3,078.45 ft. to a point on the East line of Section Two (2), All Township Ten (10) North, Range Eleven (11), West of the 6th P.M., Hall County, Nebraska, as shown on plat of Benjamin & Associates dated 3/19/82 hereto attached, marked Exhibit A and made a part hereof, together with all accretions to the above-described premises (said real estate and all accretions thereto being referred to as "Tract I").

B. Grantor shall occupy and use Tract I only for the following agricultural uses: Livestock pasturing, haying, and native grass seed production (hereinafter referred to as "Permitted Uses").

C. The Grantor shall manage Tract I in a way that will promote the maintenance and enhancement of warm season native grass and forb species. Management practices for the Permitted Uses shall maintain the diversity and productivity of native natural grass and forb species. The following mangement practices shall be permissible, unless at any time, in the reasonable opinion of the Grantee, they adversely affect the quality or utility of Tract I as habitat for Whooping Cranes, Sandhill Cranes, or other migratory birds; rotation grazing programs; burning to control cool season grasses and brush; application of animal waste fertilizer, mechanical weed control; interseeding of specific native grass or forb species to promote native grass species diversity and vigor. Other management practices, including the use of herbicides to promote warm season grass diversity and vigor or to control noxious weeds, irrigation or application of chemical fertilizers to maintain or enhance the diversity, vigor or productivity of warm season grass species, shall be permissible if agreed upon in advance in writing between the Grantor and the Grantee.

D. Existing roads and paths on Tract I may be maintained and repaired, but no new roads may be built without the prior written consent of the Grantee. Non-agricultural uses of vehicles off roads, will not be allowed if Grantee reasonably determines it will adversely affect the purposes of the Easement.

E. The following management practices shall be prohibited upon Tract I:

1. Plowing, discing, or any similar activity that would disturb the native grass cover provided that such activity shall be permitted if necessary to construct stock watering ponds which in the aggregate occupy an area of not to exceed five acres;
2. Construction or maintenance of any drainage system that might lower the water table on any part of Tract I.

F. No structures, buildings or facilities shall be constructed upon Tract I except corrals and stock watering facilities with associated sun shades and perimeter and cross fences, necessary for the management of livestock pasturing on Tract I.

III. COVENANTS RELATING TO TRACT II (NORTH TRACT-RESTRICTED AREA)

A. Tract II is legally described as follows:

A Tract of Land comprising a part of the Northeast Quarter (NE¼) of Section Ten (10); part of the Southeast Quarter (SE¼) of Section Three (3); part of the South Half (S½) of Section Two (2); and part of the Northwest Quarter of Section Eleven (11), all in Township Nine (9) North, Range Eleven (11) West of the 6th P.M. in Hall County, Nebraska, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter (NE¼) of said Section Ten (10); thence Easterly along the North line of said Section Ten (10), a distance of One Thousand Three Hundred Eighty-Eight and Sixty-Three Hundredths (1,388.63) feet; thence deflecting left 20°16'53" and running Northeasterly, a distance of Seven Thousand Sixty-Three and Nine Tenths (7,063.9) feet to the East line of said Section Two (2); thence Southerly along the East line of said Section Two (2), a distance of Four Hundred Twenty-Three and Forty-Five Hundredths (423.45) feet; thence deflecting right 47°36'52" and running Southwesterly, a distance of Three Thousand Seventy-Eight and Forty-Five Hundredths (3,078.45) feet to the South line of said Section Two (2); thence Westerly along the South line of said Section Two (2), a distance of Four Hundred Twenty-Five and Nineteen Hundredths (425.19) feet to the South One Quarter (S¼) corner of said Section Two (2); thence Westerly along the South line of said Section Two (2), a distance of Two Hundred Thirty-Two and Ninety-Five Hundredths (232.95) feet; thence deflecting left

21°30'30" and running Southwesterly, a distance of Five Thousand Four Hundred Fifty-Seven and Four Hundredths (5,457.04) feet to the West line of the Northeast Quarter (NE¼) of said Section Ten (10); thence Northerly along the West line of said Northeast Quarter (NE¼), a distance of One Thousand Nine Hundred Seventy-Six and Twenty-Five Hundredths (1,976.25) feet to the place of beginning and containing 249.193 acres more or less, together with all accretions to the above-described premises, said real estate and all accretions thereto being referred to as "Tract II").

B. In addition to the uses permitted on Tract I, the Grantor may occupy and use Tract II for production of agricultural crops and animal husbandry.

C. Permissible crop management practices on Tract II shall be those customarily used in agricultural crop production, including but not limited to plowing; discing; chemical fertilization; chemical pest and weed control; and irrigation.

D. Permissible animal husbandry practices on Tract II shall be those customarily used in the husbandry of sheep, cattle and hogs, or such other livestock operations that the Grantor may wish to pursue, except that the size of such operations will not unreasonably interfere, as determined by the Grantee, with the easement rights on Tract I. For purposes of establishing a scale of permitted animal husbandry operations on Tract II, the Grantor may establish an open lot cattle feeding operation of up to Five Hundred (500) head or a hog operation of Sixty (60) sows, and/or One Thousand Five Hundred (1,500) feeder hogs. The above livestock numbers may be exceeded if the livestock involved are confined to buildings that do not occupy more than Two and One-Half (2½) acres of real estate.

E. The construction and maintenance of residences and other buildings, structures and facilities necessary for the permitted agricultural operations on Tracts I and II shall be permitted. In addition to the main farm residence, a total of not more than five (5) residences may be constructed and maintained on the following-described real estate:

Quarter (NW1/4NE1/4), Section Ten (10), and the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4), Section Two (2), both Township Nine (9) North, Range Eleven (11), West of the 6th P.M., Hall County, Nebraska,

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except that no more than two (2) of the said six (6) houses shall be occupied by a person or persons other than Binfield family members. No new residences, except those constructed to replace existing residences, shall be constructed after the year 2050.

F. Drainage systems which cause a lowering of the water table on Tract I are prohibited.

G. Drainage over and onto Tract I, which contains toxic materials which the Grantee reasonably determines may be detrimental to the value or utility of Tract I as habitat for Whooping Cranes, Sandhill Cranes or other migratory birds, is prohibited.

IV. ADDITIONAL COVENANTS RELATING TO THE ENTIRE PREMISES (TRACT I AND II)

A. This Easement is granted under and in accordance with the laws of the State of Nebraska, incluidng but not limited to the Nebraska Conservation and Preservation Easements Act (Sections 76-2,111 to 76-2,118 inclusive, R.R.S. 1943).

B. All the covenants and conditions herein contained shall run with the land, and shall be binding upon and shall inure to the benefit of the Grantor and the Grantee and their respective heirs, personal representatives, successors and assigns, in perpetuity, and shall be enforceable at law or in equity.

C. Until January 1, 2050, if Grantor, its successors or assigns, desires to sell Tract I or Tract II or both, or any part thereof, it shall first notify Grantee in writing of such intention to sell and of the bona fide asking price for such property or properties, and the Grantee is given the exclusive option for a period of twenty (20) days after receipt of such notice to purchase such property by notifying Grantor in writing of its intention to purchase said property accompanied by a bank draft or cashier's check for 15% of the asking price. If the option is so exercised, the parties agree that within sixty (60) days after the exercise of option, sale shall be completed upon delivery to

IJ

82-002833

Grantee of a Warranty Deed and Abstract of Title showing Grantor to be the owner of a good and sufficient marketable title, free of liens and taxes, and simultaneous therewith, Grantee shall deliver to Grantor payment of the balance of the purchase price. Grantor is given the option of providing a title insurance policy in lieu of an Abstract of Title. The option given to Grantee herein shall not apply to the sale of any of the described property at public sale or auction or any sale to a Binfield family member, but Grantor agrees to notify Grantee in writing of any proposed public sale or auction of such property at least ten (10) days prior to any proposed sale.

TO HAVE AND TO HOLD the above and foregoing Easement and all of the tenements and hereditaments thereunto pertaining unto the Grantee and its successors and assigns forever.

DATED this 18th day of ~~April~~ May, 1982, at Grand Island, Hall County, Nebraska.

BINFIELD CORPORATION, A Nebraska Corporation, Grantor

By Kent A. Binfield
President

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

Now on this 18 day of ~~April~~ May, 1982, personally appeared before me, a Notary Public in and for said County, Kent A. Binfield, President of BINFIELD CORPORATION, to me personally known to be the identical person who signed the foregoing Easement Grant, and he acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said Corporation for the purposes therein set forth.

Witness my hand on the day and year first above written.

William H. Riley
Notary Public

GENERAL NOTARY-State of Nebraska
WILLIAM H. RILEY
My Comm. Exp. Aug. 30, 1983

82—002833

ACCEPTANCE

PLATTE RIVER WHOOPING CRANE MAINTENANCE TRUST, INC., a Nebraska Nonprofit Corporation, hereby accepts the foregoing Easement Grant.

Dated this 15th day of ~~April~~ May, 1982.

PLATTE RIVER WHOOPING CRANE
MAINTENANCE TRUST, INC., A
Nonprofit Corporation, Grantee,

By [signature]
~~Executive Director~~ President

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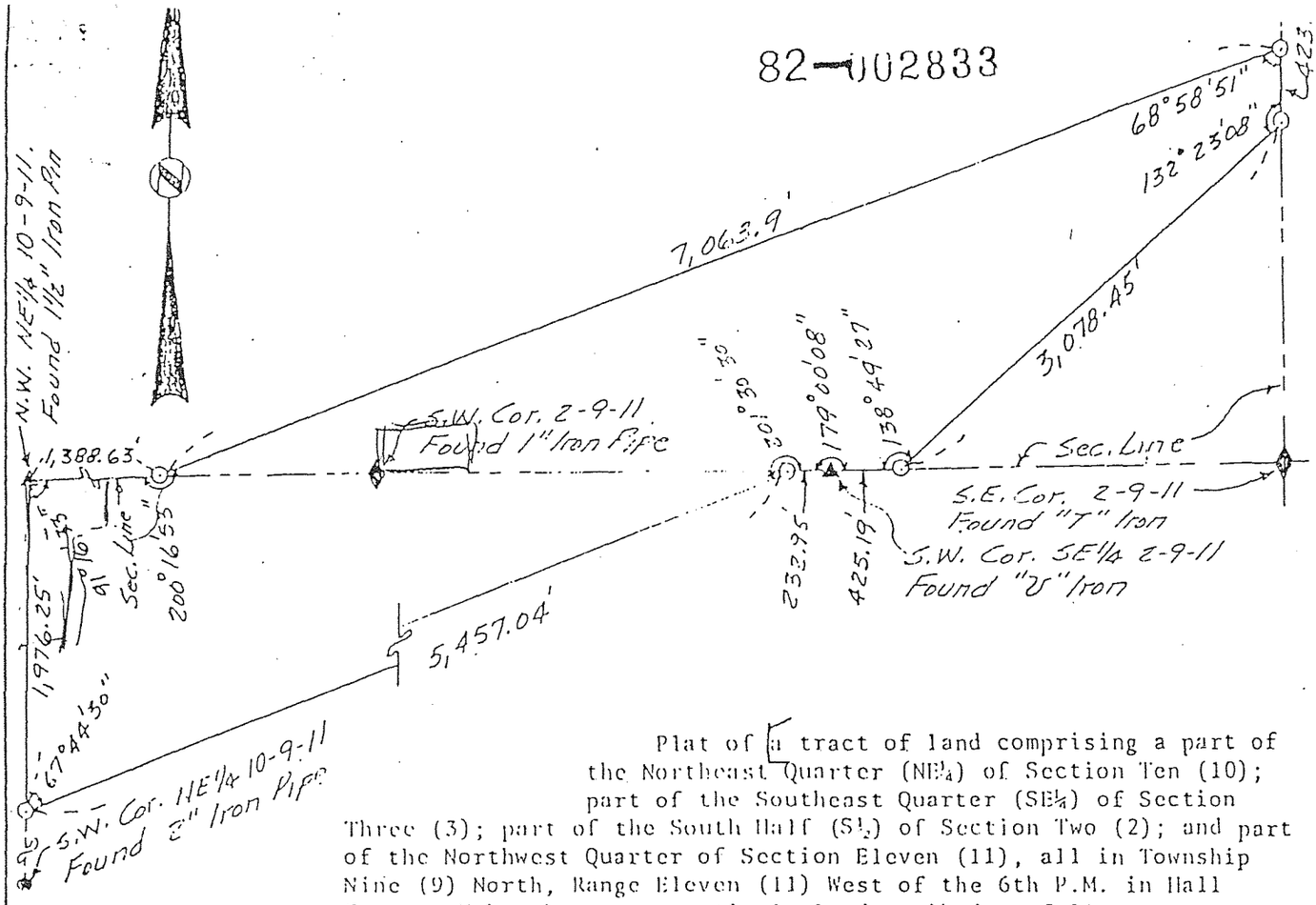
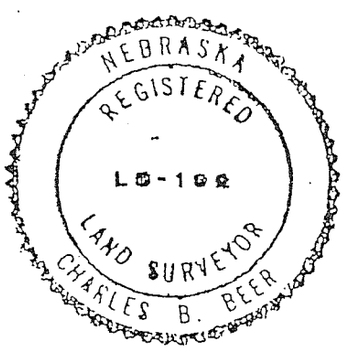


Plat of a tract of land comprising a part of the Northeast Quarter (NE¼) of Section Ten (10); part of the Southeast Quarter (SE¼) of Section Three (3); part of the South Half (S½) of Section Two (2); and part of the Northwest Quarter of Section Eleven (11), all in Township Nine (9) North, Range Eleven (11) West of the 6th P.M. in Hall County, Nebraska, more particularly described as follows:

Beginning at the northwest corner of the Northeast Quarter (NE¼) of said Section Ten (10); thence easterly along the north line of said Section Ten (10), a distance of One Thousand Three Hundred Eighty Eight and Sixty Three Hundredths (1,388.63) feet; thence deflecting left 20° 16' 53" and running northeasterly, a distance of Seven Thousand Sixty Three and Nine Tenths (7,063.9) feet to the east line of said Section Two (2); thence southerly along the east line of said Section Two (2), a distance of Four Hundred Twenty Three and Forty Five Hundredths (423.45) feet; thence deflecting right 47° 36' 52" and running southwesterly, a distance of Three Thousand Seventy Eight and Forty Five Hundredths (3,078.45) feet to the south line of said Section Two (2); thence westerly along the south line of said Section Two (2), a distance of Four Hundred Twenty Five and Nineteen Hundredths (425.19) feet to the South One Quarter (S¼) corner of said Section Two (2); thence westerly along the south line of said Section Two (2), a distance of Two Hundred Thirty Two and Ninety Five Hundredths (232.95) feet; thence deflecting left 21° 30' 30" and running southwesterly, a distance of Five Thousand Four Hundred Fifty Seven and Four Hundredths (5,457.04) feet to the west line of the Northeast Quarter (NE¼) of said Section Ten (10); thence northerly along the west line of said Northeast Quarter (NE¼), a distance of One Thousand Nine Hundred Seventy Six and Twenty Five Hundredths (1,976.25) feet to the place of beginning and containing 249.193 acres more or less.

I hereby certify that to the best of my knowledge and belief, the accompanying plat is from an accurate survey of the described property made under my supervision.



Charles B. Beer

Charles B. Beer L.S. 192

BENJAMIN & ASSOCIATES, INC., - ENGINEERS & SURVEYORS - P.O. BOX 339 - GRAND ISLAND, NEBRASKA

Scale 1" = 1,000'

MARCH 19, 1982

EXHIBIT A

PORTION OF EASEMENT OFFERED FOR SALE - 8.22 Ac.

TRACTS I (Restrictive Easement)

TRACT II Less restrictive easement

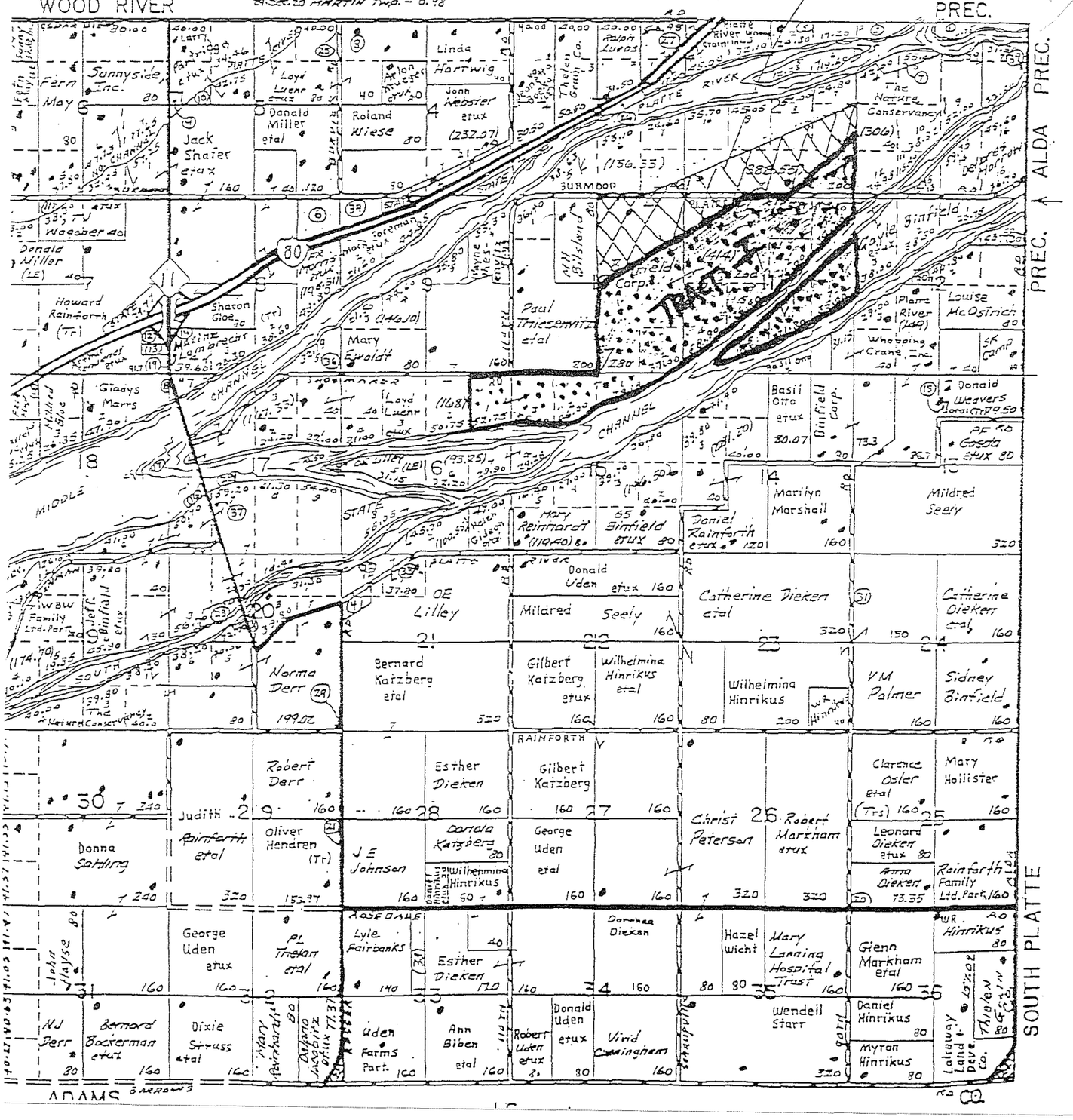
OOD RIVER SO. PART MARTIN E. PART

N R-11W OF 6TH P.M.

.1 Donovan Foote, etal - 7.60
.1 Walter Lvers, etal - 7
.20 OE Lilley, etal. (LE) - 21.10
.21 Duane Westcott, etux - 10
.22 Jerry Kingsley, etux - 42
.28 Erwin Lillienthal, etux - 37.71
.1 STATE - 13.71
.4 Charles Riesland, etal - 0.94
.3 KNECHT SUB
.5 Oswald Sorensen - 9.29
.7 Douglas Cooner, etux - 3.5
.7 BABEL SUB

15. Sec. 7 Wood River Rural, Inc. - 3.48
14. Sec. 5 SE Dist. Co. - 4.55
15. Sec. 13 Donald Weavers, etux - 0.5
16. Sec. 18 Ray, DeMars, etux - 4.39
17. Sec. 19 John Sjaas, etal - 1
18. Sec. 19 HALL Co. - 0.62
19. Sec. 8 Galen Lamorecht, etux - 0.92
20. Sec. 25 Leonard Dieken - 4.65
21. Sec. 24 Victor Lamorecht, etux - 6.03
22. Sec. 32 HALL Co. - 2.62
23. Sec. 20 Neal Sidders, etux - 11.48
24. Sec. 36 HALL Co. - 2.91
25. Sec. 5 Evangelical Assn. of N.A., (Tr) - 1
26. Sec. 3 Nicholas Weber, etal - 5.50
27. Sec. 3 LD Wojtaszewski - 46.98
28. Sec. 17 Roberta Stewart - 14.5
29. Sec. 20 MARTIN Twp. - 0.98

30. Sec. 12 Clayton Meyer, etux - 38
31. Sec. 24 Myron Hinrikus, etux - 10
32. Sec. 21 Helen Gideon - 1.06
33. Sec. 21 William Van Meter, etux - 3.84
34. Sec. 9 Larry Wojtaszewski - 40.76
35. Sec. 23 Daniel Hinrikus, etux
36. Sec. 8 Galen Lambrecht, etux - 32
37. Sec. 17 Neal Sidders, etux
38. Sec. 33 Muckels Aerial Inc. - 20
39. Sec. 1 Platte River Whooping Crane Main. Tr. - 57.6

TRACT II

lessee: Larry Wojtaszewski
Stan Rehtr