

TO: Zoning Board of Adjustment
FROM: Matt Wyant, County Planning Director
DATE: March 15, 2024

RE: Case #ZV-2024-03

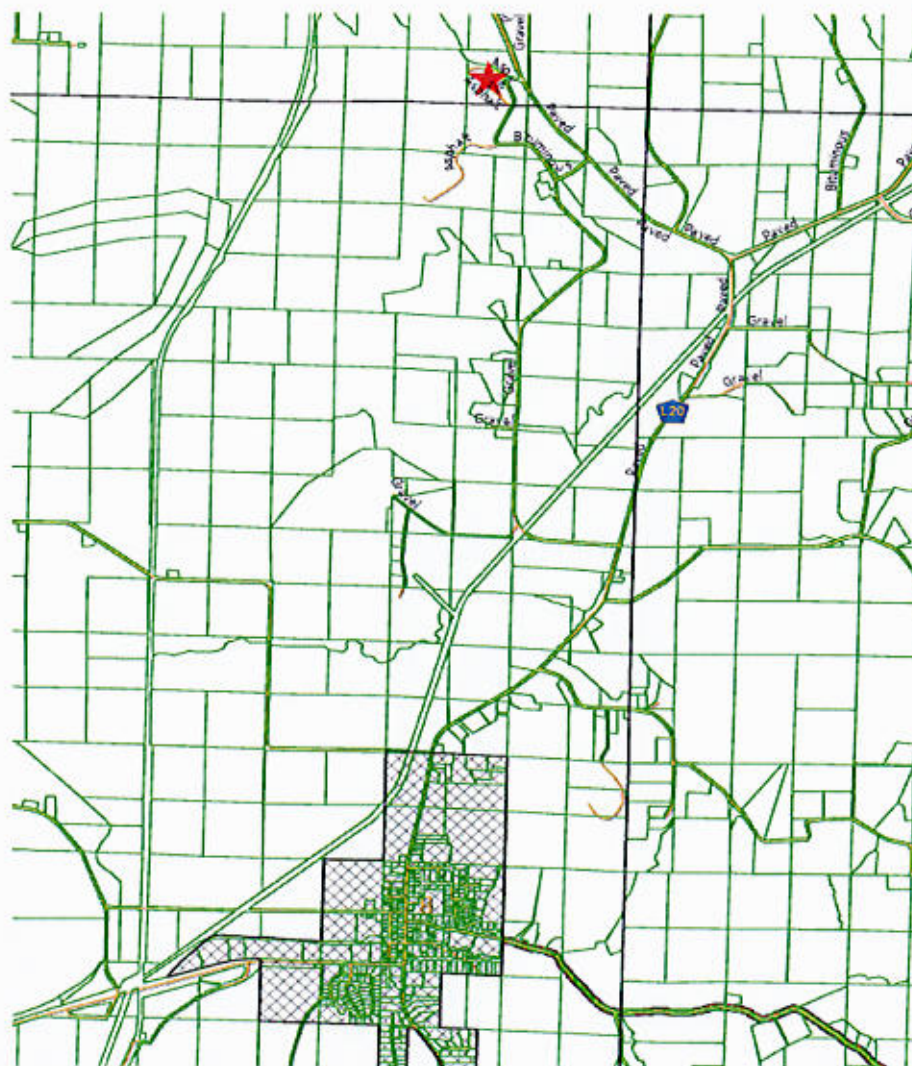
REQUEST: A fifty (50') foot front yard setback variance to allow the construction of ground mounted solar arrays with a front yard setback of 10' in lieu of 60' in a Class A-1 (Open Space Conservation) District.

LOCATION: 28072 Ski Hill Loop

Rockford Township

36-77-44 PT SE SW COMM SW COR E TO SE COR N333' NW328' WLY227' NW265'
WLY TO W LINES1039.5' TO POB

The subject property is approximately 3 miles north of city limits of Crescent at 28072 Ski Hill Loop.



PROPERTY OWNER: Pottawattamie County Conservation Board

APPLICANT: Red Lion Renewables

REPRESENTED BY: Terry Dvorak

GENERAL INFORMATION: Red Lion Renewables installed 4 solar array panels at Mt. Crescent Ski Area prior to securing a building permit. The setback from the front property line for the solar arrays is 60', however the solar arrays are installed 10' from the front property line. The contractor has requested a front yard setback variance of 50' to allow the solar arrays to remain where they are.

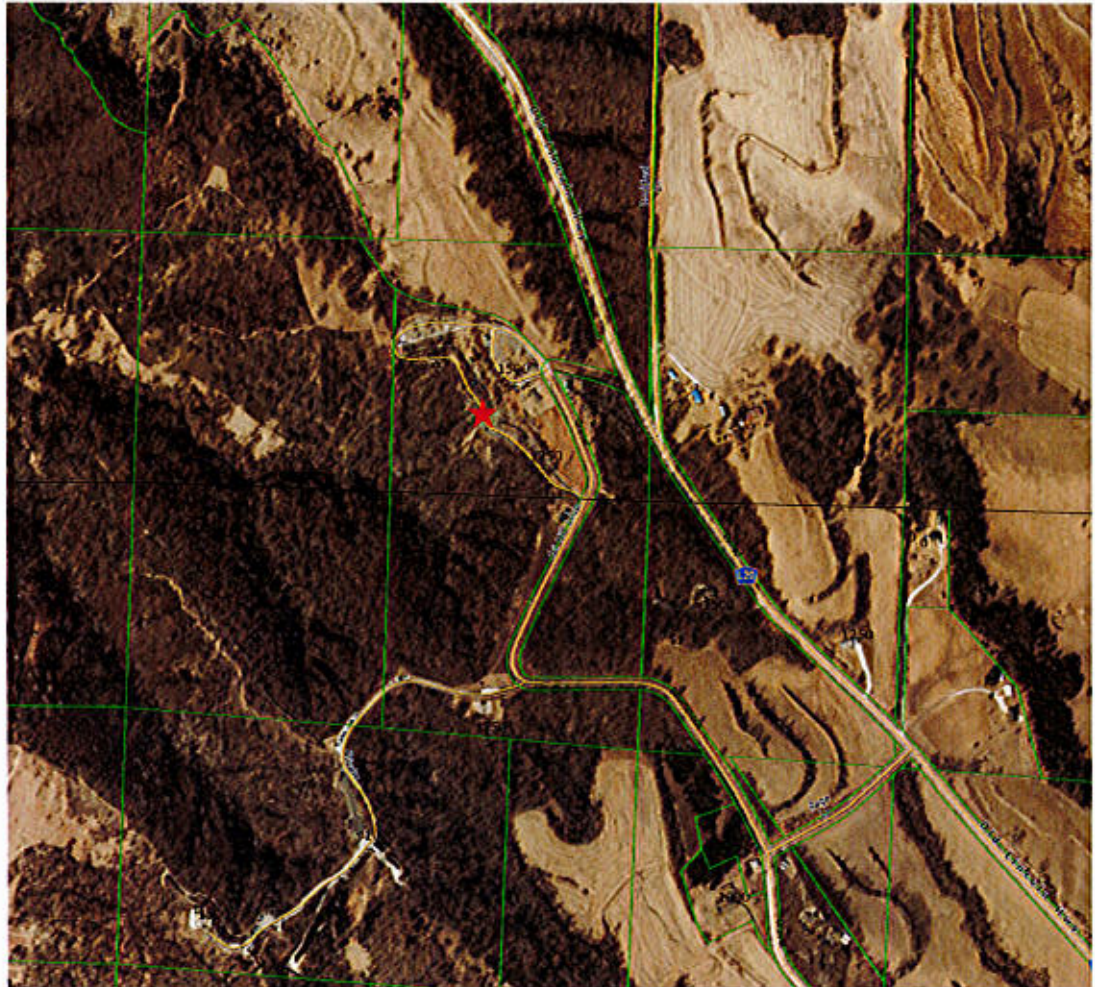
Attachment #1 is the applicant's submittals.

SITE REVIEW: The 21.55 acre parcel is part of the 106 acre Mt. Crescent Ski area and part of Hitchcock Nature Center, a 1,500 acre nature preserve.



AREA REVIEW:

The use of properties in the area are a combination of residential, conservation and agricultural.



ZONING:

The subject property is located in a Class A-1 (Open Space and Conservation) District. This section of Ski Hill Loop is a county road which fully lies within the park property. No other properties are accessible to Ski Hill Loop other than County park property.

Section 8.096.030.02 of the County Code states "No variance from the terms of this Ordinance shall be granted unless the Board specifically finds":

- .02 The Board shall have the power to hear and decide appeals for variances from the specific terms of this Ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship, and provided, that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

No variance from the terms of this Ordinance shall be granted unless the Board is satisfied that granting the variance:

- A. Is necessary to alleviate a demonstrable hardship or difficulty so great as to warrant the variance;
- B. Will not merely serve as a convenience to the applicant;
- C. Will not impair the general purpose and intent of the regulations and provisions contained in this Ordinance;
- D. Will not impair an adequate supply of light and air to adjacent properties;
- E. Will not increase the hazard from fire and other damages to said property;
- F. Will not diminish the value of land and buildings in the County;
- G. Will not increase the congestion and traffic hazards on public roads; and
- H. Will not otherwise impair the public health, safety and general welfare of the inhabitants of the County.
- I. Is not based on the nonconforming use of neighboring lands, structures or buildings in the same district, and the permitted or nonconforming use of lands, structures, or buildings in other districts is not grounds for the issuance of the variance.
- J. Will not, under any circumstances, allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

FLOOD HAZARD: The Flood Insurance Study prepared by the Federal Emergency Management Agency for the County designates in the Flood Insurance Rate Maps that the property as being in a Zone X-Areas of minimum flooding.



RED LION
RENEWABLES

Case # ZV-2024-03
Attachment 1

February 8, 2024

Pottawattamie County Zoning and Permitting

RE: Variance Request for ground mounted solar array at 28072 Ski-Hill Loop inside Hitchcock Nature Center Park.

Dear sir/madam,

We would like to request a variance for approval of the location of the ground mounted solar array located at 28072 Skill Hill Loop inside of Hitchcock Nature Center Park.

The solar array is located in the open field west of the road as you near the end of the road at the campgrounds. The land it is being placed in is a managed patch of prairie and currently has a weather station on it.

We propose a variance from the 60' buffer from the property line to optimize the solar production, the demonstration visibility of the solar array to campers and park patrons, minimize shade impact from trees, provide additional safety provisions, and leave more efficient area for future road maintenance.

Due to the terrain and elevations, the current location poses no impacts to public safety nor maintenance of the roadway or ditch. Because of this terrain, the depth of the road ditch, and height of bank between the ditch and property line, the current location actually provides greater benefits at its current location instead of moving it further away from the property line.

The roadside ditch along this stretch of the road is 2-5' below the road surface followed by a 8' hill to the property line. Anyone running off the road isn't going to make it to the property line. If a vehicle doesn't stop with the bottom of the ditch and continues up the steep 8' bank it would then get hung up on the top of hill where the property line starts. Being that this is a dead end road within the park, there is little to any chance of a vehicle gathering enough speed to make it to or past the property line. If it did, and surpassed the 10' buffer between the property line and solar array (25' from the road), the solar array would provide a barrier from the vehicle continuing toward the house and potential for striking children playing in the yard or unsuspecting occupants within the house. If it did make it up the bank and were able to maintain control, there is 10' buffer left for maintenance on the property to allow them to drive north to the residence driveway or south to exit at grade with the road without having to traverse the hill/ditch combination. So, unlike a cul-de-sac or along a continuous highway with a low ditch, an errant driver whom loses control and hits the accelerator instead of the brake isn't going to harm someone unaware in an occupied space. Anyone outside in the array field would be more protected by the embedded steel columns and able to quickly move between rows to avoid a crash and injury as they would be just walking down the road or hiking along the ditch.

The solar array is further away than other existing structures along this section of Ski Hill Loop (the residence approximately 300' south and utility poles and utility electrical equipment.

The only reasonable access to clear the ditch/bank combination is either 250' from the south of the solar array through the field or 200' from the north end of the solar array through the residence



RED LION
RENEWABLES

driveway. Otherwise it is highly unlikely and almost impossible for someone to errantly drive into the solar array at its current location.

As for maintainability, as noted above, the ditch and bank make this area unusable for roadside maintenance. The south portion of the field has ample layout space and is at a grade to be accessible for equipment and materials for any road maintenance along this stretch of road. Should the array be moved to the 60' buffer requirement, due to the terrain drop off to the west, the solar array would be converted to 8 shorter rows extending south and limit the space available for laydowns. Instead of a more efficient relatively square laydown area, it would leave a long skinny laydown area that would be more difficult to maneuver because of the ditch and bank terrain.

Below is a list of facts and reasons the current location is more safe and maintainable:

Safety

1. Ditch is 2-5' deep off of roadway
2. Hill/bank is 6-8' from the bottom of the ditch to the property line
3. 10' buffer between property line on top of the bank to the solar array + 15' ditch/bank to roadway = 25' from the roadway to solar array
4. Ski Hill Loop dead ends at the campgrounds 300' from the array
5. 5-10' closer than residence and utility equipment along the road
6. Solar array act as barrier to driving into house or children play area of yard
7. Open structure. No surprise to unsuspecting occupants inside of an enclosed building.
8. No opportunity to accidentally hit unsuspecting bi-standers whether from speeding or incapacitation from drug/alcohol/medication influence.
9. Adds further protection to residence from intentional damage

Maintenance of Roads

1. Location is not accessible for maintenance due to deep ditch and high bank
2. Leaves 10' buffer from top of hill and 25' from road way for vehicles/mowers/tractors to travel for maintenance on flat ground
3. In open field with entry/exit at grade entry south 250' south or at residence driveway 200' north that would be practical usage for more efficient road maintenance laydown usage
4. Ample laydown for maintenance equipment/materials to south that is at an accessible grade and more efficient use for materials/equipment laydown.

In summary, as you can see there are a variety of reasons that the current location provides a greater benefit, is safer, and more maintainable where it is and the need for a larger buffer distance does not provide any reasonable benefits for which the 60' buffer is intended (public safety and road maintenance). Thus, due to these factors noted above, the existing conditions nearby, the terrain, and practical lack of hazards, we request a variance to allow the solar array to remain at the current location with a 10' buffer from the property line.

Thank you for your consideration.

Sincerely,

Terry Dvorak
CEO



driveway. Otherwise it is highly unlikely and almost impossible for someone to errantly drive into the solar array at its current location.

As for maintainability, as noted above, the ditch and bank make this area unusable for roadside maintenance. The south portion of the field has ample layout space and is at a grade to be accessible for equipment and materials for any road maintenance along this stretch of road. Should the array be moved to the 60' buffer requirement, due to the terrain drop off to the west, the solar array would be converted to 8 shorter rows extending south and limit the space available for laydowns. Instead of a more efficient relatively square laydown area, it would leave a long skinny laydown area that would be more difficult to maneuver because of the ditch and bank terrain.

Below is a list of facts and reasons the current location is more safe and maintainable:

Safety

1. Ditch is 2-5' deep off of roadway
2. Hill/bank is 6-8' from the bottom of the ditch to the property line
3. 10' buffer between property line on top of the bank to the solar array + 15' ditch/bank to roadway = 25' from the roadway to solar array
4. Ski Hill Loop dead ends at the campgrounds 300' from the array
5. 5-10' closer than residence and utility equipment along the road
6. Solar array act as barrier to driving into house or children play area of yard
7. Open structure. No surprise to unsuspecting occupants inside of an enclosed building.
8. No opportunity to accidentally hit unsuspecting bi-standers whether from speeding or incapacitation from drug/alcohol/medication influence.
9. Adds further protection to residence from intentional damage

Maintenance of Roads

1. Location is not accessible for maintenance due to deep ditch and high bank
2. Leaves 10' buffer from top of hill and 25' from road way for vehicles/mowers/tractors to travel for maintenance on flat ground
3. In open field with entry/exit at grade entry south 250' south or at residence driveway 200' north that would be practical usage for more efficient road maintenance laydown usage
4. Ample laydown for maintenance equipment/materials to south that is at an accessible grade and more efficient use for materials/equipment laydown.

In summary, as you can see there are a variety of reasons that the current location provides a greater benefit, is safer, and more maintainable where it is and the need for a larger buffer distance does not provide any reasonable benefits for which the 60' buffer is intended (public safety and road maintenance). Thus, due to these factors noted above, the existing conditions nearby, the terrain, and practical lack of hazards, we request a variance to allow the solar array to remain at the current location with a 10' buffer from the property line.

Thank you for your consideration.

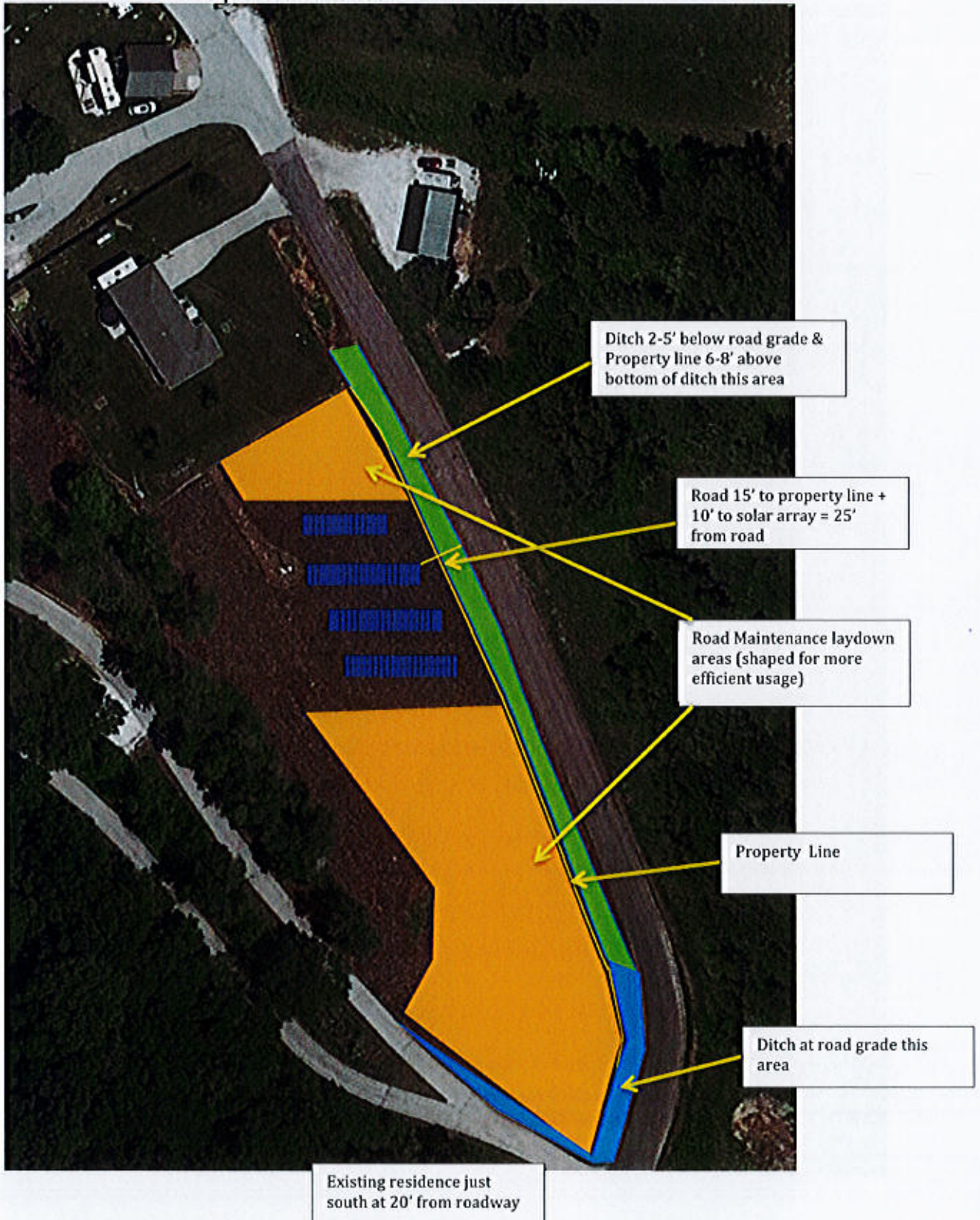
Sincerely,

Terry Dvorak
CEO



RED LION RENEWABLES

Current Location – requested variance

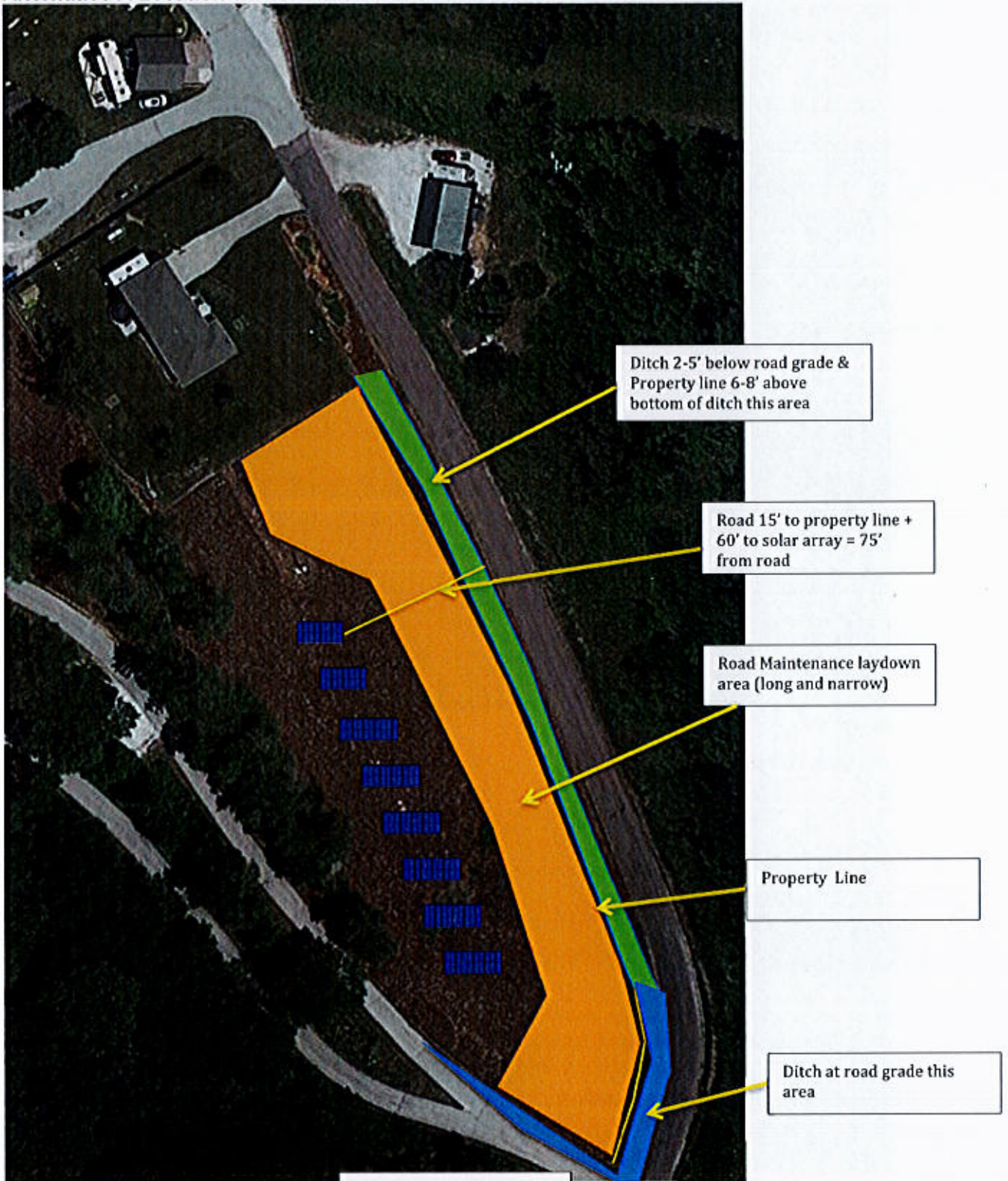




RED LION

RENEWABLES

Alternative A Location – if variance denied



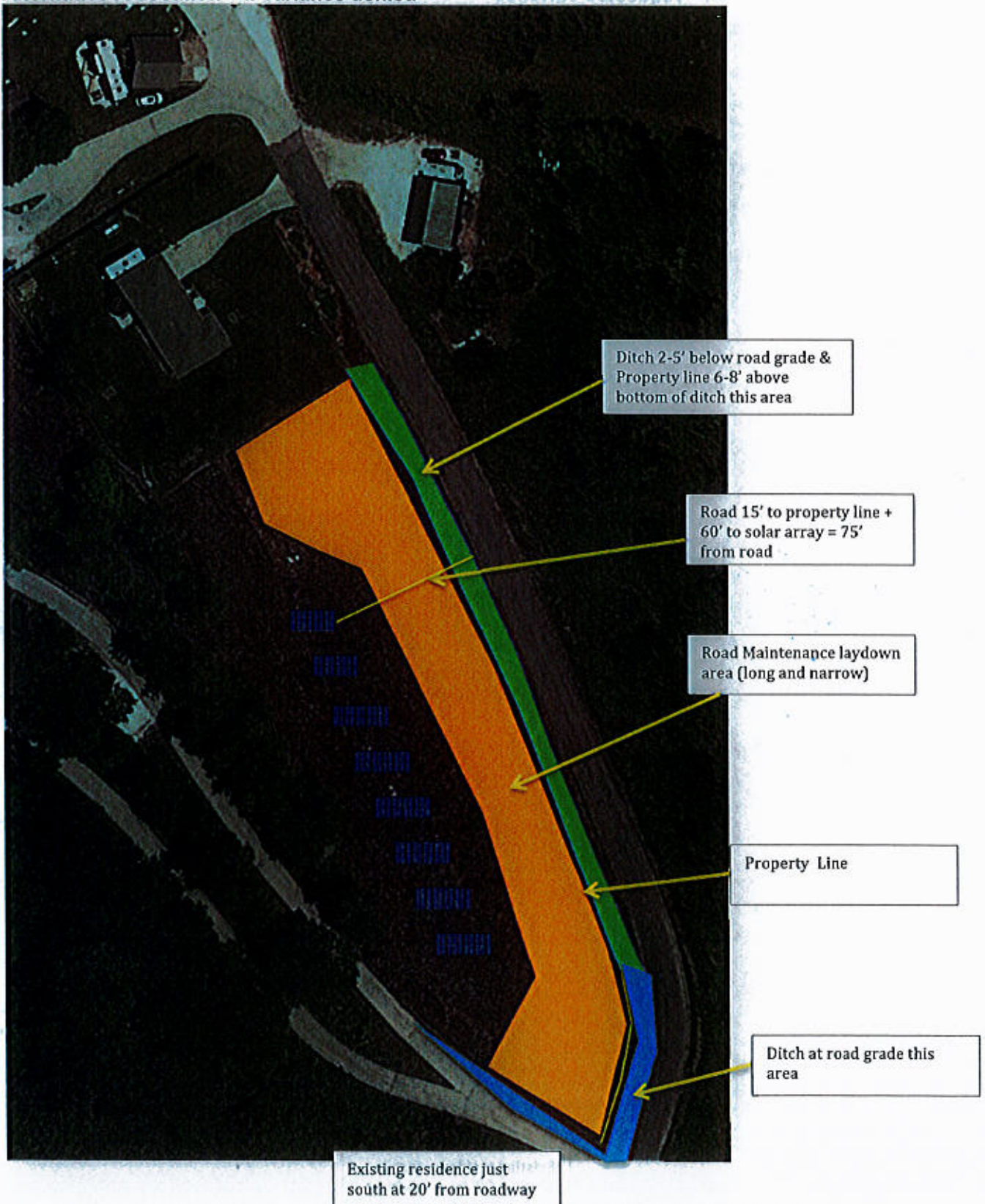
Existing residence just south at 20' from roadway



RED LION

RENEWABLES

Alternative A Location – if variance denied

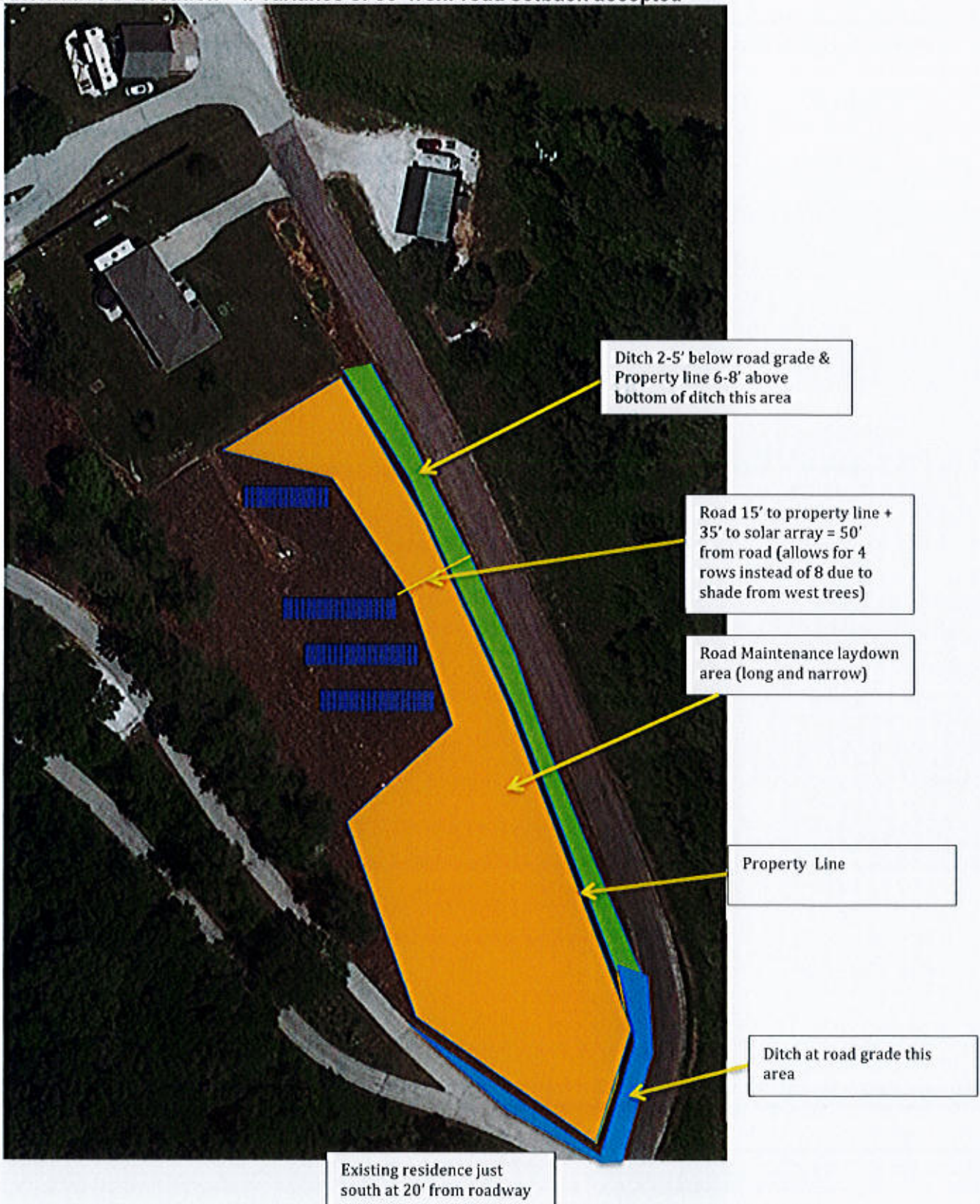




RED LION

RENEWABLES

Alternative B Location – if variance of 50' from road setback accepted



TO: Zoning Board of Adjustment
FROM: Matt Wyant, County Planning Director
DATE: March 15, 2024

RE: Case #ZV-2024-04

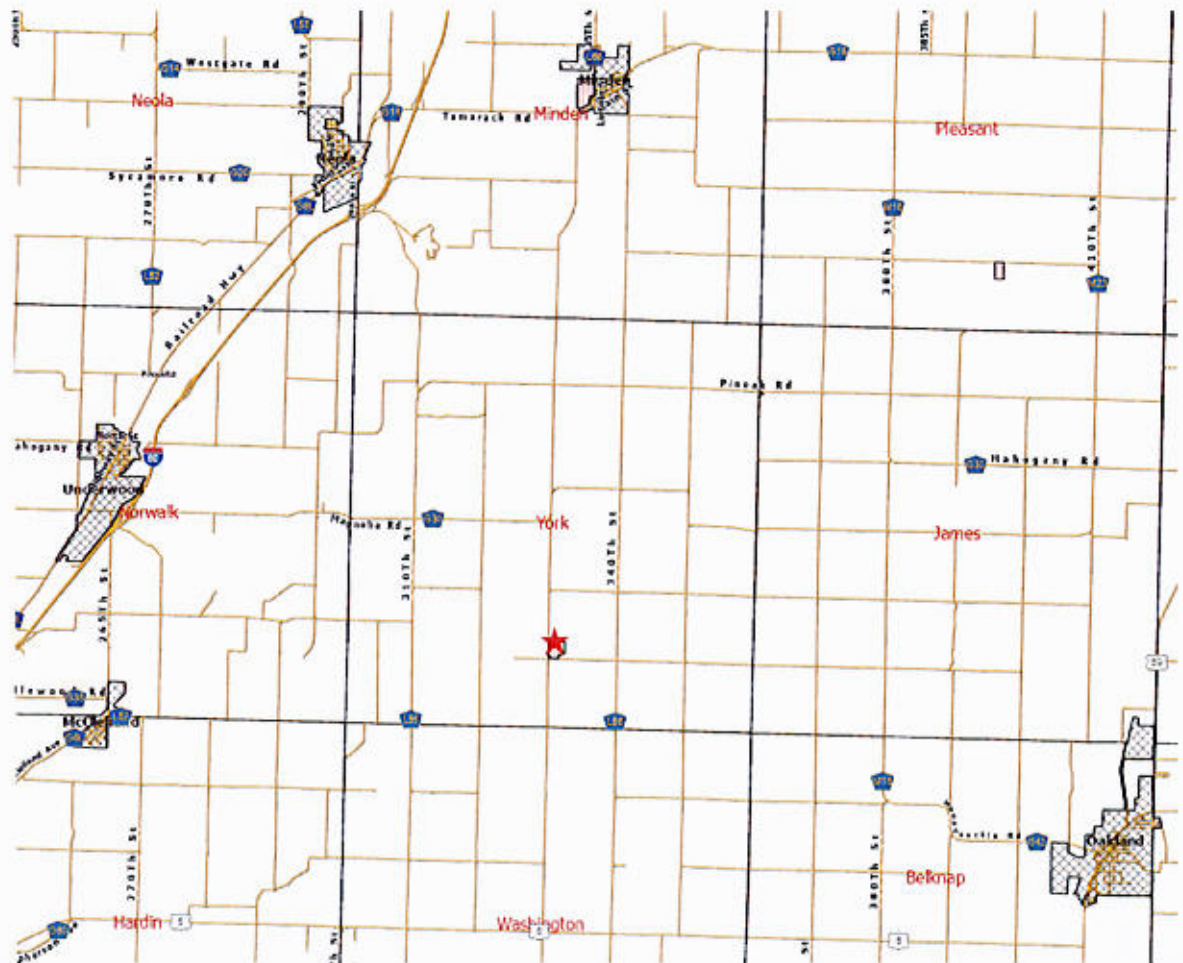
REQUEST: A twenty five (25') foot front yard setback and street side yard setback variance in lieu of 75' and a lot size variance of 1.5 acres variance in lieu of two (2) acres to allow the construction of ground booster pump station for potable water in a Class A-2 (Agricultural Production) District.

LOCATION: 330th Street and Juniper Road

York Township

27-76-41 PT SW SW EXC COMM 810.61'E SW COR TH E472.87' N384.52' W241.52'
SW138.89' W142.77' S275' TO POB

The subject property is in close proximity to the towns of Minden, Neola, Underwood, McClelland and Oakland.



PROPERTY OWNER: Regional Water (purchase agreement with Larson Wonder Valley LLC)

APPLICANT: Regional Water

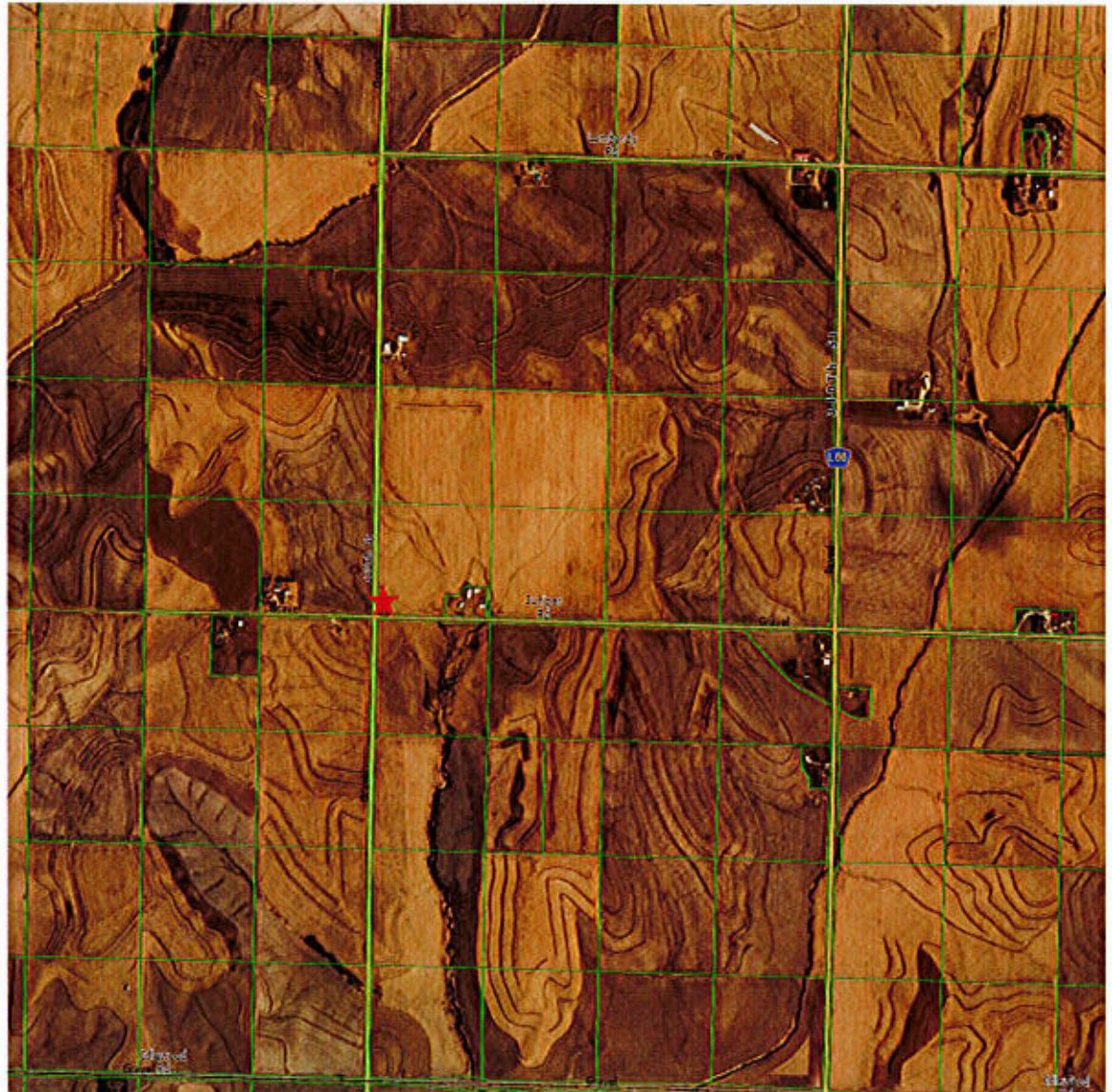
REPRESENTED BY: DGR Engineering

GENERAL INFORMATION: Regional Water is proposing a potable rural water delivery system. A booster pump station is a necessary component for the system to function and be capable of delivering rural water. **(SEE ATTACHED RENDERINGS)**

SITE REVIEW: The proposed 147'6" x 147'6" site is currently agricultural land.



AREA REVIEW: The majority of properties in the area are agricultural with a few rural residential properties.



ZONING:

The subject property is located in a Class A-2 (Agricultural Production) District. The current standards for the A-1 District are as follows:

8.010.070 SETBACK REQUIREMENTS: The setback requirement for buildings and structures in a Class A-2 District shall be as follows: (Ordinance #2004-14/07-01-04)

- .01 The front yard setback shall be a minimum of fifty (50) feet. (Ordinance #2004-14/07-01-04)
- .02 The side yard setback shall be a minimum of twenty-five (25) feet. (Ordinance #2004-14/07-01-04)
- .03 The rear yard setback shall be a minimum of fifty (50) feet. (Ordinance #2004-14/07-01-04)
- .04 The minimum setback for any yard which abuts a highway or county road shall be seventy-five (75) feet. (Ordinance #2004-14/07-01-04)

8.010.080 LOT SIZE AND COVERAGE REQUIREMENTS: The minimum lot size and maximum lot coverage for uses in a Class A-2 District shall be as follows, except as provided in Section 8.004.030:

	USE	MINIMUM LOT			MAXIMUM LOT
		AREA	WIDTH	DEPTH	COVERAGE
.01	Single-Family Dwelling	2.0 Acres	175'	300'	10%
.02	Churches	2.0 Acres	200'	200'	30%
.03	Commercial kennels and veterinary hospitals	3.0 acres	300'	300'	15%
.04	Commercial Stables	5.0 acres	300'	300'	5%
.05	Mineral Extraction and Sanitary Landfill	10.0 acres	500'	500'	1%
.06	Other permitted structures and uses	2.0 acres	175'	300'	20%

(Ordinance #2004-14/07-01-04)

Section 8.010.030.19 allows the Zoning Board of Adjustment to waive the minimum lot area and setbacks:

Transformer stations, booster stations, and utility stations, when operating requirements necessitate locating in the district; provided there is no yard or garage for service or storage, or any building for general administrative or sales offices, and further provided, that the premises upon which such use is erected shall be appropriately landscaped, screened and maintained so as to be in harmony with the general appearance of the surrounding area, and not objectionable as to noise, odor, vibration or other disturbances. The minimum lot area and setback may be waived by the Board only on finding that the waiver will not create a detrimental effect on adjacent properties. (Ordinance #2007-09/10-12-07)

Section 8.096.030.02 of the County Code states "No variance from the terms of this Ordinance shall be granted unless the Board specifically finds":

- .02 The Board shall have the power to hear and decide appeals for variances from the specific terms of this Ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship, and provided, that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

No variance from the terms of this Ordinance shall be granted unless the Board is satisfied that granting the variance:

- A. Is necessary to alleviate a demonstrable hardship or difficulty so great as to warrant the variance;
- B. Will not merely serve as a convenience to the applicant;
- C. Will not impair the general purpose and intent of the regulations and provisions contained in this Ordinance;
- D. Will not impair an adequate supply of light and air to adjacent properties;
- E. Will not increase the hazard from fire and other damages to said property;
- F. Will not diminish the value of land and buildings in the County;
- G. Will not increase the congestion and traffic hazards on public roads; and
- H. Will not otherwise impair the public health, safety and general welfare of the inhabitants of the County.
- I. Is not based on the nonconforming use of neighboring lands, structures or buildings in the same district, and the permitted or nonconforming use of lands, structures, or buildings in other districts is not grounds for the issuance of the variance.
- J. Will not, under any circumstances, allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

FLOOD HAZARD: The Flood Insurance Study prepared by the Federal Emergency Management Agency for the County designates in the Flood Insurance Rate Maps that the property as being in a Zone X-Areas of minimum flooding.

Case# ZV-2024-04 Attachment



Handwritten text: "Handwritten text: 10-1208-15 (1000)"



TO: Zoning Board of Adjustment
FROM: Matt Wyant, County Planning Director
DATE: March 15, 2024

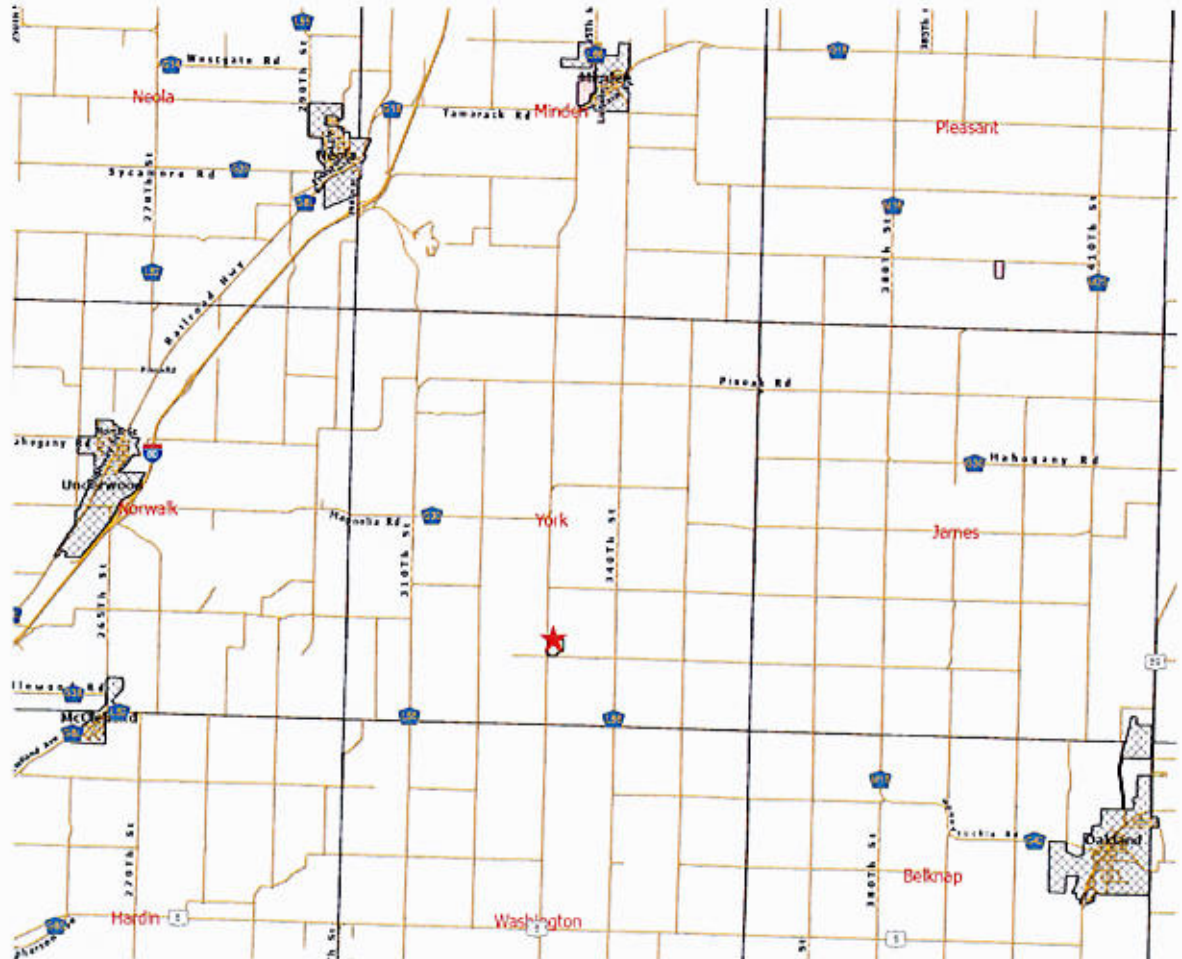
RE: Case #CU-2024-01

REQUEST: Conditional use approval to permit construction of a ground booster pump station for potable water in a Class A-2 (Agricultural Production) District.

LOCATION: 330th Street and Juniper Road
York Township

27-76-41 PT SW SW EXC COMM 810.61'E SW COR TH E472.87' N384.52' W241.52'
SW138.89' W142.77' S275' TO POB

The subject property is in close proximity to the towns of Minden, Neola, Underwood, McClelland and Oakland.



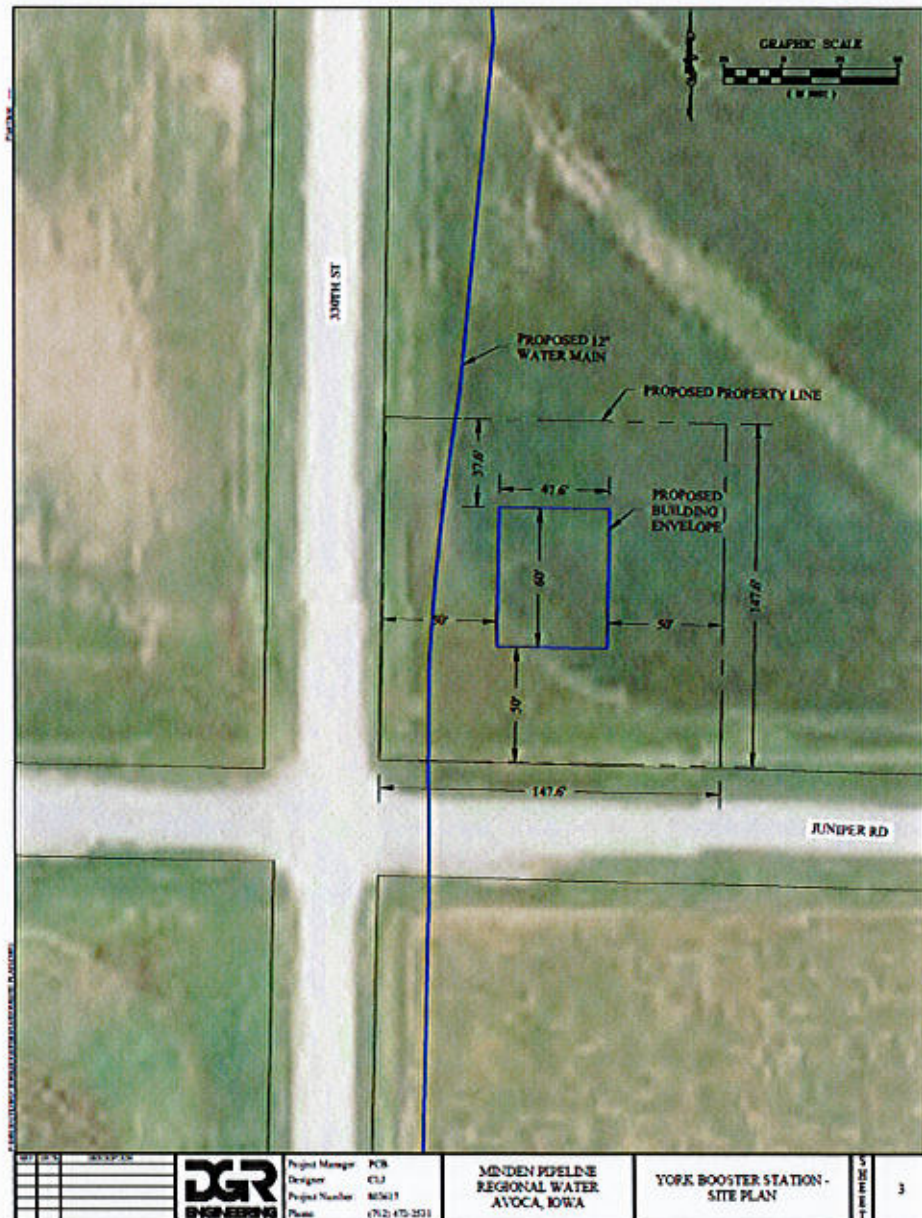
PROPERTY OWNER: Regional Water (purchase agreement with Larson Wonder Valley LLC)

APPLICANT: Regional Water

REPRESENTED BY: DGR Engineering

GENERAL INFORMATION: Regional Water is proposing a booster pump station for potable rural water delivery. Proposed structures at the site include a booster pump station to be approximately 1000 square feet and a standby generator. The proposed booster pump station will be a single-story building approximately 14 feet high to the roof peak. A chain-link security fence will be erected around the proposed building and generator.

APPLICANT'S SITE PLAN:



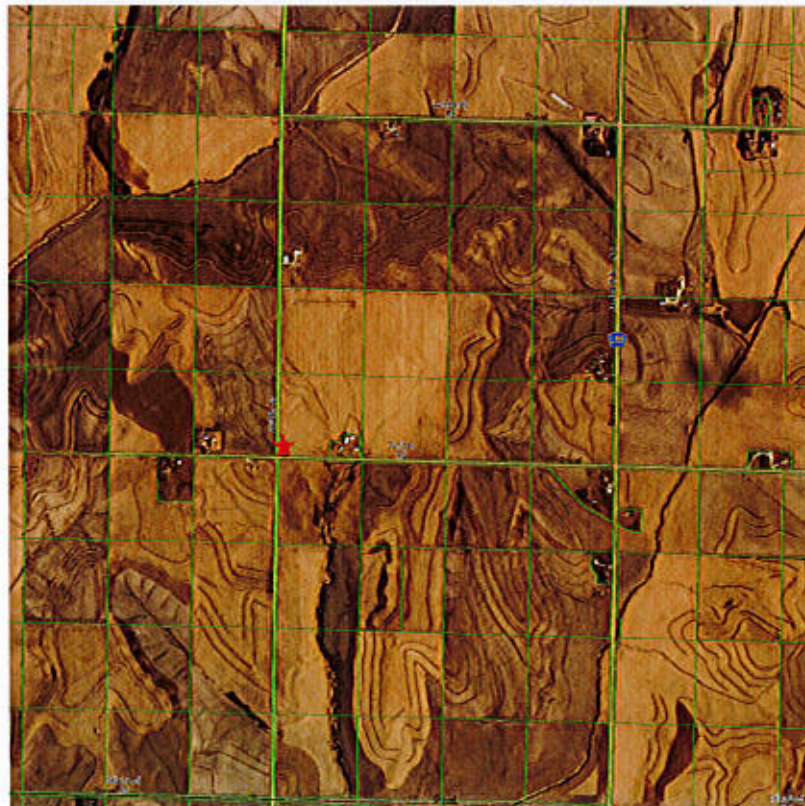
SITE REVIEW:

The proposed 147'6" x 147'6" site is currently agricultural land.



AREA REVIEW:

The majority of properties in the area are agricultural with a few rural residential properties.



ZONING:

The applicant's property is located in a Class A-2 (Ag Production) District.

8.010.030 **CONDITIONAL USES:** The following *conditional uses* shall be permitted in a Class A-2 District, when authorized in accordance with the requirements of Chapter 8.096:

- .03 Transformer stations, booster stations, utility stations, and radio or television transmitter and towers, and broadcasting stations, when operating requirements necessitate locating in the district; provided there is no yard or garage for service or storage, or any building for general administrative or sales offices, and further provided, that the premises upon which such use is erected shall be appropriately landscaped, screened and maintained so as to be in harmony with the general appearance of the surrounding area, and not objectionable as to noise, odor, vibration or other disturbances. The minimum lot area and setback may be waived by the Board only on finding that the waiver will not create a detrimental effect on adjacent properties.

Section 8.096.030.02 of the County Code states "No variance from the terms of this Ordinance shall be granted unless the Board specifically finds":

- .02 The Board shall have the power to hear and decide appeals for variances from the specific terms of this Ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship, and provided, that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

No variance from the terms of this Ordinance shall be granted unless the Board is satisfied that granting the variance:

- A. Is necessary to alleviate a demonstrable hardship or difficulty so great as to warrant the variance;
- B. Will not merely serve as a convenience to the applicant;
- C. Will not impair the general purpose and intent of the regulations and provisions contained in this Ordinance;
- D. Will not impair an adequate supply of light and air to adjacent properties;
- E. Will not increase the hazard from fire and other damages to said property;
- F. Will not diminish the value of land and buildings in the County;
- G. Will not increase the congestion and traffic hazards on public roads; and
- H. Will not otherwise impair the public health, safety and general welfare of the inhabitants of the County.
- I. Is not based on the nonconforming use of neighboring lands, structures or buildings in the same district, and the permitted or nonconforming use of lands, structures, or buildings in other districts is not grounds for the issuance of the variance.
- J. Will not, under any circumstances, allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

FLOOD HAZARD:

The Flood Insurance Study prepared by the Federal Emergency Management Agency for the County designates in the Flood Insurance Rate Maps that the property as being in a Zone X- Areas of minimum flooding.

TO: Board of Adjustment
FROM: Matt Wyant
DATE: March 15, 2024

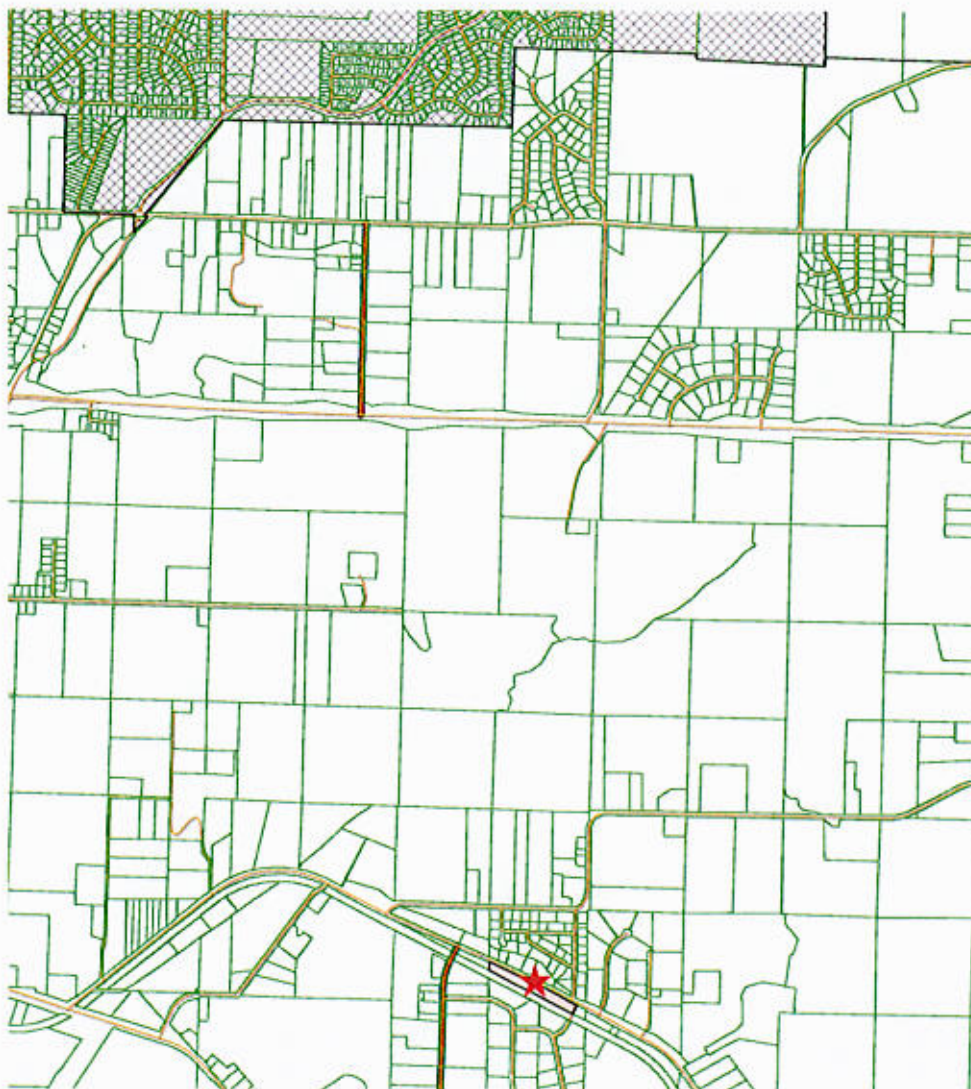
RE: Case #CU-2024-02

REQUEST: Conditional use approval to permit construction of a communications hut (internet/phone fiber services) in a Class A-4 (Loess Hills) District.

LOCATION: Lewis Township

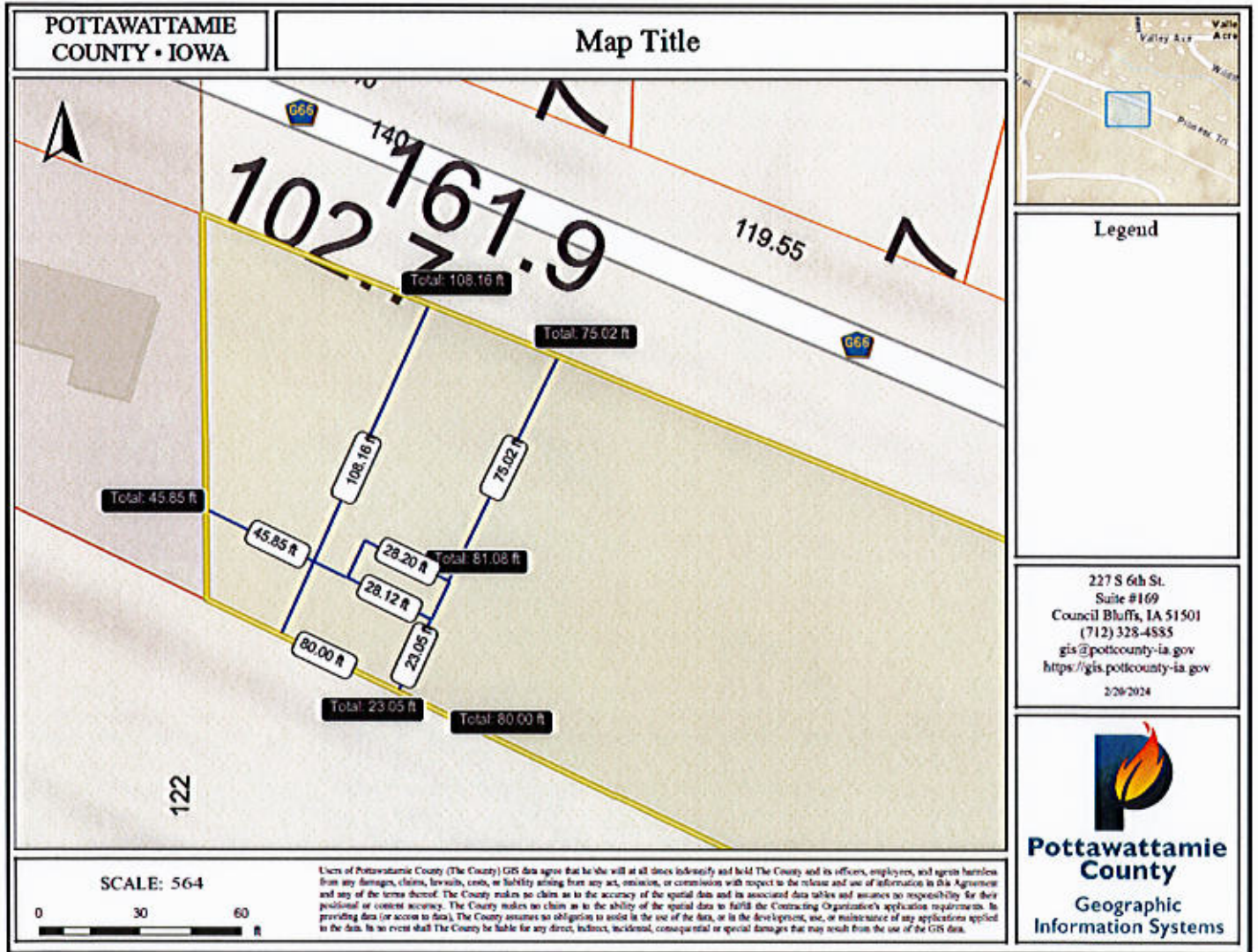
15-74-43 PT SE NE & NE SE COMM 28.23'N 111'NW SE COR SE NE TH
NWLY1347.15' S147.4' SELY1292.85'NE167.6' TO POB

The subject property is located approximately 2 miles south of the city of Council Bluffs on Pioneer Trail.



PROPERTY OWNER: Erich Ziph
APPLICANT: BTC, Inc.
REPRESENTED BY: Chris Nieland

GENERAL INFORMATION: BTC Inc. is leasing an area from Eric Ziph to construct an unmanned shelter to house fiber and electronics for internet and phone services. The shelter is a 12' x 28' precast concrete structure and will be fenced for security reasons.



RENDERINGS OF A SIMILAR COMPOUND:





SITE REVIEW: The 3.77 acre subject property contains a single family dwelling, some outbuildings, a septic system and well.

AREA REVIEW: The majority area properties are utilized for residential purposes.



ROADS & TRAFFIC: Access to the subject property will be gained from Pioneer Trail. Pioneer Trail is a paved county road. The 2016 Iowa Department of Transportation Traffic Flow Map indicated an average traffic flow of 1,740 vehicles per day.

ZONING: The property is located in a Class A-4 (Loess Hills) District.

8.014.030 **CONDITIONAL USES:** The following *conditional uses* shall be permitted in a Class A-4 District, when authorized in accordance with the requirements of Chapter 8.096:

- .16 Transformer stations, booster stations, utility stations, and radio or television transmitter and towers, and broadcasting stations, when operating requirements necessitate locating in the district; provided there is no yard or garage for service or storage, or any building for general administrative or sales offices, and further provided, that the premises upon which such use is erected shall be appropriately landscaped, screened and maintained so as to be in harmony with the general appearance of the surrounding area, and not objectionable as to noise, odor, vibration or other disturbances. The minimum lot area and setback may be waived by the Board only on finding that the waiver will not create a detrimental effect on adjacent properties.

Section 8.096.030.03 of the County Code states:

- .03 *The Board shall have the power to hear and decide only such appeals for conditional uses as the Board is specifically authorized to pass on by the term of this Ordinance; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance; or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. In reviewing an application for a conditional use permit, findings based on the following criteria shall be made and serve as the basis for approval or denial of the request:*

- A. *Does the proposed use conform to the Land Use Policy Plan?*
- B. *Is the site suitable for the proposed use? Such factors as size and shape of the property, topographic conditions, soil conditions to support water and septic systems, accessibility to transportation facilities, and soil erosion problems shall be considered.*
- C. *Is the proposed use compatible with surrounding property use? Such factors as the activities and function of the proposed use should be considered to determine if the proposed use conflicts with or reduces the usefulness or value or creates other negative impacts on adjoining property or*

properties in the general area, including public health, safety and welfare.

- D. Is the adjoining road system adequate to accommodate the proposed use in terms of the present traffic volume vs. road capacity and the general condition of the road system?*
- E. Can adequate measures be taken to minimize any potential adverse impacts on adjoining property? If so, stipulate such measures as required by the ordinance or special conditions that would be required.*
- F. Does the conditional use comply with all conditions imposed on it by the provisions of the district in which such conditional use may be authorized?*

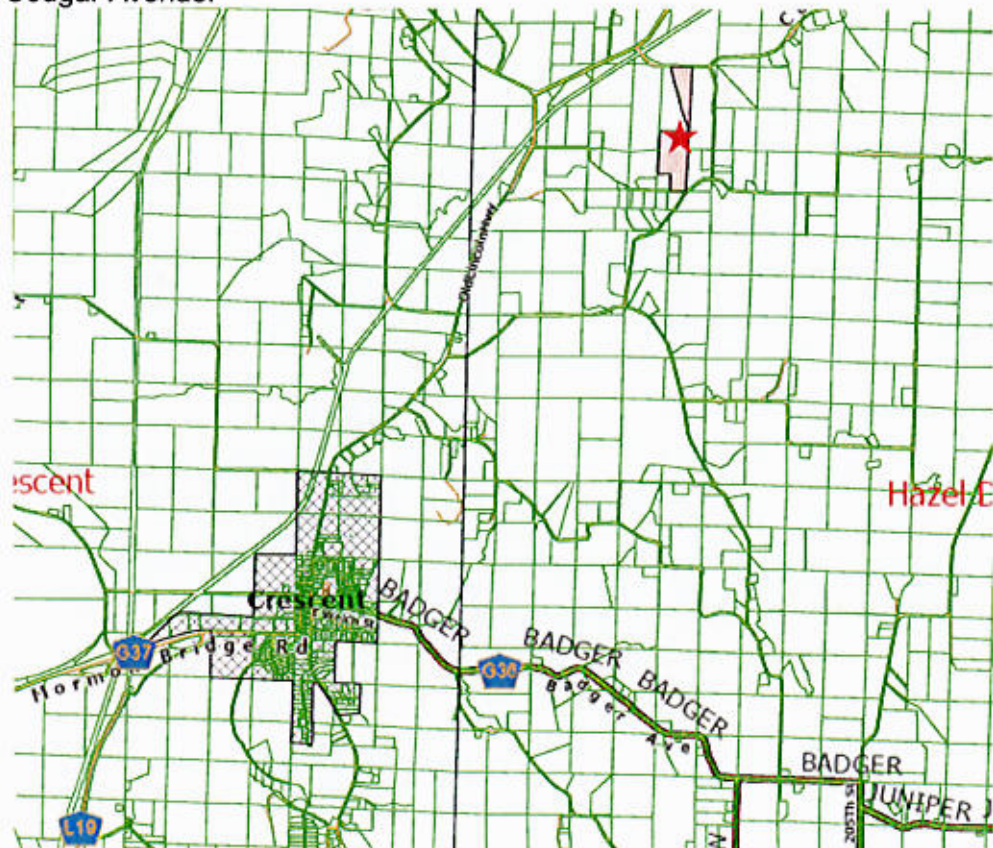
TO: Zoning Board of Adjustment
FROM: Matt Wyant, County Planning Director
DATE: March 15, 2024

RE: Case #ZA-2024-01

REQUEST: The property owners are appealing an Administrative Zoning Decision to deny an agricultural exemption request. See **ATTACHMENT #1** – Letter of Determination, and email exchanges depicting the progression of the request for an agricultural exemption to the request for an appeal of the determination.

LOCATION: 19339 Cougar Avenue
Hazel Dell Township
5-76-43 PT SW1/4 & 8-76-43 PT N1/2 NW COMM 1122.32'E W1/4 COR SECT 5 TH SELY2011.98'
S198.05' W903.44' S1386.73' E435.77' S499.46' E517.81' N3980.7'W731.29' TO POB (PARCELS D & E)

The subject property is located approximately 2 1/2 miles northeast of Crescent at 19339 Cougar Avenue.



APPLICANT: John – Tanna Piniarski

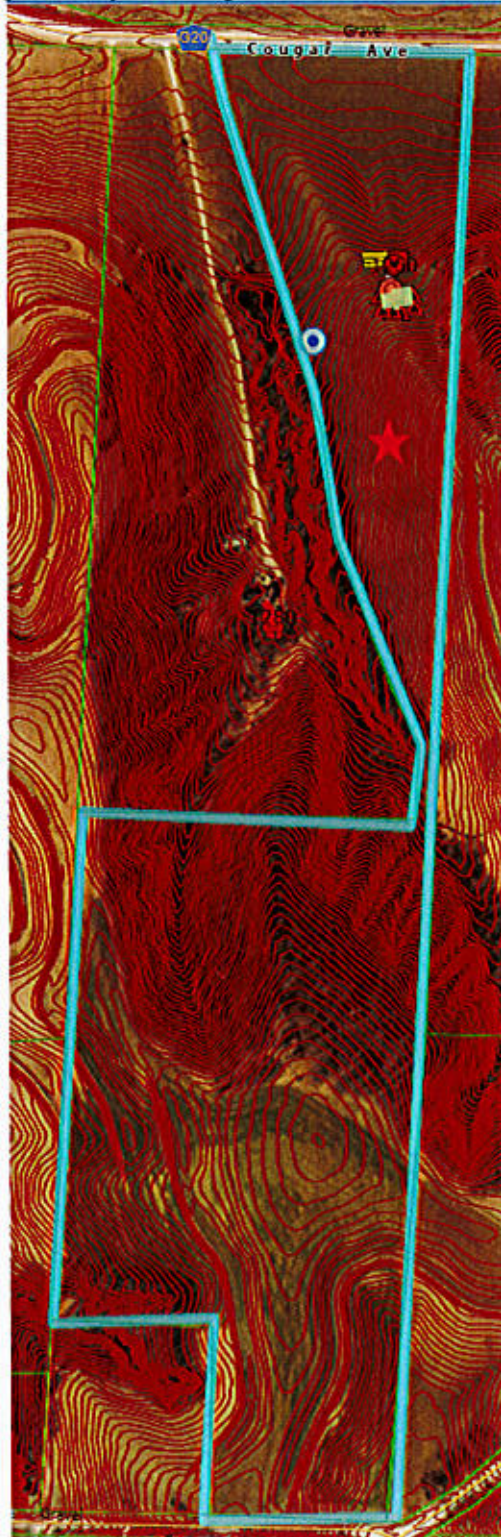
REPRESENTED BY: Joe Thornton, Attorney at Law

GENERAL INFORMATION:

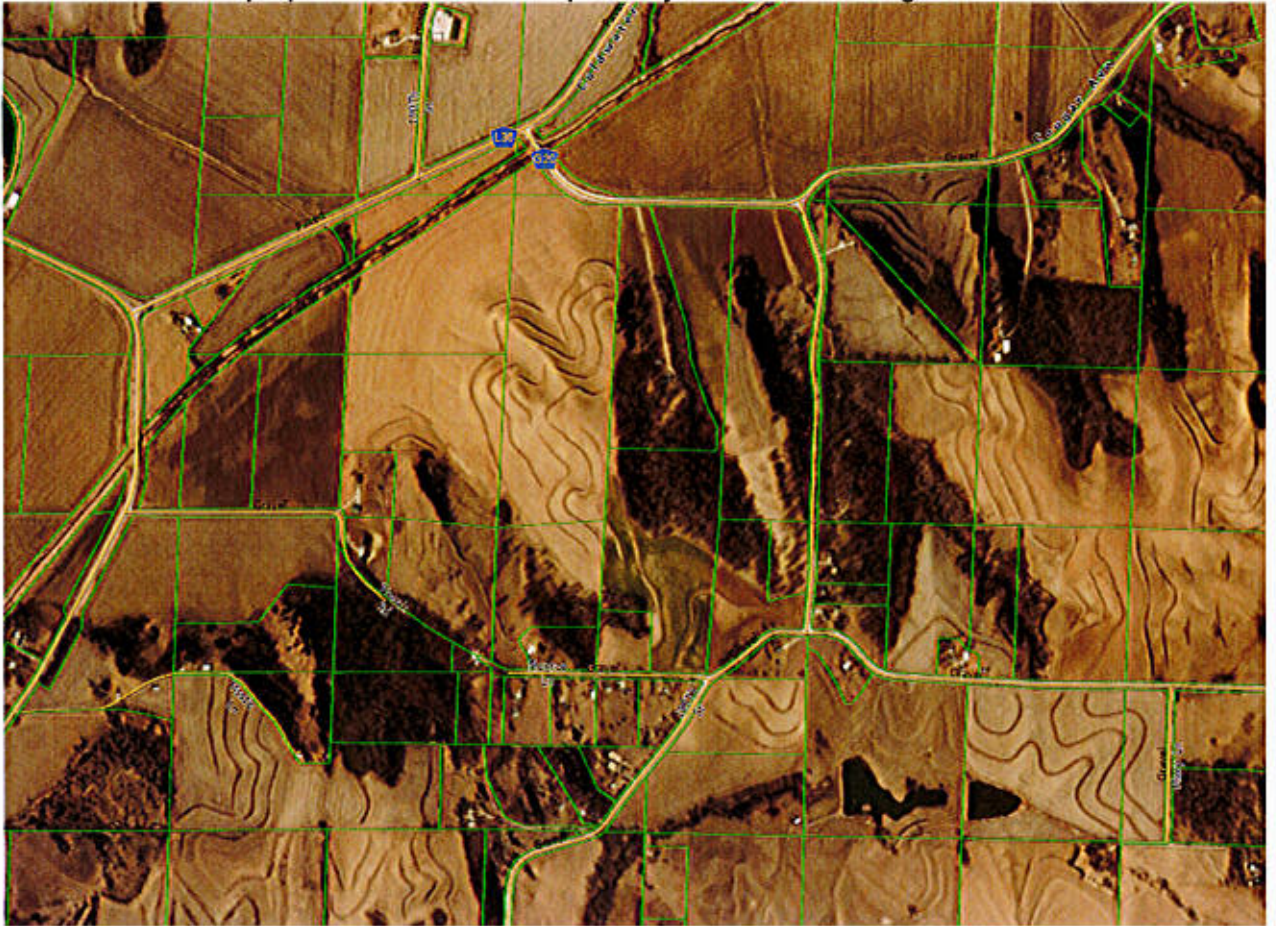
The property owners have made this request to appeal an Administrative Zoning Decision to deny an agricultural exemption request. On July 27, 2023, a permit was issued for a single family dwelling and septic system. See **ATTACHMENT #2** –site plan and permit submitted by property owners.

SITE REVIEW:

The property consists of 53.03. A new well and septic system have been installed on the property. A single family dwelling is under construction.



AREA REVIEW: The use of properties in the area is primarily residential and agricultural.



ROADS & TRAFFIC: Access to the subject property is from Cougar Avenue, a gravel county road. The Iowa Department of Transportation Traffic Flow Map indicated an average traffic flow of 150 vehicles per day.

CODE SECTIONS: See **ATTACHMENT #3** for State and County code sections pertaining to agricultural exemption, Pottawattamie County, Iowa Agricultural Exemption Request guide and Pottawattamie County Code section on Refund of Fees.

ZONING: The subject property is located in a Class A-4 (Loess Hills) District.

Section 8.096.050 of the County Code states:

APPEALS TO THE BOARD: Appeal to the Board may be taken by any person or organization aggrieved; or by any officer, department, board, or bureau of the County or any other governmental agency or body effected by any decision of the Development Director. (Ordinance #81-6/10-01-81) Such appeal shall be taken within thirty (30) days after said decision and shall be taken by the filing of a written application, upon the form provided, with the Development Director for submission to the Board. The application shall be accompanied by a fee as specified in Chapter 8.099 and by such data and information as may be prescribed by the Board to assure that fullest practicable presentation of the facts for the permanent record. An application shall contain the legal description of the property involved; the nature of the relief requested to be granted by the Board; grounds and reasons for which the appeal is taken; a site plan, drawn to

scale, showing the information for a Building Permit application; and a statement giving the names and addresses of the owners of all property owners within five hundred (500) feet of the subject property. If the applicant is the only owner of property within five hundred (500) feet of the subject property, then the statement shall contain the names and addresses of the next adjacent property owners. Each application shall be verified by the person or persons preparing the application attesting to the truth and correctness of all facts and information presented with the application. (Ordinance #81-6/10- 01-81)

CONSERVATION EASEMENT:

The property has a Conservation Easement from the Sustainable Iowa Land Trust. Relevant sections of the easement provided below. The easement in full is provided by the property owners representation as **ATTACHMENT #4**.

F. Granting Owner's Intent

1. Granting Owner intends that the Conservation Values of the Property be preserved and maintained by permitting only those uses of the Property that do not significantly impair or interfere with the Conservation Values. Granting Owner intends to make a charitable gift of the property interest conveyed by this Easement to Land Trust for the exclusive purpose of assuring that, under Land Trust's perpetual stewardship, the open space character, agricultural, ecological and scenic qualities of the Property will be conserved and maintained forever.
2. Granting Owner and Land Trust recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in Owner's situation may result in an evolution of Agricultural Uses of the Property, provided such uses are consistent with this Easement.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished.
4. Granting Owner further intends, as owner of the Property, to convey to Land Trust the monitoring and enforcement rights to preserve and protect the Conservation Values of the Property in perpetuity.
5. To effectuate the intentions of the Parties, Granting Owner intends to give to Land Trust a perpetual and irrevocable Conservation Easement over the Property, to create certain restrictive covenants and equitable servitudes for the benefit of Land Trust in gross that will bind and run with the Property, and to extinguish irrevocably and perpetually the right to develop the Property, except as expressly permitted in this Easement.

F. Land Trust's intent/qualification

Piniarski Farm Agricultural Conservation Easement

3

4b. Permitted Residential Use—The following residential use is permitted:

4b.(1) Existing Single-Family Residential Dwelling— RESERVED

4b.(2) Residential Use of Farmstead Area—Owner may engage in unrestricted residential use of the Farmstead Area to the extent permitted by all applicable Pottawattamie County ordinances and any other applicable federal, state, and local laws, regulations, and requirements, as amended from time to time. No

Piniarski Farm Agricultural Conservation Easement

6

FLOOD HAZARD: The Flood Insurance Study prepared by the Federal Emergency Management Agency for the County designates in the Flood Insurance Rate Maps that the property as being in a Zone X-Areas of minimum flooding.

Case # ZA-2024-01 Attachment #1

EVANS & DIXON^{LLC}
ATTORNEYS AT LAW

133 West Broadway | Council Bluffs, Iowa 51503
(712) 328-1833 | Fax (712) 328-8320

January 22, 2024

Matt Wyant *Via Email: matthew.wyant@pottcounty-ia.gov*
Planning and Development Director
Pottawattamie County Planning & Development
227 South 6th Street
Council Bluffs, IA 51501


RE: John Piniarski
Agricultural Exemption Request

Matt:

Please let this letter serve as an appeal to the Board of Adjustment of the Letter of Determination that you sent to John Piniarski regarding their request to claim an Agricultural Exemption. It is our position that your decision was erroneous and is contrary to the Pottawattamie County Ordinances and the laws of the State of Iowa. We would request that this appeal be set to be heard before the Board of Adjustment.

Please let me know if there is any additional information required. Please acknowledge receipt of this email and request for an appeal of your decision.

Sincerely


JOSEPH D. THORNTON
Direct e-mail: jthornton@evans-dixon.com
Direct Phone Number: 712-435-5255
Main Office Number: 712-328-1833



**Pottawattamie
County**

Planning & Development

Determination Letter of Decision

227 South 6th Street
Council Bluffs, IA 51501
Ph: 712-328-5792 | Fax: 712-328-4731
PottCounty-ia.gov

Letter of Determination

December 19, 2023

Co: Joseph D. Thornton, Partner
Smith Peterson Law Firm, LLP
133 West Broadway
P.O. Box 249
Council Bluffs, IA 51502-0249

John Piniarski
8 N Hazel Street
Glenwood, IA 51534

Dear Mr. Piniarski:

On July 17, 2023, you applied for a building permit for a new single-family dwelling to be located at 19339 Cougar Ave, Honey Creek, IA 51542. On July 27, 2023, that permit was issued. On October 16, 2023, office staff informed me that you had come in to claim an agricultural exemption for the dwelling. I emailed you on that day informing you that in order to stay compliant with the state code too please document the scope, value and duration of the resident's agricultural activities in relation to the scope and value of the proposed home. You responded on October 19, 2023, with:

Mr. Wyant,

Thanks for the response. My wife and I purchased the property in 2022. It consists of approximately 53 acres, 15 of which are timber. The property produced about 200 bales of hay this year. Last year was around the same amount of winter rye cover crop. We are also currently implementing beehives to produce honey next year. We are currently installing perimeter and interior fences for sheep, cattle and hogs as we intend to raise and market livestock. We also intend to install hoophouses and greenhouses for produce to take to market. We're currently working with DNR to remediate invasive trees and plants from the approximately 15 acres of timber on the property. We intend to grow corn and fruit trees on the tillable acres as well.

We purchased the property from Sustainable Iowa Land Trust. As a condition of the purchase of the property we agreed to farm the property organically and executed an easement to that effect. The primary purpose of that easement is to enable the property to remain in productive agricultural use and prevent uses of the property that will impair its agricultural capacity and character. Under that easement we are required to prove conformity to the Land Trust through a certificate from USDA. I am attaching a copy of the easement with this email. We intend to reside in the dwelling we are building on the property as we expand our farming operation, as living on the property will make that expansion much easier.

My response on October 20, 2023 – was not received.

December 12, 2023 – Board of Supervisors meeting I was made aware that you did not receive my email response and I again reached out to you VIA email with a delivery receipt. In that email I informed you that in order to make the determination of an ag exemption on a Farmhouse I needed to know how are the occupants primarily adapted to ag? How much time is spent towards working the land vs other work? Do you lease ground? This is the information that beginning farmers provide. Some have written letters others have supplied land leases.

Your response on December 12, 2023:

Hi Matt,
Thank you for getting back to me. In response to:

Section .04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those

activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities

As I stated before, my land is in a conservation easement that requires us to provide table food and improve soil quality. Chapter 335- 3. Land, farm houses, farm barns, farm outbuildings, or other buildings or structures may qualify under this section independently or in combination with other agricultural uses. Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes under this section.

Therefore, all of the activities on my land pertain to farming. The land historically has been in farming production. There has never not been a time that the land was not being used to farm. It was before we bought it, and continues to do so after buying it per our easement that was provided in the previous email. This should be enough for you.

Also per our previous email, it has provided every detail about our farms production including, amount of acres we have, amount of bales we produce, activities on the farm, amount of timber we have, plans we have established with DNR, infrastructure we need to set up for future livestock and other future plans for the expansion on our farm. I'm not sure if you are familiar, but setting up fencing and infrastructure on 53 acres is a full time job in itself. Your statement about income being derived from farming activities is irrelevant and shows there is a lack of understanding about the amount of money, time, and effort that goes into farming. I work nights and my wife and I spend our days on the farm. There are no leases involved and this is 100% me and my wife doing this. As if farming 53 acres of land and our conservation easement is not enough reason to have a farmhouse and be Ag exempt, I would think what I unnecessarily provided would be.

Section 335.2

2. A county shall not require an application, an approval, or the payment of a fee in order for an ordinance to be deemed inapplicable to land, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted for use for agricultural purposes under this section.

I have already been in contact with my attorney and if this is not enough for you then he can be your next point of contact.

DETERMINATION – Finds of Fact:

Iowa Code Section 335.2 states:

335.2 Farms exempt.

1. Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit, or excavation in or on the floodplains of any river or stream.

2. A county shall not require an application, an approval, or the payment of a fee in order for an ordinance to be deemed inapplicable to land, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted for use for agricultural purposes under this section.

3. Land, farm houses, farm barns, farm outbuildings, or other buildings or structures may qualify under this section independently or in combination with other agricultural uses. Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes under this section.

Pottawattamie County Code Chapter 8 Currently States:

8.001.050 AGRICULTURAL USES EXEMPT: In accordance with the provisions of Chapter 335, Code of Iowa, as amended, no regulations or restrictions adopted under the provisions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes. WHILE SO USED; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposits or excavation in or on the flood plains of any river or stream shall apply thereto. (Ordinance #2004-14/07- 01-04)

- .01 No Building Permit or Certificate of Occupancy shall be required for the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located. (Ordinance #2015-05/12-18-2015)
- .02 If a tract of land is less than thirty-five (35) acres, it shall be presumed that the tract is not primarily used for agricultural purposes. (Ordinance #81-6/10-01-81)
- .03 It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes. (Ordinance #81-6/10-01-81)

Linn vs Lang:

We recognize that small-scale agricultural production should not be discouraged. However, at some point a line has to be drawn to determine what qualifies under the statute as "agricultural use" and what is more akin to a rural acreage.

The district court also noted the work logs indicated a total of 1610 hours were logged for the twenty-one month period and that the average work day, including "other" tasks—such as mowing—was 3.7 hours per day; discounting the "other" tasks the average work day was 2.6 hours. The average work week, discounting the "other" tasks was 12.2 hours per week. The district court noted that based on the Board's review of past work, the Board determined the application for the agricultural exemption would be denied to the proposed tenants, the Schaeffers. On its review, the district court concluded there was substantial evidence to support that House 2 and the land were not "primarily adapted, by reason of nature and area, for use for agricultural purposes.

Determination:

Based upon the information you have provided thus far, I find that the single family dwelling is not primarily adapted for agricultural purposes and is not exempt from having to meet the zoning requirements set forth in Chapter 8 of the Pottawattamie County Code or the building requirements set forth in Chapter 10. There is no information to support that the agricultural activity is not merely a sideline to other work.

Inasmuch as the permit was issued in July of 2023 I am requesting that you complete the building in accordance with the permit and inspection process. As for the request for a refund of the permit fees 1.50.060 FEE REFUND: Fees shall not be entitled to be refunded. (Ordinance #2009-05/June 5, 2009)

Appeal process: Determination can be appealed to the Zoning Board of Adjustment

8.096.030 POWERS AND DUTIES: The Board shall have the following powers and duties: .01 The Board shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Development Director based on or made in the enforcement of any provision of this Ordinance or in the interpretation of district boundaries as shown on the Official Zoning Map. (Ordinance #81-6/10-01-81)

Please feel free to contact me with any question you may have concerning this determination.

Respectfully,



Matt Wyant

Planning and Development Director

Pam Kalstrup

From: pam.kalstrup@pottcounty-ia.gov
Subject: FW: Ag Exemption-Piniarski
Attachments: Piniarski Determination.pdf

From: Matthew Wyant <matthew.wyant@pottcounty-ia.gov>
Sent: Tuesday, December 19, 2023 4:28 PM
To: Thornton, Joseph <JDThornton@smithpeterson.com>
Cc: Nice, Susan <snice@smithpeterson.com>
Subject: Re: Ag Exemption-Piniarski

Joe,

Piniarski's applied for a permit to construct a single-family dwelling in July of this year which was issued. In October they came in to claim an ag exemption for the home. They provided a good explanation of agriculture on the land and easement for it. They did not provide information as stated in my last email:

A good example to follow is the new ordinance we are looking at states:

Section .04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities.

Currently Mr. Piniarski said that he did 200 bales of hay last year along with a winter rye cover crop. In order to be primarily adapted to agriculture more information is needed about their time spent towards working the land or other land they may own or lease to make the determination as stated above in section 4. With the information currently being provided I am attaching and will mail to you the letter of determination.

Matt Wyant

Director

Planning and Development

227 South 6th Street | Council Bluffs, IA 51501

P: 712.328.5792 | EXT: 5853 | M: 402.670.0569

PottCounty-ia.gov

"In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing."

— Theodore Roosevelt, 26th President of the United States

From: Thornton, Joseph <JDThornton@smithpeterson.com>
Sent: Tuesday, December 19, 2023 3:47 PM
To: Matthew Wyant <matthew.wyant@pottcounty-ia.gov>
Cc: Nice, Susan <snice@smithpeterson.com>
Subject: FW: Ag Exemption-Piniarski

You don't often get email from jdthornton@smithpeterson.com. [Learn why this is important](#)

Warning: EXTERNAL MESSAGE: Verify actual sender address. Verify links before clicking. Be cautious with attachments.

Matt, I have retained by the Piniarski's regarding their ag exemption. Below is an email exchange you had with them. After reviewing the emails, I don't understand why you have not granted the exemption. The state statute is right on point. I understand you have proposed changes to the county's ordinances to comply with the statute. Please provide me an explanation why the exemption has not been granted. They provided you a copy of the Agricultural Conservation Easement that resolve any questions you had. . Thanks Joe

Joseph D. Thornton, Partner

Smith Peterson Law Firm, LLP

133 West Broadway

P.O. Box 249

Council Bluffs, IA 51502-0249

Office: (712) 328-1833

Direct: (712) 435-5255

Cell: (402) 740-4043

----- Forwarded message -----

From: **Matthew Wyant** <matthew.wyant@pottcounty-ia.gov>

Date: Tue, Dec 12, 2023, 10:57 AM

Subject: Re: Agricultural Exemption Request

To: John Piniarski <johnnyanthpini@gmail.com>

Mr. Piniarski,

Thank you for attending today's meeting with the Board. I do apologize that you did not receive my response to your email on October 19th, 2023. Your email does a great job of explaining the scope of the ag activities on the land. In order to make the determination for an ag exemption on a Farmhouse how are the occupants primarily adapted to ag? How much time is spent towards working the land vs other work? Do you lease ground? This is the information that beginning farmers provide. Some have written letters others have supplied land leases.

A good example to follow is the new ordinance we are looking at states:

Section .04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities.

Again, I apologize the response was not received.

Sincerely,

Matt Wyant

Director

Planning and Development

227 South 6th Street | Council Bluffs, IA 51501

P: 712.328.5792 | EXT: 5853 | M: 402.670.0569

PottCounty-ia.gov

"In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing."

— Theodore Roosevelt, 26th President of the United States

From: John Piniarski <johnnyanthpini@gmail.com>
Sent: Thursday, October 19, 2023 6:59 PM
To: Matthew Wyant <matthew.wyant@pottcounty-ia.gov>
Subject: Re: Agricultural Exemption Request

WARNING External Message: Verify actual sender address. Hover over links to check before clicking. Take extra caution with attachments.

Mr. Wyant,

Thanks for the response. My wife and I purchased the property in 2022. It consists of approximately 53 acres, 15 of which are timber. The property produced about 200 bales of hay this year. Last year was around the same amount of winter rye cover crop. We are also currently implementing beehives to produce honey next year. We are currently installing perimeter and interior fences for sheep, cattle and hogs as we intend to raise and market livestock. We also intend to install hoopouses and greenhouses for produce to take to market. We're currently working with DNR to remediate invasive trees and plants from the approximately 15 acres of timber on the property. We intend to grow corn and fruit trees on the tillable acres as well.

We purchased the property from Sustainable Iowa Land Trust. As a condition of the purchase of the property we agreed to farm the property organically and executed an easement to that effect. The primary purpose of that easement is to enable the property to remain in productive agricultural use and prevent uses of the property that will impair its agricultural capacity and character. Under that easement we are required to prove

conformity to the Land Trust through a certificate from USDA. I am attaching a copy of the easement with this email. We intend to reside in the dwelling we are building on the property as we expand our farming operation, as living on the property will make that expansion much easier.

On Mon, Oct 16, 2023, 3:53 PM Matthew Wyant <matthew.wyant@pottcounty-ia.gov> wrote:

Hello Mr. Piniarski,

The office staffed informed me that you have decided to change from a building permit that has been issued on your new home to an agricultural exemption request. In order to stay compliant with state code on this issue please document the scope, value and duration of the resident's agricultural activities in relation to the scope and value of the proposed home. You may add any additional information you like to show that the home is incidental to the use for agricultural purpose of the land. Once the information is provided a determination of the exemption will be made in 7 to 10 business days.

Thank you,

Matt Wyant

Director

Planning and Development

227 South 6th Street | Council Bluffs, IA 51501

P: 712.328.5792 | EXT: 5853 | M: 402.670.0569

PottCounty-ia.gov

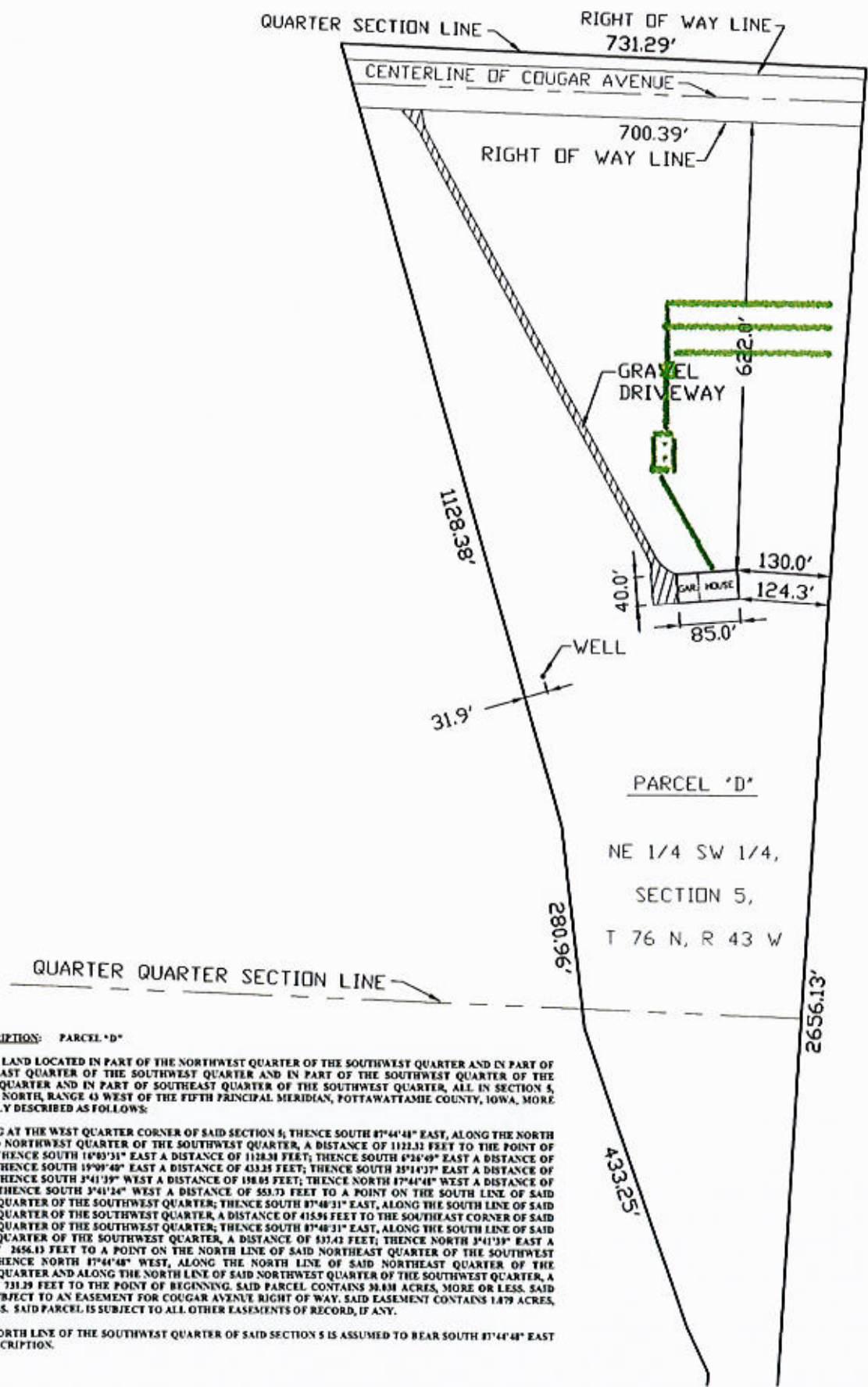
Case# ZA-2024-01

Attachment #2

PLOT PLAN OF PROPOSED HOUSE LOCATION

SCALE: 1" = 200'

NOTE: SEE ATTACHED PLAT OF SURVEY



LEGAL DESCRIPTION: PARCEL "D"

A PARCEL OF LAND LOCATED IN PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND IN PART OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND IN PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND IN PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 5, TOWNSHIP 76 NORTH, RANGE 43 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 5; THENCE SOUTH 87°44'48" EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1121.31 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 16°03'31" EAST A DISTANCE OF 1128.89 FEET; THENCE SOUTH 87°44'48" EAST A DISTANCE OF 218.96 FEET; THENCE SOUTH 19°09'49" EAST A DISTANCE OF 433.25 FEET; THENCE SOUTH 39°14'37" EAST A DISTANCE OF 169.39 FEET; THENCE SOUTH 3°41'39" WEST A DISTANCE OF 188.84 FEET; THENCE NORTH 87°44'48" WEST A DISTANCE OF 93.44 FEET; THENCE SOUTH 3°41'39" WEST A DISTANCE OF 553.73 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 87°48'31" EAST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 415.96 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 87°48'31" EAST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 537.42 FEET; THENCE NORTH 3°41'39" EAST A DISTANCE OF 2656.13 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH 87°44'48" WEST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 731.29 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 34.83 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR COUGAR AVENUE RIGHT OF WAY. SAID EASEMENT CONTAINS 1.479 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO ALL OTHER EASEMENTS OF RECORD, IF ANY.

NOTE: THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 5 IS ASSUMED TO BEAR SOUTH 87°44'48" EAST FOR THIS DESCRIPTION.



PERMIT PROJECT

FILE #: 23-000883

19339 COUGAR AVENUE HONEY CREEK IA 51542

NEW SFD WITH NEW SEPTIC AND EXISTING NEW WELL
(W22-000009)



FILE INFORMATION

Project Name

New SFD with new septic and existing new well (W22-000009)



Type

Permitting



Status

Open



Open Date

07/17/2023

Close Date

Department

Planning and Development



Responsible User

Paula Good



Priority

Normal



How Received



PROPERTY INFORMATION

Property Address

19339



COUGAR

AVENUE



HONEY CREEK

IA

51542

Parcel #

764305300005

Owner Name

PINIARSKI, JOHN-TANNA

Owner Address
8 N HAZEL ST

GLENWOOD IA 51534

Owner Phone

Legal Description

HAZEL DELL TWP 5-76-43 PT SW1/4 & 8-76-43 PT N1/2 NW COMM 1122.32'E 1

Approximate Location

PROPERTY INFORMATION

Township

HAZEL DELL

Property Class

A

Primary Rural Zoning

A-4

Floodway

Special Flood Hazard Area, if any

PERMIT PROJECT
FILE #: 23-000883
19339 COUGAR AVENUE HONEY CREEK IA 51542
NEW SFD WITH NEW SEPTIC AND EXISTING NEW WELL
(W22-000009)



PERMIT #: RNC23-000019

Permit Type

Residential New Single Family Dwelling Combination

Subtype

Single Family Dwelling



Work Description:

New SFD with new septic and existing new well



Applicant

John Piniarski



Status

Issued



Valuation

249,842.75



FEES & PAYMENTS

Plan Check Fees

638.22

Permit Fees

1,832.87

Total Amount

2,471.09

Amount Paid

2,471.09

Balance Due

0.00

Non-Billable

PERMIT DATES



Application Date

07/17/2023

Approval Date

07/27/2023

Issue Date:

07/27/2023

Expiration Date:

01/27/2025

Close Date

Last Inspection

ENVH Septic Inspection on 12/14/2023 (Pass)



PROPERTY INFORMATION

Airport Hazard Zone?

No



Flood Zone

X



BULK ZONING STANDARDS

Building Height:mainbulk

Number of Stories:mainbulk

1

Front Yard:mainbulk

75'

Street Side Yard:mainbulk

Rear Yard:mainbulk

50'

Interior Side Yard:mainbulk

25'

PROPOSED ZONING STANDARDS

Building Height:mainpro

Number of Stories:mainpro

Front Yard:mainpro

622'

Street Side Yard:mainpro

Rear Yard:mainpro
1000'+

Interior Side Yard:mainpro
124'

CONTACT INFORMATION

Party.responsible.for.construction
Property Owner

Property Owner
- John Pinlarski

Electrical Contractor
Clifton electric - Mike Clifton

Plumbing Contractor
Eledge Plumbing, Inc - John Eledge

Mechanical Contractor
K P S - KENNETH PUNTENEY

Design Professional/Engineer

Design Professional/Engineer

Party responsible for septic installation
Licensed Septic Installer

Septic Installer
Midwest Septic & Excavating-SI21-000002

Well Driller

PROJECT INFORMATION

DESCRIPTION OF WORK

Type of Septic System
New Septic System

Type of Well
Exlstng

i Barn for animals or fowl
No

BUILDING INFORMATION

MAIN STRUCTURE

Dwelling Type
Wood Frame - Habitable Living Area (all stories above basement)

DSquare Footage

2319

Finished Basement Type

BSquare Footage

Unfinished Basement Type

Unfinished Non-Habitable

USquare Footage

2319

Garage or Carport Type

Garage

GSquare Footage

1200

Covered Deck/Porch Type1

PSquare Footage

Covered Deck/Porch Type2

Porch/Deck - With Roof Area (Non-Habitable)

HSquare Footage

550

Uncovered Deck Type

KSquare Footage

ACCESSORY STRUCTURE

Constructing Accessory Structure

No

Garage or Carport Type

GSquare Footage

Finished Storage Shed or Pole Barn Type

SSquare Footage

Unfinished Storage Shed or Pole Barn Type

uSquare Footage

SEPTIC PERMIT DESIGN BASIS

PROPOSED

Number of bedrooms

3

Water Supply

Private Water Well

Percolation Rate

14.9

Soil Loading Rate

0.6

Septic Tanksepbuid

Gallons

1250

Compartmentssepbuid

2

Material Typesepbuid

Concrete

Laterals with Gravelsepbuid

Total Lengthsepbuid

of Lines/Footage Each Linesepbuid

Trench Widthsepbuid

Rock Depth Under Pipesepbuid

Laterals-Gravellessepbuid

Total Lengthsepbuid

252'

of Lines/Footage Each Linesepbuid

3/84'

Pipe Typesepbuid

33in. greater than Chamber

STATE MINIMUM REQUIREMENT

Septic Tank

Gallons

1250

Compartments

2

Laterals with Gravel

Total Length

of Lines/Footage Each Line

Trench Width

Rock Depth Under Pipe



Laterals-Gravelless

Total Length

250'

of Lines/Footage Each Line

Pipe Type

33in. greater than Chamber



Is there an existing well on property?

Yes



Status Code on Existing Well

01 - Existing and In Use



INTERNATIONAL ENERGY CODE

Residential Compliance Options

Software Report (REScheck) * Trade-off Approach



Attach Energy Code Supporting Documents

Piniarski - rescheck.pdf



CHARGE FEES

Charge Fees Based On

Calculated Valuation



Online Payment

No



Does this project require a new E911 Address/Yard Marker?

No



Does this project require a County Percolation Test Fee?

No - Not Required



SUBMITTAL DOCUMENTS

Site Plan

Piniarski - bldg site plan.pdf

19339 Septic site plan.pdf

19339 Cougar-GIS SFD site.pdf



Percolation Test Results or Soil Analysis

Piniarski - perc test.pdf

19339 Cougar-rev perc test.pdf



Entrance Permit

John Piniarski - entrance.pdf



Building Plans

Piniarski - bldg plans.pdf



Grading Regular or Engineered Plan



DO NOT START CONSTRUCTION UNTIL PERMITS ARE RECEIVED AND PLACARDS ARE POSTED. FAILURE TO WAIT FOR PERMITS AND POST PLACARDS WILL CAUSE YOU TO HAVE TO PAY AN INVESTIGATION FEE, WHICH IS DOUBLE THAT OF ANY PERMIT FEES YOU PAY. ADDITIONALLY, FAILURE TO OBTAIN PERMITS PRIOR TO STARTING CONSTRUCTION COULD RESULT IN THE ISSUANCE OF A CITATION OF COUNTY INFRACTION. OUR GOAL IS TO HAVE PERMITS OBTAINED PRIOR TO CONSTRUCTION STARTING. PLEASE HELP US ATTAIN THIS GOAL BY APPLYING FOR AND OBTAINING YOUR PERMITS BEFORE STARTING YOUR CONSTRUCTION.)

ACKNOWLEDGEMENT

I hereby certify all information contained in this application is true, accurate and complete to the best of my knowledge. Furthermore, I am the property owner of record; or an authorized representative of the contractor registered with Pottawattamie County listed above and authorized by the property owner to perform the work described. I am primarily responsible for the work described and agree to abide by the applicable provisions of law and building codes adopted by the state of Iowa and Pottawattamie County.

Applicant Signature

Sign Here

- Any and all information given to County Government may be considered an open record and subject to request from anyone at anytime. Please check this box if you want your contact information to be made public, or leave it un-checked if you are giving this information only as a convenience in the matter.

A \$25 dollar State Well Permit Fee MUST BE PAID BY CHECK and be submitted to our office made payable to IDNR

FEES



FEE	DESCRIPTION	TOTAL
Permit Fee		1,832.87
Plan Review Fee		458.22
Septic Permit		180.00
	Plan Check Fees	638.22
	Permit Fees	1,832.87
	Total Fees	2,471.09

PAYMENTS



DATE	RECEIVED FROM	AMOUNT
07/27/2023	PINIARSKI, JOHN-TANNA	180.00
07/27/2023	PINIARSKI, JOHN-TANNA	2,291.09
	Amount Paid	2,471.09
	Balance Due	0.00



State Code:

335.2 Farms exempt.

1. Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit, or excavation in or on the floodplains of any river or stream.

2. A county shall not require an application, an approval, or the payment of a fee in order for an ordinance to be deemed inapplicable to land, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted for use for agricultural purposes under this section.

3. Land, farm houses, farm barns, farm outbuildings, or other buildings or structures may qualify under this section independently or in combination with other agricultural uses. Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes under this section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.2; 81 Acts, ch 117, §1070; 82 Acts, ch 1245, §16]

C93, §335.2

2019 Acts, ch 24, §104; 2020 Acts, ch 1034, §1, 5, 6

Referred to in §335.3, 368.26, 414.23

Pottawattamie County, Iowa code

8.001.050 AGRICULTURAL USES EXEMPT: In accordance with the provisions of Chapter 335, Code of Iowa, as amended, no regulations or restrictions adopted under the provisions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes. **WHILE SO USED**; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposits or excavation in or on the flood plains of any river or stream shall apply thereto. (*Ordinance #2023-06/01-08-2024*)

- .01 No Building Permit or Certificate of Occupancy shall be required for the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located.
- .02 Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes.
- .03 It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes.
- .04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities.
- .05 No conditional use permit, special use permit, special exception, or variance shall be required for agricultural experiences on property of which the primary use is agricultural production.



**INFORMATIONAL GUIDE
AND
REQUEST FOR DETERMINATION**
Pottawattamie County
Planning & Development Department
Building & Safety Division

**Agricultural Exemption
From
Zoning & Building Regulations**

What is the "Agricultural Exemption" and what does the exemption allow for?

The State of Iowa has given counties the authority to develop zoning regulations and to adopt building codes for their unincorporated areas. However, the State has declared that farms should be able to operate relatively free from local restrictions.

An Agricultural Exemption provides relief from setback distances and allows for agricultural uses in all zoning districts. Floodplain regulations, onsite sewage system regulations, well regulations and entrance permitting still apply to agricultural projects.

For each project, please submit an Agricultural Exemption Request via Informational guide or provide other information and documentation to show the level of agricultural activities. Information can be provided electronically or in paper format and may be supplemented by any documents which the preparer deems may be helpful to make a determination. The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities.

NOTE: Some financial institutions may require a "Certificate of Occupancy" as part of mortgage financing. The County will only issue a Certificate of Occupancy if building permits have been issued, building codes have been adhered to and inspections performed. If your proposed dwelling is granted a farm exemption, no permits will be issued and no inspections are performed, therefore, the County **WILL NOT ISSUE A CERTIFICATE OF OCCUPANCY**. However, if you choose to apply for building permits, pay the required fees and have inspections performed, a Certificate of Occupancy can be granted provided the structures are constructed to the applicable codes.

The Development Director will make a determination and inform you of the decision in writing within 7 to 10 working days. Any appeal of the Director's decision must be made within 30 days of the date of the decision to the Zoning Board of Adjustment.

Effective March 1, 2009 all agricultural buildings and dwellings will be required to obtain electrical permits. Effective July 1, 2009 agricultural electrical permits will be issued and inspected by the State of Iowa. The state electrical division contact phone number is (515)725-6147. Their website is <http://iowaelectrical.gov>.

Sections from the Code of Iowa:

335.2 Farms exempt.

Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

331.304.3.b Farms exempt.

A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so uses or under construction for that use.

Agricultural Exemption and related definitions from the Pottawattamie County, Iowa, Zoning Ordinance, Chapter 8.001 and 8.002-Defintions.

- 8.001.050 AGRICULTURAL USES EXEMPT:** In accordance with the provisions of Chapter 335, Code of Iowa, as amended, no regulations or restrictions adopted under the provlsions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes. WHILE SO USED; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposits or excavation in or on the flood plains of any river or stream shall apply thereto. (Ordinance #2004-14/07- 01-04)
- .01 No Building Permit or Certificate of Occupancy shall be required for the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located. (Ordinance #2015-05/12-18-2015)**
 - .02 Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes.**
 - .03 It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes. (Ordinance #81-6/10-01-81)**
 - .04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activlites.**
 - .05 No conditional use permit, special use permit, special exception, or variance shall be required for agricultural experiences on property of which the primary use is agricultural production.**

- 8.002.020.030 **AGRICULTURE:** The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of such accessory use shall be secondary to that of normal agricultural activities.
- 8.002.0070.040 **FARM:** A tract or area of land which is primarily used for agricultural purposes and the growing and production of all farm products thereon, and their storage on the area, or for the raising thereon of poultry or livestock.
- 8.02.70.50 **FARMSTEAD:** The buildings and adjacent service areas of a farm.

**POTTAWATTAMIE COUNTY, IOWA
AGRICULTURAL EXEMPTION REQUEST
INFORMATION GUIDE**

PROPERTY OWNER	Name			
	Mailing Address	Street		City, State, Zip
	Contact Information	Email		Home # <input type="checkbox"/> Work # <input type="checkbox"/> Cellular <input type="checkbox"/>
OCCUPANT (if other than property owner)	Name			
	Mailing Address	Street		City, St, Zip
	Contact Information	Email		Home # <input type="checkbox"/> Work # <input type="checkbox"/> Cellular <input type="checkbox"/>
PROPERTY INFORMATION		<input type="checkbox"/> Same as above #1 <input type="checkbox"/> To be assigned by Planning Dept.		
	Flood Plain Area	Rate Map # 19155CO- Floodplain? Flood Zone <input type="checkbox"/> .1% <input type="checkbox"/> AH <input type="checkbox"/> A <input type="checkbox"/> AO <input type="checkbox"/> AE <input type="checkbox"/> X <input type="checkbox"/> Yes <div style="text-align: right;"><input type="checkbox"/> No</div>		
	Zoning District	<input type="checkbox"/> A-1 <input type="checkbox"/> A-2 <input type="checkbox"/> A-3 <input type="checkbox"/> A-4 <input type="checkbox"/> R-1 <input type="checkbox"/> R-2 <input type="checkbox"/> R-3 <input type="checkbox"/> R-5 <input type="checkbox"/> C-1 <input type="checkbox"/> C-2 <input type="checkbox"/> C-3 <input type="checkbox"/> J-1 <input type="checkbox"/> J-2 <input type="checkbox"/> J-3		
	Parcel #	Legal Description	Acres	
IMPROVEMENTS	Description of Work <i>EF on that apply</i>	<input type="checkbox"/>	Single-Family Dwelling	
		<input type="checkbox"/>	Remodel or Addition to Existing Single-Family Dwelling	
		<input type="checkbox"/>	Deck	
		<input type="checkbox"/>	Detached Garage	
		<input type="checkbox"/>	Storage Building	
		<input type="checkbox"/>	Barn for animals or fowl including corral	
		<input type="checkbox"/>	Demolition of:	
		<input type="checkbox"/>	Addition :	
	<input type="checkbox"/>	Grading		
	<input type="checkbox"/>	Other		

SECTION A: CONSTRUCTION OF A FARM HOUSE/ADDITION TO A FARM HOUSE/REMODEL OF FARM HOUSE

In order to qualify for the exemption as a **farm house**, the occupants must be primarily adapted to agricultural. Please provide a detailed answer as appropriate to the following questions. Attach additional documentation if necessary.

Primarily adapted to agriculture includes but is not limited to any of the following:

1. Describe the average number of hours per week the occupant dedicates towards agricultural activities on the properties described above or documentation of.

2. Describe what the occupant's active role is relating to the agricultural activities that take place on the properties described above or documentation of.

3. Describe the percentage of monetary input the occupant furnishes to the agricultural operation or documentation of.

SECTION B: OTHER STRUCTURES

1. Use of the structure. List what will be stored or kept in the structure, i.e. farm tractor, combine, agricultural chemicals, seed, hay, boat, camper or livestock.

2. Describe the percentage the structure that will be utilized for the agricultural purpose.

Pottawattamie County, Iowa Code
CHAPTER 8.099
FEES

- 8.099.010 FILING FEE REQUIRED: A filing fee in accordance with the established fee schedule shall be charged for each application to assist in deferring the cost of administrative review and legal publication. The applicant shall be held responsible for submitted the required filing fee upon submission of the completed application. No action shall be taken on any application until the required fee is paid in full. (*Ordinance #81-6/10-01-81*)
- 8.099.020 FEE SCHEDULE: The fee schedule as set forth in Chapter 1.50 is hereby established for matters pertaining to this Ordinance. (*Ordinance #99-1/02-06-99*)
- 8.099.030 PAYMENT OF FEES: All fees mentioned above shall be paid to the County Treasurer for the rural services fund of Pottawattamie County, Iowa. (*Ordinance #2007-10/12-7-07*)
- 8.099.040 FEE REFUND: Fees shall not be entitled to be refunded. (*Ordinance #2009-05/06-05-09*)

ATTACHMENT #4
CASE# ZA-2024-01

EVANS & DIXON L.L.C.

ATTORNEYS AT LAW

133 West Broadway | Council Bluffs, Iowa 51503
(712) 328-1833 | Fax (712) 328-8320

March 13, 2024

Matt Wyant
Pottawattamie County Planning & Development
227 South 6th Street
Council Bluffs, IA 51501

Via Hand Delivery

RE: Piniarski Appeal

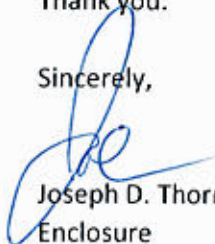
In addition to the other items already provided to you by Mr. and Mrs. Piniarski, we are submitting the following documents for inclusion in the record and for the hearing on March 27, 2024:

- Sustainable Iowa Land Trust – Farm Management Plan 4/14/22
- Piniarski Farm Plan 2024
- Piniarski Farm Plan 2023
- Piniarski Farm 2022 with attached 2nd and 3rd Year Map Key and Aerials
- Sustainable Iowa Land Trust -- Annual Monitoring Visit Report
- Letter of Les Beck, President of the Board of Directors – SILT – dated 3/14/24
- Grant of Agricultural Conservation Easement Limiting Owners' Uses

Please let me know if you require additional information.

Thank you.

Sincerely,



Joseph D. Thornton
Enclosure

Cc: Kristen Bracker (letter only, via email)

RECEIVED

MAR 13 2024

**POTT. CO. IOWA
PLANNING**

**Sustainable Iowa Land Trust
Farm Management Plan
PINIARSKI FARM**

This form is designed to be efficient while also providing adequate information to meet SILT's sustainability standards per our policies (for SILT-owned land) and agricultural conservation easements. Farmers/landowners are encouraged to duplicate and draw on aerial maps and attach other documentation that will help illustrate your plans for this land in the next 1-3 years. Plans are reviewed annually at our site visit.

Date: 4/14/2022

By John & Tanna Piniarski

And Shannon of the Sustainable Iowa Land Trust (volunteer/staff)

Length of time you have farmed/protected this land: 3 months

This farm is being operated by the standards of and certification of : (Check All that Apply)

- USDA Certified Organic Program
- Certified Naturally Grown
- Food Alliance
- Animal Welfare Approved (livestock only)
- Biodynamic
- Other 3rd Party Certification Standard heretofore agreed upon, describe:

I am in Year 1 of transitioning to this practice.

If you are already certified, please attach a copy of your third-party certification.

(NOTE: Should farmer decline to get certified by any of the above referenced parties, the cost of inspecting and verifying farmer's sustainable practices will be borne by the farmer.)

Plan description:

Attach a map of our farming area showing fields/divisions.

For each field or division please note our plans for the next three years. This plan is subject to change on a yearly basis. Plan includes possible crops, tillage, livestock and pasture strategies, maintenance plans, planned soil improvements and other physical changes to the landscape.

See map

2024

Piniarski Farm Plan

Our last year ended pretty well. We harvested around 100 bales for the year. Our Fall harvest of millet didn't do as well as our Spring Harvest so we ended up cutting the front pasture and letting it lay. Currently, our back pasture is planted in wheat and will be ready for harvest end of Spring. We are establishing pasture grass for the sheep we will be rotationally grazing in the front pasture. After this wheat harvest, we will be planting pasture grass on our back pasture and establishing the fence line along that side of the property so that we can rotationally graze back there as well. We had a 300-foot vegetable and flower garden this past year and we plan to expand and have started prepping for that. We turned our 30x12 carport into a green house to allow us more space to start seeds and extend our growing season. We also applied for our local farmers market so hopefully we get approved. Our first hive of bees made it through Winter and will have a second hive this Spring. Johnny set up a plan with the DNR and has been working diligently to remove invasive species from the farm that have taken over parts of our timber and terraces. We ordered trees to start our orchard and some other native trees to place around the property for wildlife and windbreaks. Our farmhouse should be done this year so that will make things easier to fulfill more of our plans.

2023

Piniarski Farm Plan

This year's farm plan will be a refined repeat of last year's and may be more realistic as we are hoping to be living on the property for the first time in the coming month if all goes as planned.

Our first year (last year) we had great plans and expectations, but had a few roadblocks along the way slowing our plans. With all that said we were still able to get a road to the future homestead area put in, a water well dug and installed, and electricity brought out to the farm! Since we aren't completely ready to turn up our regenerative permaculture food forest on the pastures planted organic rye for the first harvest this year. First thing, in mid-April we will be developing beds and an irrigation system. In the following spring, we hope to start a compost operation and establish a fence where there isn't any for future livestock. We hired a surveyor to identify the exact property lines in question. We also have met with the local forester and identified and made plans for remediation of quite a few trees of heaven problems on the farm, as well as some other invasive species we will be removing this spring. We will also be planting some fruit and native trees to help with dust and wind blocks.

2022

Piniarski Farm

1st Year Map Key

Front Pasture (Cougar Ave)

Thick White Line- Road from Street to house (will also connect to future buildings in farmstead area)

Black Thin Line- Fence line continuation for future animal grazing

Red Rectangle- House

Small Blue Circle- Desired well location (depending on where they can find water)

Grey Rectangle Left of House- Septic system

Back Pasture

Yellow Hexagons- Bee Boxes (will also plant some wildflowers around them)

Front and Back Pasture

Current pasture is in Winter Rye. Our plan is to cut and bail in early Summer for sale of hay and silage.

2nd- 3rd Year Map Key

Front Pasture

Purple Square- Farmstand

Dark Green Line Running Along Road- Protective Treeline

Lime Green Section- Fruits and Veggies

Blue Section- Cut Flowers

Dark Red Section- Community Space

Back Pasture

Big Blue Arrows- Chicken and Livestock Rotation (Cows, Chicken,
Potentially Sheep and Lamb)

Pink and Green Line- Fruit Tree Orchard (Apples and Pears)



Source: ESRI, Vector, GeoEye, Earthstar Geographics, CNR/Airphoto DS, USGS, AeroGRID, IGN, and the GIS User Community



Source: EPA, Water GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Annual Monitoring Visit Report:

Landowner

Landowner
Tanna and Johnny Piniarski
tanna.piniarski@gmail.com

Observations

1. SILT Property Name

Driscoll Stewardship Site

2. Date of Monitoring Visit:

12/11/23

3. Date of Last Monitoring Visit:

07/20/2022

4. Time of Monitoring:

12:00 PM

5. Property Location (address):

19195 Cougar Avenue,

6. County:

Pottawattamie

7. No. of Acres:

53

8. Date of Acquisition:

September 2015

9. Acquisition Type:

Reserved Life Estate Conservation Easement Bargain Sale Fee Simple

10. Monitored by:

Zachary Cassidy

11. Report prepared by:

Zachary Cassidy

12. Weather Conditions:

Sunny Overcast Rain Snow Windy Other

13. Did the farmer/landowner accompany you on the site visit?

Yes No

14. Narrative Description: Describe the general character of the property and the conditions observed during the site visit. Please make notes on the attached map showing monitoring route, area covered and observations. Is there a route you would recommend for future site visits?

Noticed a downed fence along Monroe Lane. Otherwise no major issues were found.

15. Did you observe evidence of any of the following during your visit? Please check boxes and describe in detail below.

Commercial activity Building Construction Depositing/dumping Wetland or Stream Alteration
Excavation (soil, gravel, rock) Pond Construction Tree removal/timbering Road/driveway construction
Encroachment Trespassing Other

16. What indications are there that the primary use of this property is for sustainable food production? Attach pictures if needed.

Obvious signs of farming.

17. Has this property been in sustainable food farming for three out of the last five years?

Yes No

18. Do Baseline Documentation photos reflect the current conditions of the property?

Yes No

19. Observations related to the property's conditions and conservation values (CRP, tree plantings, cover crops, tillage, etc)? Please describe the observation and the location of anything noted. Is there action needed?

N/A

20. Observations related to any potential conservation easement violations or conservation property ownership challenges?

N/A

21. Is this farm certified by one of the following? If so, please attach the certification to this Annual Monitoring Report. If there is no current certification please explain why and whether or not the current farmer will be providing one of these certification in the future.

Certified Organic Food Alliance Approved Certified Naturally Grown Animal Welfare Approved
 Certified Humane Biodynamic Other

22. Anticipated property transfer Issues?

N/A

23. Any Follow Up Required?

Yes No

Summary

I attest that this report is a fair and accurate representation of the conditions of the property at the time of the visit.

Zachary Dunn Cassidy

Zachary Dunn Cassidy, Central Iowa Land Scout

December 14th, 2023 at 9:42:54 AM GMT-6 by user: zach@silt.org

Photos Taken



Photopoint 01: 41.40183, -95.81657
. Facing ESE. Taken by Zach Cassidy.



Photopoint 01: 41.40183, -95.81657
. Facing E. Taken by Zach Cassidy.



Photopoint 01: 41.40183, -95.81657
. Facing E. Taken by Zach Cassidy.



Photopoint 02: 41.4035, -95.8163
Facing SSW. Taken by Zach Cassidy.



Photopoint 02: 41.4035, -95.8163
Facing SSW. Taken by Zach Cassidy.



Photopoint 02: 41.4035, -95.8163
Facing SSE. Taken by Zach Cassidy.



Photopoint 03: 41.40372, -95.81629
Facing SSW. Taken by Zach Cassidy.



Photopoint 03: 41.40372, -95.81629
Facing WNW. Taken by Zach Cassidy.



Photopoint 03: 41.40372, -95.81629
Facing ENE. Taken by Zach Cassidy.



Photopoint 04: 41.40181, -95.818
Facing NE. Taken by Zach Cassidy.



Photopoint 04: 41.40181, -95.818
Facing SSW. Taken by Zach Cassidy.



Photopoint 04: 41.40181, -95.818
Facing NNW. Taken by Zach Cassidy.



Photopoint 05: 41.40378, -95.81809
. Facing SW. Taken by Zach Cassidy.



Photopoint 05: 41.40378, -95.81809
. Facing NW. Taken by Zach Cassidy.



Photopoint 05: 41.40378, -95.81809
. Facing SE. Taken by Zach Cassidy.



Photopoint 06: 41.40634, -95.81941
. Facing NE. Taken by Zach Cassidy.



Photopoint 06: 41.40634, -95.81941
. Facing W. Taken by Zach Cassidy.



Photopoint 06: 41.40634, -95.81941
. Facing WNW. Taken by Zach Cassidy.



Photopoint 07: 41.40476, -95.81811
. Facing S. Taken by Zach Cassidy.



Photopoint 08: 41.41247, -95.81699
. Facing W. Taken by Zach Cassidy.



Photopoint 08: 41.41247, -95.81699
. Facing W. Taken by Zach Cassidy.



Photopoint 08: 41.41247, -95.81699
. Facing WNW. Taken by Zach Cassidy.



Photopoint 09: 41.4125, -95.81852
. Facing E. Taken by Zach Cassidy.



Photopoint 09: 41.4125, -95.81852
. Facing SW. Taken by Zach Cassidy.



Photopoint 09: 41.4125, -95.81852
. Facing SSE. Taken by Zach Cassidy.



Photopoint 10: 41.41114, -95.81718
. Facing NE. Taken by Zach Cassidy.



Photopoint 10: 41.41114, -95.81718
. Facing SSW. Taken by Zach Cassidy.



Photopoint 10: 41.41114, -95.81718
. Facing ENE. Taken by Zach Cassidy.



Photopoint 11: 41.41035, -95.8169
. Facing WSW. Taken by Zach Cassidy.



Photopoint 11: 41.41035, -95.8169
. Facing SW. Taken by Zach Cassidy.



Photopoint 11: 41.41035, -95.8169
. Facing E. Taken by Zach Cassidy.



Photopoint 12: 41.40985, -95.8171
. Facing NW. Taken by Zach Cassidy.



Photopoint 12: 41.40985, -95.8171
. Facing NNW. Taken by Zach Cassidy.



Photopoint 12: 41.40985, -95.8171
. Facing SSW. Taken by Zach Cassidy.



Photopoint 13: 41.40795, -95.81645
. Facing NW. Taken by Zach Cassidy.



Photopoint 13: 41.40795, -95.81645
. Facing WSW. Taken by Zach Cassidy.



Photopoint 13: 41.40795, -95.81645
. Facing W. Taken by Zach Cassidy.



Photopoint 14: 41.40691, -95.81611
. Facing ESE. Taken by Zach Cassidy.



Photopoint 14: 41.40691, -95.81611
. Facing SSE. Taken by Zach Cassidy.



Photopoint 14: 41.40691, -95.81611
Facing NE. Taken by Zach Cassidy.

Visit Map



- Site Visit Points
- Site Visit Lines
- Driscoll Boundary

Les Beck
3406 Sycamore Court NE
Cedar Rapids, IA 52402
(319) 310-6853
lbeck0702@imnmail.com

March 14, 2024

Pottawattamie County Board of Adjustment
227 South 6th Street
Council Bluffs, IA 51501

Subject: Case #ZA-2024-01 (Piniarski)

Board Members:

Thank you for your time to consider these comments regarding John & Tanna Piniarski's appeal of their agricultural exemption denial.

I am writing, in part, as President of the Board of Directors of the Sustainable Iowa Land Trust (SILT). SILT's mission is to "...secure, preserve and steward threatened farmland, ensuring that future generations of farmers have access to Iowa land to produce healthy food in the most sustainable ways possible." In support of this mission, SILT holds an Agricultural Conservation Easement on the Piniarski's land, which stipulates that the agricultural area of the property shall be used for Commercial Agriculture. Please find as part of this letter a copy of the Agricultural Conservation Easement.

I am also writing, in large part, as a former county planning & zoning director with nearly forty years' experience in Iowa. I served as Planning & Zoning Administrator for Story County from 1983 – 2000, and then as the Linn County Planning & Development Director from 2000 until my retirement in 2021. It is safe to say that I have reviewed several hundred agricultural exemption cases over the course of my career. I understand how difficult these decisions can be not only for zoning staff, but for a Board of Adjustment when hearing an appeal. These decisions become even more difficult in cases involving beginning farmers like the Piniarski's – where there may at first appear to be relatively thin evidence of farming on which to grant an exemption. After reviewing the evidence in this case, however, I believe there is very strong evidence from which this Board can determine that the appeal should be granted.

Some Facts Regarding This Case

As a quasi-judicial board, it is important to base your decision on the facts of the case. These are what I believe are pertinent facts.

Pertinent Iowa Code Facts

1. Iowa Code Chapter 335 grants counties the authority to adopt zoning regulations at the option of the Board of Supervisors.
2. Iowa Code section 335.2.1 exempts from zoning regulations "land, farm houses, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used."
3. Iowa Code section 335.2.3 states, in part, that "land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes."

4. Neither “agricultural purposes” nor “soil or water conservation program” are defined in Iowa Code Chapter 335.

Pertinent Pottawattamie County Zoning Ordinance Facts

1. The Zoning Ordinance defines Agriculture as “the use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of such accessory use shall be secondary to that of normal agricultural activities.”
2. Section 8.001.050.02 of the Pottawattamie County Zoning Ordinance states that “land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes.”
3. The Pottawattamie County Zoning Ordinance does not define “soil or water conservation program.”

Pertinent Sustainable Iowa Land Trust Facts

1. The Sustainable Iowa Land Trust (SILT) is a registered 501(c)(3) non-profit organization whose mission is to “... secure, preserve and steward threatened farmland, ensuring that future generations of farmers have access to Iowa land to produce healthy food in the most sustainable ways possible.”
2. SILT holds an Agricultural Conservation Easement on the Piniarski property, which stipulates that the agricultural area of the property shall be used for Commercial Agriculture.
3. **Article I, Section D of the Easement** states, in part: “(Iowa Code) Section 161A.2 declares the policy of the State as ensuring long-term protection of Iowa’s soil and water through integration of conservation practices into agricultural production.”
4. **Article I, Section F of the Easement** states, in part: “It is the Land Trust’s intent to monitor and enforce this easement for the purpose of maintaining the land’s affordability and natural agricultural capacity to grow food for human consumption.”
5. Additionally, the Easement includes the following recitations in **Article II, Section B. Purposes:**
 2. Granting Owner grants this easement for the purpose of providing long-term affordable access to land that will be farmed with methods that maintain the ecological health and species diversity of the Property.
 3. In particular, Owner’s primary purpose in granting this Easement is to enable the Property to remain in productive agricultural use. ...
6. **Article II, Section D, Prohibitions, Restrictions and Reserved Rights** includes the following subsection:
 - (15) **Agricultural Use Required.** Owner is required to use the Agricultural Area and Homestead Area for commercial agricultural purposes... and to retain and protect the agricultural productive capacity and open space character of the Property.
7. In fulfillment of the grant of this Agricultural Conservation Easement, the Piniarski’s developed farm plans for 2023 and 2024, detailing work that was planned, and work that has been accomplished, to establish their farm operation.
8. Also in fulfillment of the grant of this Agricultural Conservation Easement, SILT staff performed an annual monitoring visit on December 11, 2023, as required by the Easement. The monitoring report indicates “obvious signs of farming” and that the property has been in sustainable food farming for three of the past five years.

Conclusions That May be Drawn from These Facts

A Board of Adjustment must draw its conclusions of law from the facts of the case. Based on the facts presented above, I believe it is reasonable for this Board of Adjustment to make the following conclusions of law:

1. The property is “primarily adapted, by reason of nature and area, for use for agricultural purposes” in accordance with Iowa Code Chapter 335.
2. The property qualifies under Iowa Code section 335.2.3 and under Pottawattamie County zoning ordinance section 8.001.050.02 as “land enrolled in a soil or water conservation program” as evidenced by **Article I, Section D** of the Agricultural Conservation Easement, and therefore may be considered land primarily adapted for use for agricultural purposes.
3. The Piniarski’s are, and will continue to be, engaged in commercial agricultural production on the property, as required by the Agricultural Conservation Easement held by the Sustainable Iowa Land Trust and evidenced by the 2023 and 2024 farm plans prepared by the Piniarski’s for SILT.
4. Commercial agricultural activity is occurring on the property as evidenced by the SILT annual monitoring report dated December 11, 2023.
5. The provisions of the Agricultural Conservation Easement, the 2023 and 2024 farm plans, and the annual monitoring report all provide evidence that the Piniarski’s are engaged in commercial agricultural production on the property, and therefore the proposed house may be considered to be “primarily adapted, by reason of nature and area, for use for agricultural purposes” as a farm house per Iowa Code Chapter 335.

Suggested Board Action

These findings and conclusions provide the Board with a solid legal justification to determine there was an error of law in the denial of the agricultural exemption, and to grant the appeal of John and Tanna Piniarski, Case #ZA-2024-01.

I apologize that I am unable to attend this meeting in person, but I want to take this opportunity as a former county planning staff person to thank you for your service on the Pottawattamie County Board of Adjustment. I hope that the Board finds this information helpful in its deliberations.

Regards,



Les Beck, Board President
Sustainable Iowa Land Trust

Prepared by:

Name: Suzan Erem, Executive Director Sustainable Iowa Land Trust
Address: PO Box 306 101 Main St. West Branch IA 52358
Telephone: (319) 800-8108

Return to:

Name: Sustainable Iowa Land Trust
Address: PO Box 306, 101 Main St., West Branch, IA 52358

Tax parcel(s): 764305300005

GRANT OF AGRICULTURAL CONSERVATION EASEMENT LIMITING OWNERS' USES

I. RECITALS

A. Identification of Owner, Land Trust and others

The Owners, John and Tanna Piniarski, are the sole owners in fee simple of that certain real property containing a total of 53.03 acres, more or less, in Pottawattamie County, Iowa, designated as Pottawattamie County Assessor's Parcel Number[s] 764305300005 on the Pottawattamie County Assessor's Maps currently in effect, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The term "Owner" refers to both the Granting Owner and to all subsequent Owners no matter how they may come to own part or all of the Property. The Sustainable Iowa Land Trust ("Land Trust") is the holder and owner of the Easement conveyed with this Deed.

B. General information about the Property, introduction of any Zones

The Property consists of 53.03 acres of tillable, forested, and pasture ground located in the western region of the State of Iowa.

The Property consists of 53.03 areas, a 48.7 -acre portion of the property that will used for Commercial Agriculture ("the Agricultural Area") further described in Exhibit B and a 5.4 -acre portion of the property that can be further developed ("the Farmstead Area") further described in Exhibit B.

The Agricultural Area is intended for commercial agriculture.

The Farmstead Area is intended for all uses related to farm family dwelling, farm worker dwelling, farm buildings and related agricultural and or commercial enterprises.

The entirety of the described Property is referred to herein as "Easement Area."

C. Factual recitals to establish public benefit, satisfaction of section 170(h)

1. **Open Space [§ 1.170A-14(d)(4)]** with scenic enjoyment, agriculture, significant public benefit. The Agricultural Area is Ida silt loam and Monona silt loam soils, described by the United States Department of Agriculture as farmland of statewide importance. Steep, erodible slopes are ideal for perennial crop production and pasture, Wooded areas are well-suited for Agroforestry. The farm is bordered on two sides by county roads that provide scenic enjoyment. The land is within 20 miles of Omaha, NE and therefore under threat by housing development. The farm will provide scenic enjoyment to those who live in homes built surrounding it.
2. **Recreation or Education [§ 1.170A-14(d)(2)]**. The location of this land makes it suitable for educating the public on nature-friendly table food farming. Since the 1950's, the Iowa landscape has moved from an average of 34 crops per farm to an average of two. More than 99 percent of Iowa's cropland is currently in two commodity crops. The remaining land is used for industrial livestock confinement operations. Iowa imports nearly 90 percent of its food at the time of this Grant. Additionally, this property is located only one mile from a well-established, popular nature enter that draws tens of thousands of visitors per year. There is significant opportunity for a farmer to educate the public on the soil's capacity to grow food near Iowa's metropolitan areas.

D. Factual recitals to establish Public Benefit, Satisfaction of Iowa Chapter 159: The State of Iowa has a clearly delineated conservation policy to preserve and protect agriculture and agricultural land for a significant public benefit, as encapsulated in the following sections of the Code of Iowa. Chapter 159 assigns the Iowa Department of Agriculture and Land Stewardship (IDALS) with the responsibility of protecting and promoting agriculture, and it must establish and maintain a Division of Soil Conservation. Section 161A.2 declares the policy of the State as ensuring long-term protection of Iowa's soil and water through integration of conservation practices into agricultural production. Sections 161A.5-12 provide for continuing operation of Iowa's Soil and Water Conservation Districts.

As specifically identified in Iowa Chapter 159.2 The objects of the department of agriculture and land stewardship shall be:

1. *To encourage, promote, and advance the interests of agriculture, including horticulture, livestock industry, dairying, cheese making, poultry raising, biofuels, beekeeping, production of wool, production of domesticated fur-bearing animals, and other kindred and allied industries.* Based on soil types, slopes and location from a major metropolitan area such as Omaha, NE, this land is suited in particular for horticulture, pastured livestock and beekeeping but can support many other farm enterprises.
2. *To encourage a relationship between people and the land that recognizes land as a resource to be managed in a manner that avoids irreparable harm.* As Iowa is currently the No. 1 contributor to the hypoxia in the Gulf of Mexico, this land, located in the Big Papillion-Mosquito HUC-8 Iowa watershed, reducing soil erosion and the use of synthetic chemicals on this property through natural practices and perennial crops near waterways will reduce the harm this property is causing downstream.

Individually and collectively, these agricultural, open space and ecological values comprise the "Conservation Values" of the Property.

E. Baseline

The specific Conservation Values of the Property, including the natural, ecological, scenic, agricultural, open space, and other characteristics of the Property, and its current use and state of improvement, are documented in an inventory of relevant features of the Property prepared by Land Trust with the cooperation of Owner dated December 11, 2021 on file at the offices of Land Trust and incorporated herein by this reference ("Baseline Documentation"), consisting of field reports, maps, photographs, and other documentation that the Parties all agree provide, collectively, an accurate representation of the Property at the time of this grant and that are intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with this Easement. The Baseline Documentation may be used by Land Trust to establish that a change in the use or character of the Property has occurred, but the existence of the Baseline Documentation shall not preclude Land Trust's use of other evidence to establish the condition of the Property as of the date of this Easement. The Parties further agree that, if a controversy arises with respect to the condition of the Property or a particular Conservation Value thereof, the Parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in resolution of the controversy.

F. Granting Owner's intent

1. Granting Owner intends that the Conservation Values of the Property be preserved and maintained by permitting only those uses of the Property that do not significantly impair or interfere with the Conservation Values. Granting Owner intends to make a charitable gift of the property interest conveyed by this Easement to Land Trust for the exclusive purpose of assuring that, under Land Trust's perpetual stewardship, the open space character, agricultural, ecological and scenic qualities of the Property will be conserved and maintained forever.
2. Granting Owner and Land Trust recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in Owner's situation may result in an evolution of Agricultural Uses of the Property, provided such uses are consistent with this Easement.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished.
4. Granting Owner further intends, as owner of the Property, to convey to Land Trust the monitoring and enforcement rights to preserve and protect the Conservation Values of the Property in perpetuity.
5. To effectuate the intentions of the Parties, Granting Owner intends to give to Land Trust a perpetual and irrevocable Conservation Easement over the Property, to create certain restrictive covenants and equitable servitudes for the benefit of Land Trust in gross that will bind and run with the Property, and to extinguish irrevocably and perpetually the right to develop the Property, except as expressly permitted in this Easement.

F. Land Trust's intent/qualification

Land Trust is qualified to hold conservation easements under the laws of the United States and the State of Iowa. It is Land Trust's intent to monitor and enforce this easement for the purpose of maintaining the land's affordability and natural agricultural capacity to grow food for human consumption.

II. Agreement

A. Grant and Acceptance of Easement.

In consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Chapter 457A of the Code of Iowa and other applicable law, Owner hereby voluntarily grants and conveys to Land Trust a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth, and Land Trust hereby accepts that grant and conveyance.

B. Purposes.

1. Owner grants this Easement to Land Trust for the purpose of assuring that, under Land Trust's perpetual stewardship, the open space character, agricultural capacity and ecological qualities of the Property will be conserved and maintained forever and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The Parties agree, however, that the current uses of, and improvements to, the Property, as described in the Baseline Documentation, are consistent with the conservation purposes of this Easement.
2. Granting Owner grants this Easement for the purpose of providing long-term affordable access to land that will be farmed with methods that maintain the ecological health and species diversity of the Property.
3. In particular, Owner's primary purpose in granting this Easement is to enable the Property to remain in productive agricultural use, preventing uses of the Property that will impair or interfere with its agricultural productive capacity, its soils, and its agricultural character, values, and utility. To the extent that the preservation of the other Conservation Values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values.
4. In granting this Easement, Owner has considered the fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted in this Easement. Owner believes that any such changes will increase the benefit to the public of the continuation of this Easement. Both Granting Owner and Land Trust intend that any changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

C. Rights of Land Trust.

To accomplish the purposes of this Easement, the following rights are expressly conveyed to Land Trust by Granting Owner:

(1) Protection—To identify, preserve and protect the Conservation Values of the Property.

(2) Entry and Enforcement—To manage its responsibilities as holder of this Easement in order to uphold the purposes of this Easement, including, but not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purpose of preserving the Property's Conservation Values including agricultural productive capacity, ecological qualities and open space character in perpetuity. Failure of Land Trust to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice (except in the event of an emergency circumstance or prevention of a threatened breach), Land Trust shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.

(3) Access—To use any recorded or prescriptive easement that now or in the future grants lawful access to or across the Property for any of the foregoing purposes.

(4) Signage—To erect and maintain signs or other appropriate markers in one or more prominent locations on the Property acceptable to Owner, visible from a public road, bearing information indicating that the Property is protected by Land Trust. The wording of the information shall be determined by Land Trust. Land Trust shall be responsible for the costs of erecting and maintaining such signs or markers.

(5) Interpretation—To interpret this Easement, apply this Easement to factual conditions on or about the Property, respond to requests for information from persons having an interest in this Easement or the Property, and apply this Easement to changes occurring or proposed within the Property.

(6) Protection—To require that all mineral, air and water rights as Land Trust deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Easement.

(7) Additional Rights—To exercise such additional rights as may be reasonably necessary to effectuate the purposes of this Easement.

D. Prohibitions, Restrictions and Reserved Rights.

The Property shall be used in a manner consistent with this Easement. Any activity on or use of the Property that is inconsistent with the purposes of this Easement is prohibited. Granting Owner reserves all rights accruing from Granting Owner's ownership of the Property, including the right to engage in, or to permit or invite others to engage in, all uses of the Property that are permitted herein or are neither expressly prohibited herein nor inconsistent with the purposes of this Easement. Ownership rights include the right to sell, lease, or otherwise transfer the Property to anyone Owner chooses, as well as the right to privacy and the right to exclude any member of the public from trespassing on the Property.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, expressly permitted, or qualifiedly permitted as set forth. Nothing in this Easement relieves

Owner of any obligation or restriction on the use of the Property imposed by federal, state, and local laws, regulations and requirements.

(1) Extinguishment of Development Rights. Granting Owner hereby grants to Land Trust all development rights except as specifically reserved in this Easement, that were previously, are now or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the Parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

(2) Subdivision. The Property is currently comprised of one legal parcel, all owned by Granting Owner. Unless otherwise permitted by Land Trust, Owner shall maintain all of the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel in perpetuity. Subdivision of any of the parcels, recording of a subdivision plan, partition of any of the parcels, certificates of compliance, lot line adjustments or any attempt to divide any of said parcels into two or more legal parcels without prior approval of Land Trust as provided below is prohibited.

(3) Lot Line Adjustments. RESERVED

(4) Structures. Placement, construction, installation, reconstruction or expansion of any structures, buildings, additional roads or access routes, or other manmade improvement of any kind (including, without limitation, buildings, parking lots, billboards, mobile homes, modular structures, towers) is prohibited outside the Farmstead Area, except as expressly permitted in this Section D(4). A structure includes anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground. Before undertaking any construction, erection, installation or placement that requires advance approval, Owner shall notify Land Trust and obtain prior written approval from Land Trust as required below. "Improvement" shall not refer to trees, vines, or other living improvements planted for agricultural or landscaping purposes, whether or not stakes are required to support the plants, nor shall it refer to minor irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without the approval of Land Trust. "Minor irrigation improvements" are those that are seasonal in nature and that do not significantly affect Conservation Values.

4a. Fences—Existing fences may be repaired and replaced, and new fences may be built, anywhere on the Property for purposes of reasonable and customary agricultural management and protection of crops, livestock and wildlife, and for security of farm produce, livestock, equipment, and improvements on the Property, and to define boundaries without any further approval of Land Trust.

4b. Permitted Residential Use—The following residential use is permitted:

4b.(1) Existing Single-Family Residential Dwelling— RESERVED

4b.(2) Residential Use of Farmstead Area—Owner may engage in unrestricted residential use of the Farmstead Area to the extent permitted by all applicable Pottawattamie County ordinances and any other applicable federal, state, and local laws, regulations, and requirements, as amended from time to time. No

more than one primary residences not to exceed 2,500 square feet, one Second Unit and one Guest Cottage, shall be permitted in the Farmstead Area. The total interior floor space of the Guest Cottage shall not exceed 1,000 square feet and the total interior floor space of the Second Unit shall not exceed 1,500 square feet.

4b.(3) Placement and Size of Replacement Structures— RESERVED

4b.(4) Accessory Structures, outdoor kitchens/pizza ovens and the like—

Recreational structures and other accessory structures may be constructed within the Farmstead Area without prior written notification to Land Trust so long as they do not interfere with the Conservation Values of the easement.

4c. Agricultural Structures and Improvements—New buildings and other structures and improvements to be used solely for agricultural production on the Property, including barns, equipment sheds, and improvements to be used for agricultural production purposes or sale of farm products predominantly grown or raised by Owner on the Property, but not including any dwelling or farm labor housing, may be built within the Farmstead Area depicted in Exhibit B, without further approval of Land Trust. Any other agriculture production or marketing-related structures may be constructed, repaired, enlarged or replaced only with the written approval of Land Trust as provided herein.

New buildings and other structures and improvements to be used primarily for agricultural production as defined above and not to be used for any dwelling or Farm Support Housing as defined below may be built on the Property within the Farmstead Area identified on Exhibit B. New buildings, structures or improvements proposed for locations outside the Farmstead Area may be built only with the approval of Land Trust.

4d. Agricultural Employee Housing—New dwellings or structures to be used primarily to house tenants or employees engaged in agricultural production on the Property ("Farm Support Housing") may be built on the Property, provided they are located entirely within the Farmstead Area as established in Exhibit B. Farm Support Housing shall not be subdivided from the Property under any circumstances.

4e. Farm Stand/Winery/Other Production or Agricultural Sales Facility—Owner may engage in Commercial activities related to Agriculture sale and production/processing within the Farmstead Area of agricultural products, a majority of which are produced on the Property or another property owned by Owner, or within a county's distance to the Property, into derivatives thereof.

4f. Commercial Agricultural Activities—Owner may engage in Commercial activities related to Agriculture inside of Structures [as that term is defined below] used for Agriculture (for example, farm machine repair shop or seed and mineral shop), and seasonal or occasional outdoor Commercial activities that are accessory to the agricultural uses of the Property (for example, hay rides, corn maze, farm animal petting zoo, pick your own produce) and sale of Agricultural products produced off of the Property but associated with such seasonal or occasional activities (for example, the sale of apple cider on a hay ride).

(5) Utilities. The installation of new, or extension of existing, utilities (including, without limitation, water, sewer, septic tanks and systems, power, fuel, and communication lines and related facilities) is prohibited, except

- (a) as necessary for Agricultural Uses as that term is defined herein
- (b) to service permitted residential uses in the Farmstead Area
- (c) to service other permitted structures and improvements, or

(6) Surface Alterations Excepting Roads and Trails. Any alteration of the surface of the land, including, without limitation, the excavation, addition, dredging, deposit, or removal of soil, sand, gravel, rock, peat, or sod is prohibited, except as necessary for Agricultural Uses, so long as the Conservation Values and agricultural productivity of the soils are not harmed and as necessary for permitted Residential Uses.

“Alteration of the surface of the land” shall include filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, altering the surface or general topography of the Property, and depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other material. Owner shall not explore for, develop, or extract minerals, metals, or hydrocarbons by any mining method, surface or otherwise, on the Property. Composting for Agricultural or Residential Use is excluded from this definition.

(7) Soil Disturbance. Any use or activity that causes or is likely to cause significant soil degradation or erosion, soil compaction, or the pollution, degradation, or depletion of any surface or subsurface waters on the Property is prohibited. Any use or activity, including the use of heavy machinery or large tractors, that is likely to cause significant compaction or erosion of the soil on the Property or degradation of water is prohibited. Mining, drilling, exploration for, or development and/extraction of minerals, hydrocarbons, steam, soils, gravel, rock, or other materials on or below the surface of the Property are all prohibited, using any method that disturbs the surface of the land, except as necessary for the permitted drilling of water wells pursuant to Paragraph 12 or for a specific and not continuous Agricultural Use on the Property.

(8) Removal, Mining and Extraction. No person has retained a qualified mineral interest in the Property of a nature that would disqualify this Easement for purposes of §1.170A-14(g)(4) of the Treasury Regulations. From and after the Easement Date, the grant of any such interest is prohibited and Land Trust has the right and obligation to prohibit the exercise of any such right or interest if granted in violation of this provision.

(9) Existing and New Roads—The maintenance, repair, relocation, improvement, and use of new roads for access to the Property and to access the Farmstead Area are permitted. These roads shall be unimproved, unpaved, and no greater than 20 feet in width, except that the primary road used to access the Farmstead Area may be paved and up to 20 feet in width or improved to the minimum extent necessary to accommodate legal requirements existing at the time of construction. Owner shall not permit any road or driveway access through any portion of the Property to any adjoining parcel, whether or not under the same ownership.

(10) Impervious Surface—No more than 5 percent of the surface of the Property may be covered with impervious material of any kind made or added by humans, including concrete, asphalt, packed earth, structures, tents, or other material, unless for Agricultural Use as permitted in this Easement.

(11) Vehicles. The operation of any motorized or non-motorized vehicle off permitted roads is prohibited except (i) in conjunction with permitted Agricultural Uses, (ii) for urgent emergency uses, (iii) for maintenance of the Property and its water supply, (iv) addressing trespassing, and (v) monitoring this Easement.

(12) Water. The Property includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, creeks and riparian rights and other rights in and to the use of water historically used on or otherwise appurtenant to the Property. Owner reserves and shall retain all right, title, and interest in and to all tributary and non-tributary water, all appropriative, prescriptive, contractual or other water rights, and related interests in, on, under, or appurtenant to the Property for use on or for the benefit of the Property in a manner consistent with this Easement and in accordance with applicable federal, state, and local laws, regulations and requirements. Activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, are prohibited.

(a) Irrigation Improvements—New Irrigation Improvements for permitted Agricultural Uses, including ponds, pumping stations, above ground storage tanks over 5000 gallons require the prior approval of Land Trust as set forth below.

(b) Watershed Enhancement, Creek Restoration and Aquifer Enhancement—Owner may undertake activities to enhance watersheds, restore creeks or enhance natural aquifer recharge so long as (i) the activities have been approved by a qualified hydrologist or Natural Resources Conservation agent, (ii) the activities are consistent with the Conservation Values of the Property and the purposes of this Easement, and (iii) the activities have been approved in advance by Land Trust as provided herein.

(c) No Transfer of Water Rights—Owner shall not separately transfer, encumber, sell, lease or otherwise separate any water rights associated with the Property, nor any permits, licenses or contracts related to the water rights on the Property, or change the authorized or historic use of the water rights without the consent of Land Trust. Owner shall not abandon or allow the abandonment of, by action or inaction, any of the water rights or such permits, licenses or contracts without the consent of Land Trust.

(13) Trees and Other Vegetation. - RESERVED

(14) Trash and Debris, Storage and the Like. The dumping, burial, burning, or other disposal or accumulation of wastes, ashes, refuse, debris, dredge spoils, hazardous or toxic materials, inoperative vehicles, or other unsightly or offensive material on the Property is prohibited, except that reasonably generated by activities permitted herein and disposed of in a lawful manner that does not cause, and is not likely to cause, soil degradation or erosion, pollution of any surface or subsurface waters, or any other degradation of Conservation Values.

(15) Agricultural Use Required. Owner is required to use the Agricultural Area and Farmstead Area for commercial agricultural purposes, including the Agricultural Uses described below, or to permit others to use the Agricultural Area and Farmstead Area for commercial agricultural purposes, in accordance with applicable federal, state, and local laws, regulations and requirements and to retain and protect the agricultural productive capacity and open space character of the Property. This requirement may be waived by Land Trust due to unusual

circumstances, such as great hardship by owner, and documented in the Farm Management Plan. Owner must make application in writing for these special circumstances.

(a) Mandatory Uses. The Property shall remain in agriculture in a way consistent with the Conservation Values and Purposes of this Easement. Such conformity is to be evidenced by delivery to Land Trust, not less than once per year, of a third-party certificate issued by an agent approved for such purpose by the United States Department of Agriculture or other responsible authority reasonably acceptable to Land Trust.

(b) Maintenance of Agricultural Capacity—Should the Property cease to be used for agricultural purposes for more than three years, the agricultural fields will be mowed at least biannually, or otherwise maintained in a condition that prevents the growth of woody vegetation interfering with drainage systems or the reversion of significant portions of the Property to regulated wetland status. Similarly, during prolonged periods of non-use for agricultural purposes, artificial and natural drainage systems must be maintained in a functional state by Owner. If Owner does not comply with this provision, Land Trust shall have the right to mow, maintain or operate such fields at Owner's expense.

Should the Property cease to be used for agricultural purposes for more than five years, Owner gives Land Trust the authority to place the land back into production to comply with this Easement.

(16) Commercial or Industrial Use.

(a) Owner may conduct only those Commercial uses or activities that are directly related to agricultural purposes. Commercial activities and uses that are permitted shall be limited in scale to those appropriate to the size and location of the Property and shall not harm the Conservation Values.

(b) Natural Resource Benefits—Owner reserves the right to sell, trade, or exchange quantifiable natural resource benefits associated with the Property, provided that such sales, trades, or exchanges are exercised in a manner that is consistent with this Easement. Such agreements, and any management of such natural resources in accordance with such agreements, or to accomplish such sales, trades or exchanges, shall be subject to this Easement, and Owner shall at all times remain responsible for compliance with this Easement. One example of such agreement, sale, trade or exchange is one under which Owner receives compensation, including transferable credits, for participating in a greenhouse gas emissions offset program. Another example would be agreeing to restore, enhance or manage endangered species habitat as part of a conservation banking or credit program, provided Owner may not benefit from any compensation or credits available through such programs or agreements in the event that such restoration is required as a result of Owner's violation of this Easement. The Parties acknowledge that, because the conservation interests protected by this Easement shall not be adversely affected by such agreements, exchanges or trades, and the only interest affected shall be Owner's interest, any compensation for such agreements, exchanges or trades shall be payable in its entirety to Owner.

(17) Recreational Uses. Owner retains the right to use and to permit others to use the Property for otherwise lawful recreational uses, including, but not limited to, hiking, cross-country skiing,

birdwatching, meditating, observing and photographing nature, walking, picnicking, resting, education and hunting that are consistent with the purposes of this Easement. Owner retains the right to use and to permit others to use the Property for passive, non-intrusive recreational or educational purposes that require no significant surface alteration or other development of the land.

Resort structures, golf courses, non-residential swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, athletic fields, and any other nonagricultural recreational structures or facilities are prohibited on the Property.

(18) Other Activities

(a) Ecological/Scientific Research—Owner may engage in and permit others to engage in ecological research on the Property that is consistent with the intent of this Easement provided that Land Trust's approval is obtained as provided herein if the research is more than merely observational.

(b) Educational Activities—Owner may carry out educational activities related to the agricultural use of the Property, including but not limited to educational activities addressing the subjects of sustainable agriculture, food production and nutrition, environmental conservation, and ecology.

(c) Future Technology—No use shall be made of the Property, and no activity thereon shall be permitted that is or is likely to become inconsistent with the Purposes of this Easement. Owner and Land Trust acknowledge that, in view of the perpetual nature of this Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Easement. Land Trust therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Easement or (b) alterations in existing uses or structures, are consistent with the Purposes of this Easement.

(19) Right to Privacy/Prevention of Trespass. Owner retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

(20) Acts of God. Owner may undertake the clearing and restoration of land, watercourses, roads, and other structures that have been damaged by fire, flood, earthquake, wind or other natural or human-induced forces.

(21) Home Occupations. So long as otherwise consistent with the Conservation Values, persons lawfully residing on the Property may engage in "home occupations," that occur exclusively inside the home as that term is defined in and subject to all conditions provided in the then current local, state and federal law as amended from time to time. Any physical change required outside the home to accommodate the home occupation is subject to prior written approval of Land Trust.

(22) Renewable Energy/Ancillary Improvements.

(a) Without permission from Land Trust, facilities for the generation and transmission of electrical power, such as windmills and/or solar arrays may be built exclusively within the Farmstead Area. Generation of any electrical power shall be principally for use on the Property. Ancillary improvements constructed within the Farmstead Area count

toward the impervious surfaces limitation as set forth herein. All energy production plans, construction and distribution contracts and other agreements must be made expressly subordinate to this Easement and to the rights of Land Trust in this Easement to protect the Conservation Values in perpetuity.

(b) Possible Future Commercial Energy Production—As of the date of this Easement, Owner and Land Trust mutually agree that current technology for commercial wind and solar energy generation, using tall and visually intrusive wind turbines and large arrays of solar panels, is incompatible with protection of the Conservation Values, and, therefore, commercial renewable/alternative energy production using such technology is prohibited. If renewable/alternative energy production technology changes in the future so that renewable/alternative energy production on a commercial scale is compatible with protection of the Conservation Values, Owner may seek Land Trust's approval of an renewable/alternative energy production plan in accordance with State or Federal Statute or Utility Agreement and taking into consideration the impact on scenic, agricultural and ecological Conservation Values. All plans, construction and distribution contracts and other agreements shall be made expressly subordinate to this Easement and to the rights of Land Trust to protect the Conservation Values in perpetuity.

(23) Boundaries. Owner is obligated to identify the boundaries of the Easement, any Farmstead Area and any other area specially recognized in this Easement before undertaking any actions that are restricted by this Easement within or without the boundaries in question. If Owner fails to do so, Land Trust has the right to require a survey of the relevant lands, at Owner's cost, if necessary, to determine whether Owner's land use activity is in compliance with this Easement.

(24) Reserved Rights Exercised to Minimize Damage. All rights reserved by Owner or activities not prohibited by this Easement shall be exercised so as to prevent or to minimize damage to the Conservation Values identified above and water quality, air quality, land/soil stability and productivity, wildlife habitat, scenic and cultural values, and the natural topographic and open space character of the Property

E. Notice and Approval Processes

(1) Notice of Intent to Undertake Activities or Uses. In addition to notice and/or approval requirements set forth in this Easement, Owner must notify Land Trust and obtain approval before undertaking activities or uses (1) not documented in the Baseline, (2) not affirmatively permitted herein or (3) about which Owner is uncertain as to their adverse impact on Conservation Values.

(a) Purpose—Notice affords Land Trust an opportunity to determine whether the proposed activities or uses are permitted under this Easement and, if so, to ensure that they are designed and carried out in a manner that is consistent with this Easement, as well as to enable Owner to engage in permitted activities confident that they create no unintended violations.

(b) Application—Owner shall submit a written description of the proposed activity or use (an "Application") explaining its nature, scope, design, location, timetable, and other material aspects in sufficient detail to permit Land Trust to make an informed judgment.

(c) Initial Response—Within 30 days after receipt of the Application, Land Trust shall inform Owner in writing whether the Application is complete or whether additional, specified information is required for a complete Application.

(d) Costs—if Land Trust reasonably determines that (i) the advice of a consultant such as an engineer, ecologist, attorney or surveyor is necessary to determine whether an Application is complete and/or to assist Land Trust in reviewing the Application, or (ii) more than 10 person-hours of Land Trust's personnel will be or have been spent annually responding to Application(s) submitted by Owner, Owner shall pay a fee based upon Land Trust's estimate of costs of consultants and/or Land Trust personnel (collectively "Land Trust's Costs") upon notification of the amount or withdraw the Application. If payment is made, Land Trust's time to determine that the Application is complete shall be extended until the consultant's work, if any, is done. If payment is not made, the Application is deemed denied. After Land Trust completes its response to the Application, Land Trust shall submit a final statement of the aggregate amount of Land Trust's Costs, and appropriate adjustments shall be made at that time.

(2) Land Trust's Approval. When Land Trust's approval is required or sought as set forth herein, Land Trust shall grant or deny approval in writing within 30 days after receipt of Owner's complete Application. Criteria that Land Trust may consider include, without limitation, compliance with the provisions of this Easement, the capability of the proposed activity or use to preserve and enhance Conservation Values, the manner in which the proposed activity or use is to be carried out, and its likely effect upon Conservation Values. Land Trust's approval may be withheld upon a good-faith determination by Land Trust that there is a significant risk that the activity or use as proposed would be inconsistent with the purposes of this Easement. Approval or disapproval is within the sole discretion of Land Trust, and approval may only be granted upon conditions that will not harm the Conservation Purpose of this Easement. Failure of Land Trust to respond to a notice of intention within 30 days of receipt of that notice shall constitute a denial.

(3) Inspection and Certification. Upon completion of any use or activity of limited duration, or upon commencement of any use or activity of unlimited duration, as the case may be, Land Trust shall, at the request of Owner, inspect the Property and, if the action was performed in accordance with this Easement and Land Trust's approvals or consents issued hereunder, issue a certificate to that effect, dated as of the time of inspection. Land Trust shall be fully reimbursed by Owner for all costs, including reasonable professional fees of surveyors, attorneys, consultants, Land Trust staff, and accountants, incurred in servicing Owner's request.

(4) Discretionary Approval. In limited circumstances, Land Trust may give written permission to Owner to engage in activities that have impacts on the Conservation Values but that do not conflict with the conservation purposes of this Easement. Land Trust may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate or are not in conflict with the general and specific purposes of this Easement AND (2) either enhance or do not significantly impair any Conservation Value protected by this Easement. Any discretionary consent given by Land Trust under this Paragraph must be delivered by Land Trust to Owner in writing before Owner may engage in the proposed activity, and such consent shall be (a) revocable at Land Trust's discretion, (b) limited in duration; and (c) specific to the individuals or entities who have requested permission to engage in the activity. Notwithstanding the foregoing, Land Trust will not agree to any activities that would result in the amendment or

termination of this Easement under state or federal law. Owner understands and agrees that Land Trust may not be compelled by legal action or otherwise to give consent to any request made under this Paragraph. Nothing in this section shall require Land Trust to consent to any activity otherwise restricted in this Easement, or compel Land Trust to consult or negotiate regarding the withholding or provision of such consent.

(5) Notice of Land Trust's Obligations. If Land Trust by action or inaction does not perform or fulfill any affirmative, non-discretionary obligation required of Land Trust pursuant to this Easement, then Owner may give written notice of that obligation to Land Trust as provided herein, and the Parties shall cooperate and act in good faith to reach a resolution with respect to the obligation.

F. Land Trust's Remedies.

Land Trust may take all actions that it deems necessary to ensure compliance with this Easement. Land Trust shall have the right to prevent and correct violations of this Easement. If Land Trust finds what it believes is a violation, it may at its discretion take appropriate legal action to ensure compliance with this Easement and shall have the right to correct violations and prevent the threat of violations.

(1) Notice of Violation; Corrective Action. If Land Trust determines that a violation or potential violation of this Easement has occurred or is threatened, Land Trust may give written notice to Owner of such violation and demand corrective action sufficient to cure the violation within a specified time appropriate to the circumstances and, when the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Land Trust.

Upon receipt of such notice, Owner shall have 30 days in which to respond to Land Trust and to commence such corrective action as may be necessary to cure the violation or restore the Property. Should Owner fail to respond or to commence corrective action within the 30-day period and thereafter diligently pursue the corrective action, Land Trust may exercise any other remedies provided herein, or at law or in equity. This period to cure shall only apply if the actions constituting the alleged violation have been suspended.

(2) Injunctive Relief. If a court with jurisdiction determines that a violation may exist or has occurred, Land Trust may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy. A court may also issue an injunction requiring Owner to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, Owner shall reimburse Land Trust for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney fees. Failure of Land Trust to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Land Trust's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity or otherwise. Land Trust may seek preliminary injunctive relief even though the dispute is to be arbitrated. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, Land Trust shall give Owner written notice of the violation or potential violation, and 60 days to correct it, before filing any legal action.

(3) Damages. Land Trust shall be entitled to recover damages for violation of this Easement or injury to any of the Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, ecological, agricultural or environmental values. Without limiting Owner's liability therefor, Land Trust shall apply any damages recovered in such manner as Land Trust shall determine in its sole discretion to the costs of monitoring and enforcing this Easement and undertaking any corrective action on the Property.

(4) Emergency Enforcement. If Land Trust, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to Conservation Values, Land Trust may pursue its remedies under this paragraph and state law without prior notice to Owner or without waiting for the period provided for cure to expire.

(5) Scope of Relief. Land Trust's rights under this paragraph apply equally in the event of either actual or threatened violations of this Easement. Owner agrees that Land Trust's remedies at law for any violation of this Easement are inadequate and that Land Trust shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief to which Land Trust may be entitled, including specific performance of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Land Trust's remedies described in this paragraph shall be cumulative and in addition to all remedies now or hereafter existing at law or in equity. Land Trust's remedies are not intended to displace any other remedy available under this Easement, Chapter 457A of the Code of Iowa, or any other applicable law. Land Trust may take such other action as it reasonably deems necessary to insure compliance with this Easement.

(6) Costs of Enforcement. All reasonable costs incurred by Land Trust in enforcing this Easement against Owner, including, without limitation, costs of suit and reasonable attorney fees, experts' fees and any costs of restoration necessitated by Owner's violation of this Easement shall be borne by Owner; provided, however, that, if Owner ultimately prevails in a judicial enforcement action, Owner shall be entitled to reimbursement for costs of suit and reasonable attorney fees.

(7) Forbearance Not a Waiver. Any forbearance by Land Trust to exercise its rights under this Easement in the event of any violation of this Easement shall not be deemed or construed to be a waiver by Land Trust of such violation or another violation of this Easement or of any of Land Trust's rights under this Easement. No delay or omission by Land Trust in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(8) Waiver of Certain Defenses. Owner hereby waives any defense of laches, waiver, estoppel, or prescription. In making this grant of Easement and in acquiring this Property, Granting Owner and subsequent Owners have considered the possibility that uses prohibited by this Easement may become more economically valuable than permitted uses and that neighboring parcels may be put to prohibited uses. All Parties intend that any such changes shall not be deemed circumstances justifying amendment or termination of this Easement.

(9) Change of Conditions. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished.

(10) Cumulative Remedies. This description of Land Trust's remedies does not preclude Land Trust from exercising any other right or remedy that may at any time be available to Land Trust under this Easement or applicable law. If Land Trust chooses to exercise one remedy, Land Trust

may nevertheless choose to exercise any one or more of the other rights or remedies available to Land Trust at the same time or at any other time.

G. Public Access.

No right of access by the general public to any portion of the Property is conveyed by this Easement.

H. Responsibilities of Owner and Land Trust Not Affected.

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Land Trust, or in any way to affect any existing obligations of Owner as owner of the Property. Among other things, this principle shall apply to the following.

(1) Costs, Legal Requirements, and Liabilities. Owner retains and agrees to bear all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, and operation of the Property. Owner remains solely responsible for obtaining any applicable government permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Owner shall keep the Property free of any liens arising out of any work performed for or materials furnished to Owner that might impair the effectiveness of this Easement in any way.

(2) Subsequent Liens on Property. No provisions of this Easement shall be construed as impairing the ability of Owner to use this Property as collateral for future indebtedness.

(3) Subsequent Encumbrances. The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise diminish or impair the Conservation Values protected by this Easement is prohibited, except with the approval of Land Trust.

(4) Taxes. Owner shall be solely responsible for payment of all taxes and assessments levied against the Property. Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including, without limitation, any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Land Trust with satisfactory evidence of payment upon request. If Land Trust ever pays any taxes or assessments on the Property, or if Land Trust pays levies on Owner's interest in order to protect Land Trust's interests in the Property, Owner will reimburse Land Trust for the same.

(5) Upkeep and Maintenance. Owner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by federal, state, and local laws, regulations and requirements. Land Trust shall have no obligation for the upkeep or maintenance of the Property. If Land Trust acts to maintain the Property in order to protect Land Trust's interest in the Property, Owner will reimburse Land Trust for any such costs.

(6) Liability for Operations and Conditions. Land Trust shall have no responsibility for operation of the Property, monitoring of hazardous conditions on it, or protection of Owner, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, Land Trust shall not be liable to Owner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or

incurred by or threatened against Owner or any other person or entity, except as the claim, liability, damage, or expense is the result of (negligence,) gross negligence, or intentional misconduct of Land Trust or its officers, directors, members, employees, or agents.

(7) Indemnification by Owner. In view of Land Trust's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, Owner hereby releases and shall indemnify, protect, defend and hold harmless Land Trust, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, liability, damage or expense suffered or incurred by or threatened against Owner or any other person or entity, to the Property or the Easement. Owner shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of Land Trust. Owner agrees to take out, and keep in force, public liability and other insurance to protect Owner against any liability to the public, whether to persons or property, incident to the use of or resulting from an occurrence in or about the Property. Such insurance shall be in the amount maintained by comparable properties for comparable uses and in no case less than One Million Dollars (\$1,000,000) per occurrence, or such greater amount as Land Trust may require commensurate with inflation. Land Trust shall be named additional insured on Owner's general liability insurance policy.

I. Representations and Warranties.

Owner agrees and Granting Owner represents and warrants that, after reasonable investigation and to the best of their knowledge:

a) No Hazardous Materials Liability.

- a. Other than agricultural and/or household chemicals that have been applied, used, and disposed of in accordance with all then-applicable laws, no substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement including, without limitation, The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (the "Environmental Compliance Laws") as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any other way harmful or threatening to human health or the environment, exists on or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, under, from, or across the Property. Owner represents, warrants and covenants to Land Trust that Owner's activities upon and use of the Property are in compliance with all Environmental Compliance Laws. Without limiting the obligations of Owner under this Easement, Owner agrees to indemnify, protect and hold Land Trust harmless against any and all claims arising from or connected with any hazardous materials present, alleged to be present, or otherwise associated with the Property at any time, except any hazardous materials placed, disposed or released by Land Trust, its employees or agents. If any action or proceeding is brought against Land Trust by reason of any such claim, Owner shall, at the election of and upon written notice from Land Trust, defend such action or proceeding by counsel reasonably acceptable to Land Trust or reimburse Land Trust for all charges it incurs for legal services in defending the action or proceeding. If, at any time, there occurs, or has

occurred, a release in, on, from, under, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any Environmental Compliance Laws as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any other way harmful or threatening to human health or the environment, Owner shall perform containment, remediation, and any cleanup actions which such Environmental Compliance Laws require Owner to perform.

b. **Limited Status of Land Trust.** Despite any arguably contrary provision in this Easement, the Parties do not intend this Easement to be, and this Easement shall not be, construed such that it creates in or gives to Land Trust any of the following:

(1) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Compliance Laws;

(2) The obligations or liabilities of a person described in 42 U.S.C. section 9607(a)(3) or (4);

(3) The obligations of a responsible person under any applicable Environmental Laws;

(4) Any right to investigate, control, monitor or remediate any Hazardous Materials associated with the Property;

(5) Any authority to specify the chemicals or Hazardous Substances that may be used on the Property, or

(6) Any control over Owner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

Nothing in this Easement shall be construed as giving rise, in the absence of judicial decree, to any right or ability in Land Trust to exercise physical or managerial control over the day-to-day operations of the Property, or any of Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Environmental Compliance Laws. The term "hazardous materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. section 6901 et seq.); the Hazardous Waste Control Law (California Health & Safety Code section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Easement.

c. **Storage Tanks.** There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable Environmental Compliance Laws.

(2) **Compliance with Law.** Granting Owner and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

(3) Litigation, Proceedings and Investigations. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property. No civil or criminal proceedings or investigations have been instigated at any time known to Granting Owner, none is now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that the Granting Owner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

(4) Acts Beyond Owner's Control. Nothing contained in this Easement shall be construed to entitle Land Trust to bring any action against Owner for any injury to or change in the Property resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, and natural earth movement, or other natural events, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

(5) Granting Owner's Title Warranty. Owner owns the entire fee simple interest in the Property, including the entire mineral estate, free from all encumbrances except those described in Exhibit A, and hereby promises to defend the same against all claims that may be made against the Easement.

(6) Subordination. There are no financial liens or encumbrances as of the date of this Easement. Any financing lien or encumbrance at any time shall be subordinate to this Easement, and the Parties agree to execute such documents as may be reasonably required by Owner's lender(s) to accomplish such subordination.

(7) No Representation of Tax Benefits. Owner represents and warrants that (i) Owner has not relied upon any information or analyses furnished by Land Trust with respect to the availability, amount or effect of any tax deduction, credit or other benefit to Owner or to the value of this Easement or the Property; (ii) Owner has relied solely upon personal judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by Owner. If any person providing services in connection with this Easement or the Property was on a list provided by Land Trust, Owner acknowledges that Land Trust is not responsible in any way for the performance of services by these persons; and (iii) donation of this Easement is not conditioned upon the availability or amount of any deduction, credit or other tax benefit. Land Trust acknowledges that no goods or services were delivered to Granting Owner in consideration of this Grant.

(8) Consideration. Granting Owner acknowledges receipt of \$1.00 in consideration of the grant of this Easement to Land Trust. The consideration has been paid in full to Granting Owner.

J. Condemnation and Extinguishment.

This Easement may be terminated only due to extraordinary circumstances and only by way of condemnation, as described below, or judicial extinguishment if a court with jurisdiction, at the joint request of Owner and Land Trust, determines that conditions on or surrounding the Property have changed to such a degree that it has become impossible or impractical to fulfill the Conservation Purpose(s). If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation by any public, corporate, or other entity with eminent domain powers or authority, so as to terminate this Easement in whole or in part, Owner and Land Trust

shall act jointly to recover the full value of the interests in the Property subject to the taking or in-lieu purchase and all direct and incidental damages resulting therefrom. All expenses reasonably incurred by Owner and Land Trust in connection with the taking or in-lieu purchase shall be paid out of the amount recovered. Land Trust's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth immediately below. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, Land Trust shall be entitled to compensation in accordance with applicable law.

(1) Valuation. If this Easement is terminated in whole or in part, whether by judicial extinguishment or condemnation, Land Trust shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the greater of (i) the percentage required pursuant to Treasury Regulation §1.170A-14(g)(6); or (ii) the proportion that the value of this Easement at the time of extinguishment or condemnation bears to the then value of the Property as a whole.

(2) Application of Proceeds. Land Trust shall use all proceeds received under the circumstances described in this paragraph to pay the costs to monitor, enforce and preserve any portions of the Property that remain subject to this Easement, or, if no remaining portion of the Property is subject to this Easement, to monitor and enforce other easements held by Land Trust that are comparable to this Easement and to conserve properties subject to such other easements in a manner consistent with Land Trust's conservation purposes under this Easement.

(3) Highest and Best Use. The purposes of this Easement are presumed to be the best and most necessary public use as defined in Chapter 457A of the Code of Iowa.

(4) Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible or impractical to accomplish, this Easement can only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Land Trust shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to termination or extinguishment, shall be the stipulated fair market value of this Easement or proportionate part thereof, as determined in accordance with Paragraph A.

K. Transfers and Amendments.

(1) Transfer of Easement by Land Trust. This Easement may only be assigned or transferred to a private nonprofit organization that, at the time of transfer, is a "qualified organization" under section 170(h) of the Internal Revenue Code, authorized to acquire and hold easements pursuant to Chapter 457A of the Code of Iowa, that has similar purposes to preserve agricultural lands and open space. If no such private nonprofit organization exists or is willing to assume the responsibilities imposed by this Easement, then this Easement may be transferred to any public agency authorized to hold interests in real property as provided in Chapter 457A of the Code of Iowa. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on Land Trust by this Easement and is expressly willing and able to hold this Easement for the purpose for which it was created. All transfers shall be duly recorded. If Land Trust is no longer authorized to hold easements under Chapter 457A of the Code of Iowa (or any successor provision then applicable), it shall transfer or assign its rights and obligations under this Easement in accordance with this paragraph. All consideration received by Land Trust for any transfer or assignment shall be applied first to the costs incurred by Land Trust for such transfer or assignment and to monitor and enforce this Easement during its ownership thereof, and any remaining consideration shall be used by Land

Trust for its costs of monitoring and enforcing comparable easements upon other properties and for conservation of those other properties in a manner consistent with Land Trust's conservation purposes under this Easement.

(2) Subsequent Transfers by Owner. Owner agrees to disclose this Easement to all prospective buyers of the Property and to inform Land Trust of a prospective sale. Owner agrees that this Easement shall be incorporated by reference in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Property or by which Owner grants to a third party a right or privilege to use the Property, including, without limitation, any easement, leasehold interest, or license agreement. Owner further agrees to give written notice to Land Trust of the transfer of any such interest, or the grant of any such right or privilege, at least 30 days prior to the date of such transfer or grant. Such notice shall include the name, phone number and other pertinent contact information as well as the scheduled closing date. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. If Property subject to this Easement is transferred while a violation remains uncured, Owner who transfers remains liable for the violation jointly and severally with Owner to whom the Property is transferred.

(3) Estoppel Certificates. Land Trust will provide certificates to Owner or third parties indicating the extent to which, to Land Trust's knowledge after due inquiry, the Property is in compliance with this Easement, after an inspection by Land Trust made at Owner's cost within 30 days after Owner's written request.

(4) Additional Easements. The grant of any subsequent easements, interests in land, or use restrictions that might diminish or impair the agricultural productive capacity or open space character of the Property is prohibited. Owner may grant subsequent easements, including conservation easements, interests in land, or use restrictions on the Property, provided that they do not restrict agricultural practices conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, or interfere with any term of this Easement, as determined by Land Trust. Land Trust's written approval shall be obtained at least 30 days in advance of Owner's execution of any proposed subsequent easement, interests in land, or use restriction on the Property, and such subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to this Easement. Land Trust shall deny any proposed subsequent easement, interest in land, or use restriction that appears to restrict agricultural husbandry practices, or diminishes or impairs the agricultural productive capacity or open space character of the Property.

(5) Permitted Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Owner and Land Trust may jointly amend this Easement; provided, however, that (i) no amendment or modification shall be allowed that will adversely affect the qualification of this Easement or the status of Land Trust under any applicable laws, including Chapter 457A of the Code of Iowa or section 170(h) of the Internal Revenue Code of 1986, as amended, and (ii) any amendment or modification shall not harm Conservation Values, shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration. Any amendment or modification shall be recorded in the Official Records of Pottawattamie County, Iowa. This Easement is not otherwise subject to amendment or modification of any sort. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the status or rights of Land Trust under this Easement.

L. Perpetual Duration—No Merger.

Owner and Land Trust explicitly agree that it is their express intent, forming a part of the consideration of this Easement, that the provisions of this Easement are to last in perpetuity. To accomplish that intent and in view of the public interest in its enforcement of this Easement, the Parties specifically agree that (1) no purchase or transfer of the underlying fee interest in the Property by or to Land Trust shall be deemed to eliminate this Easement, or any portion thereof, under the doctrine of "merger" or other legal doctrine, including but not limited to the Marketable Record Title Act of Iowa or any similar provision of local, state or federal law; and (2) should Land Trust come to own all or a portion of the fee interest in the Property, Land Trust as successor in title to Owner shall observe and be bound by all obligations of the Owner under and all restrictions imposed upon the Property by this Easement.

The Parties further agree that, if it becomes necessary to avoid the application of the doctrine of "merger" or similar legal doctrine that would result in extinguishment of this Easement, Land Trust, as promptly as practicable, shall either (1) transfer its fee simple interest in the Property subject to this Easement, or (2) assign Land Trust's interests in this Easement of record to another holder in conformity with the requirements of this paragraph. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this paragraph and shall contain language necessary to continue it in force.

M. RIGHT OF FIRST REFUSAL

(1) Grant of Option

Owner grants to Land Trust a right of first refusal (such term is referred to elsewhere in this Easement as the "Right of First Refusal") to purchase the Protected Property on such terms and conditions as Owner would be willing to sell said Protected Property to a third-party.

(2) Exercise of Option

At such time as Owner receives a written offer to purchase the Protected Property that Owner wishes to accept (the "Offer"), Owner shall notify Land Trust of such receipt and shall include in such notice a true and accurate copy of the Offer as submitted in writing to Owner. Land Trust shall then have thirty (30) days, excluding Saturdays, Sundays, or federal holidays, from delivery of such notice in the manner set forth below, within which to enter into a written agreement of sale and purchase with Owner upon the same terms and conditions as are contained in the Offer including any and all contingencies therein for such matters as e.g., inspections, obtaining financing, zoning matters, or the like.

(3) Dates

All dates set forth in the Offer shall be adjusted to account for the delay between Owner's delivery of notice of the Offer and Land Trust's entering into a written agreement of sale and purchase with Owner upon the same terms and conditions as are contained in the Offer.

(4) Survival of Option

If for any reason, Owner fails to sell the Protected Property to a third party after the Land Trust's decision not to exercise the Right of First Refusal, this Right of First Refusal will not be extinguished.

(5) Limitations on Option

This Right of First Refusal shall be inapplicable to:

1. A transfer, by way of sale, gift, or devise, including a trust to or for a party related to Owner (a "Related Party"), or to any transfer, in whole or part, from one Related Party

to another, but shall apply to any subsequent transfer to a third party and shall remain in effect for the remainder of the Duration. For the purpose of this subsection, if the then-Owner is an individual, a Related Party shall include and be limited to a spouse, lineal descendant, or a spouse of such descendant, ancestor, or sibling (whether by the whole or half blood), a partnership of which such Owner is a member, a joint ownership, or ownership in common, which includes the then Owner, or a corporation, the majority of whose securities is owned by Owner, or any one of more foregoing parties. An involuntary transfer of the Protected Property, including a transfer pursuant to a foreclosure, real estate contract forfeiture, or court order, but shall apply to any subsequent transfer to a third party and shall remain in effect.

2. Any lease of an interest in the Protected Property or the Water Rights permitted by this Easement.

(6) Assignment

Except as provided for in this Section 9.6, Land Trust's rights under the Right of First Refusal may not be assigned by Land Trust

(7) Exercise of Assignment

If Land Trust elects to match an Offer, Land Trust may at that point assign its interest in the written agreement for the sale and purchase of the Protected Property on the same terms and conditions as are contained in the Offer.

(8) Duration

Land Trust's Right of First Refusal shall survive any assignment, conveyance or transfer of Land Trust's interest herein in accordance with Section 9.01.

N. Notices.

Any notice, demand, request, consent, approval, or communication that a Party desires or is required to give to the other Parties shall be in writing and either served personally or sent by first class mail, postage prepaid, return receipt requested, or delivered by a nationally recognized overnight delivery service such as Federal Express or United Parcel Service, charges prepaid or charged to the sender's account or by email with proof of receipt. Addresses for purpose of giving notice are as follows:

To the Owner:

John and Tanna Piniarski
8 N. Hazel St., Glenwood, IA 51534

To Land Trust:

Sustainable Iowa Land Trust
PO Box 306, West Branch, IA 52358

or to such other address as a Party from time to time shall designate by written notice to the other Parties. When personally delivered, notice is effective upon delivery. When mailed, certified mail, postage prepaid, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt. When delivered by an overnight delivery service, notice is effective on delivery, if delivery is confirmed by the delivery service. A recipient cannot defeat delivery by refusing to accept the notice, and notice is deemed delivered if refused.

O. Recordation.

Land Trust shall record this instrument in timely fashion in the Official Records of Pottawattamie County, Iowa and may re-record it at any time appropriate in Land Trust's discretion as may be required to preserve Land Trust's rights in this Easement.

P. General Provisions.

(1) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Iowa. Unless otherwise stated, references to authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective, disregarding the conflicts of law principles of that State.

(2) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Chapter 457A of the Code of Iowa and the Internal Revenue Code, both as amended.

(a) Construction Favoring Validity—If any provision in this instrument is found to be ambiguous, an interpretation consistent with this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The Parties acknowledge that each Party and its counsel have reviewed and revised this easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

(b) Conflict in Conservation Values—If a conflict arises between protection of one or more of the identified Conservation Values that may have an actual impact, or may have a potential impact, on one or more of the other identified Conservation Values, Land Trust intends to enforce this Easement, in its sole discretion, by giving the greatest level of protection to the Conservation Values in the hierarchy and order as listed in the Recitals, Paragraph C. Land Trust reserves the right to review this hierarchy of Conservation Values from time to time as the public benefits that are provided by this Easement may change over time. Owner acknowledges that Land Trust has the right in its discretion and after consultation with Owner to modify and to revise this hierarchy by filing a Notice in the public records of Pottawattamie County, IA. The hierarchy set forth in Paragraph C is intended to apply only to resolve actual or potential conflicts between protected Conservation Values, and therefore, this Paragraph C may not be interpreted or construed by Owner, Land Trust, or any other person to justify a disregard of, or to discount, Land Trust's and Owner's obligations hereunder to protect and preserve all Conservation Values if such actual or potential conflict between protected Conservation Values does not exist.

(3) Significance of Recitals and Terms. The Recitals to this Easement are integral and operative provisions of this Easement. In all matters of interpretation, whenever necessary to give effect to any clause of this Easement, the neuter or gender-specific pronouns include the masculine and feminine, the singular includes the plural, and the plural includes the singular.

(4) Severability. If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of the agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(5) Entire Agreement. This Easement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, negotiations, understandings, or agreements of the Parties relating to the subject matter of this Easement, all of which are merged herein.

(6) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Owner's title in any respect.

(7) Joint Obligation. The obligations imposed by this Easement upon multiple concurrent Owners shall be joint and several.

(8) Successors and Assigns. All covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, lessees, successors, and assigns and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property. The terms "Owner" and "Land Trust," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the Owner and all of the Owner's heirs, successors and assigns, and the above-named Land Trust and its successors and assigns.

(9) Termination of Rights and Obligations and Standing to Enforce. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or transfer of the Property, except all representations and warranties made by and liabilities incurred by Owner shall survive. Only Land Trust and Owner and Owner and/or the state Attorney General may bring an action to enforce this Easement, and nothing herein shall be construed to grant any other individual or entity standing to bring an action to enforce this Easement if standing is not otherwise authorized under applicable law, nor to grant any rights in the Property by adverse possession or otherwise.

(10) No Oral Approval. Owner understands that any oral approval or oral representation made by a Land Trust officer, employee or agent does not meet the requirements of this Easement, does not otherwise bind or commit Land Trust, and may not be relied on by Owner. Owner agrees that no oral approval or oral representation made by Land Trust's officers, employees or agents, or understood by Owner to have been made by Land Trust, its officers, employees or agents, shall be used by Owner to assert that Land Trust is, in any way, estopped or has made an election or has waived any provision of this Easement.

(11) Reasonableness Standard. Owner and Land Trust shall follow a reasonableness standard, shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner, shall cooperate with one another, and shall take all other reasonable action suitable to these ends.

(12) Mediation. If a dispute arises between Owner and Land Trust concerning the consistency of any proposed use or activity with this Easement, and Owner agrees not to proceed with the use or activity pending resolution of the dispute, either Party may propose mediation by written request delivered to the other. Such request will not impact Land Trust's ability to seek injunctive relief. If both Parties agree, then, within thirty (30) days after receipt of the request, the Parties shall select a single impartial mediator. If the Parties are unable to agree on selection of a single mediator, then the Parties shall, within sixty (60) days of receipt of the initial request, jointly apply to the Iowa Mediation Service or to a court for appointment of an impartial mediator with relevant experience in real estate and conservation easements. Mediation shall then proceed in accordance with the following guidelines:

(a) Purpose—The purpose of the mediation is to (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning issues in the dispute; and (iii) assist the Parties to develop proposals that will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of this Easement.

(b) Participation—The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Party representatives with settlement authority will attend mediation sessions as requested by the mediator.

(c) Confidentiality—All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made in or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a Party. The sole exception from this prohibition shall be the settlement agreement or similar document to which the Parties agree in the context of the mediation.

(d) Time Period—Neither Party shall be obligated to continue the mediation beyond two (2) days from the date of selection or appointment of a mediator nor if the mediator finds no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute.

(e) Costs—Unless otherwise agreed at the time, the cost of the mediator shall be borne equally by Owner and Land Trust; the Parties shall bear their own expenses, including attorney fees, individually.

(f) Alternative Process - If the mediation under the preceding subsection is unsuccessful, Owner and Land Trust agree to submit their respective final written proposals to a farmer, conservation or resource management professional, unaffiliated with either Owner or Land Trust, who has the expertise, training or qualifications to review their respective proposals (the "Reviewer") to select one, and only one, that best meets the standard of reasonableness set forth above. If Owner and Land Trust are unable to identify a mutually agreeable Reviewer, the Reviewer is to be appointed by Iowa Mediation Services. Owner and Land Trust must each submit one, and only one, written proposal to the Reviewer within ten (10) days following appointment of the Reviewer. Within thirty (30) days following receipt of such proposals, the Reviewer must select, by notice to Owner and Land Trust, either Owner's proposal or Land Trust's proposal as submitted, without compromise or modification. Neither Owner nor Land Trust are permitted to communicate with the Reviewer during the Review period. The decision of the Reviewer is final and is conclusively deemed to meet the standards of reasonableness set forth above. Owner and Land Trust accept this procedure in full satisfaction of any and all rights that they may have under applicable law or otherwise to appeal or otherwise litigate disputes arising with respect to Review under this Easement. Cost of the Reviewer are to be borne equally by Owner and Land Trust.

(13) Representation of Authority of Signatories. Each individual executing this Easement on behalf of the Owner or Land Trust represents and warrants to the other Party that the execution and delivery of this Easement and all related documents have been duly authorized by the Party for which the individual

is signing and that the individual has the legal capacity to execute and deliver this Easement and thereby to bind the Party for which the individual is signing.

(14) Representation by Counsel. The Owner retained and has been represented by Shawn Ilg in the negotiation and preparation of this Easement. Land Trust has been represented by its attorney David Bright in the negotiation and execution of this Easement

(15) Appraisal; Tax Forms. If Owner claims a federal and/or state income or other tax deduction for the donation of this Easement, Owner shall provide Land Trust with a copy of the "qualified appraisal" (as defined by the Treasury Regulations applicable to the valuation of donated property for federal income tax purposes) of the fair market value of the Property before this Easement was recorded, the fair market value of the Property subject to the restrictions of this Easement, and the fair market value of the Easement. By the time of the Easement's recordation, a properly and accurately completed IRS Form 8283 (or its successor form or state equivalent), Land Trust will complete and execute those portions of that form that require information from Land Trust as the donee and return it to Owner. Land Trust will not knowingly sign a Form 8283 if it has significant concerns about the appraiser, appraisal and/or claimed tax deduction. Land Trust makes no assurance as to whether a deduction may be available or, if so, what the tax benefits may be.

Q. GLOSSARY

“Access Drive” means an unpaved road, drive, or lane providing vehicular access to the Farmstead Area and between fields for the purpose of agricultural production.

“Additional Improvement” means an Improvement other than an Existing Improvement.

“Agricultural Improvement” means an Improvement used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage building, farm stand, feeding and irrigation facilities.

“Agricultural Uses” shall mean the commercial production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to

- (i) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, herbs and dry beans;
- (ii) fruits, including apples, peaches, grapes, cherries, nuts and berries;
- (iii) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans;
- (iv) horticultural specialties, including seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers;
- (v) livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, milk and other dairy products, eggs and furs;
- (vi) timber, wood, and other wood products derived from trees;
- (vii) aquatic plants and animals and their byproducts, and
- (viii) breeding and raising of bees, breeding, raising, pasturing, and grazing livestock of every nature and description; breeding and raising poultry;
- (ix) planting, raising, harvesting, and producing agricultural and horticultural crops of every nature and description.

“Amendment” means an amendment, modification, or supplement to this Grant signed by Owner and Land Trust and recorded in the Public Records. The term “Amendment” includes an amendment and restatement of this Grant.

“Applicable Law” means federal, state or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Property, the Conservation Easement, or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

“Beneficiary” means a Person given rights under the terms of this Grant.

“Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

“Construction” means demolition, construction, reconstruction, maintenance, expansion, exterior alteration, installation, or erection of temporary or permanent Improvements..

“Dwelling Unit” means the use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

“Existing Improvement” means an Improvement existing as of the Easement Date as identified in the Baseline Documentation.

“Existing Servitude” means an easement or other matter affecting title to the Property (other than a Lien) accorded priority to the Conservation Easement by notice in the Public Records or other prior notice recognized under Applicable Law.

“Extraction Improvements” mean wells, casements, impoundments, and other Improvements for the exploration, extraction, collection, containment, transport, and removal (but not processing or refining) of oil or natural gas (regardless of source) from substrata beneath the surface of the Property. The term “Extraction Improvements” includes any Access Drive required for the Construction or operation of Extraction Improvements or the removal of oil or natural gas from the Property.

“Farm Management Plan” means a written plan prepared by Owner and/or farm operator(s) and approved by the Land Trust, updated annually to assure consistency with the Conservation Purposes.

“Height” means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes, and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

“Impervious Coverage” means the footprints (including roofs, decks, stairs, and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete, and asphalt. Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake), bedrock and naturally occurring stone and gravel, and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

“Improvement” means a building, structure, facility, or other improvement, whether temporary or permanent, located on, above, or under the Property.

“Indemnified Parties” means each Beneficiary (if any), and their respective members, directors, officers, employees and agents, and the heirs, personal representatives, successors, and assigns of each of them.

“Lien” means a mortgage, lien, or other encumbrance securing the payment of money.

“Litigation Expense” means any court filing fee, court cost, witness fee, and all other fees and costs of investigating and defending or asserting any claim of violation or claim for indemnification under this Grant including, in each case, attorneys’ fees, other professionals’ fees, and disbursements.

“Losses” mean any liability, loss, claim, settlement payment, cost, expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, penalties, or other charge other than a Litigation Expense.

“Lot” means a unit, lot, or parcel of real estate separated or transferable for separate ownership or lease under Applicable Law.

“Market Value” means the fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

“Owner” means the undersigned Owner or Owners and all Persons after them who hold an interest in the Property.

“Person” means an individual, organization, trust, government, or other entity.

“Public Records” mean the public records of the office for the recording of deeds in and for the county in which the Property is located.

“Qualified Organization” means a governmental or charitable entity that (a) meets the criteria of a qualified organization under §1.170(A-14)(c)(1) of the Regulations and (b) is duly authorized to acquire and hold conservation easements under the Chapter 457A of the Code of Iowa.

“Regulations” mean the provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

“Signs” (not exceeding five square foot each) to control access to the Property or for informational, directional, or interpretive purposes.

“Renewable Energy” means energy that can be used without depleting its source such as solar, wind, geothermal, and movement of water (hydroelectric and tidal).

“Residential Improvements” mean dwellings and Improvements accessory to residential uses such as garage, swimming pool, and children’s play facilities. Must be located within the Farmstead Area.

“Residential Uses” mean customary uses for a single family residential dwelling.

“Site Improvement” means an unenclosed Improvement such as an Access Drive, Utility Improvement, walkway, boardwalk, retention/detention basin or other stormwater management facility, well, septic system, bridge, parking area, airplane landing strip or other pavement, fence, wall, gate, man-made pond, berm, and landscaping treatment. The term does not include Extraction Improvements.

“Subdivision” means any division of the Property or any Lot within the Property; and any creation of a unit, lot, or parcel of real estate, including subsurface portions of the Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership. The term “Subdivision” includes any “subdivision” as defined in the Chapter 354, Code of Iowa, as reenacted and amended as of the applicable date of reference.

“Sustainable” means economically sustainable land management practices that provide goods and services from an ecosystem without degrading soil or water resources, which include crop and customer diversity, and do not cause a decline in the yield of those goods and services over time.

“Utility Improvement” means an Improvement for the reception, storage, or transmission of potable water, stormwater, sewage, electricity, gas, telecommunications, or any other sources of power. The term does not include Extraction Improvements.

Exhibit A. Legal Description of Easement Property

Exhibit B. Map of Farmstead and Agricultural Areas

Exhibit C. Acknowledgement of Baseline Documentation Report

[REMAINDER OF PAGE INTENTIONALLY BLANK]

INTENDING TO BE LEGALLY BOUND, Owner have signed and delivered this Grant as of the Easement Date.

John Piniarski
Owner's Name: John Piniarski

1-31-22
Date

Tanna Piniarski
Owner's Name: Tanna Piniarski

1/31/22
Date

STATE OF IOWA:

COUNTY OF Pottawattamie

ON THIS DAY 1-31-22, before me, the undersigned, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



David Welte, Notary Public

Print Name:
David Welte

INTENDING TO BE LEGALLY BOUND, the Land Trust, by its respective duly authorized representative, has signed and delivered this Grant as of the Easement Date.

By: Suzan Erem
[SUSTAINABLE IOWA LAND TRUST]

01/31/2022
Date

Name: Suzan Erem
Title: Executive Director

STATE OF IOWA :

COUNTY OF

ON THIS DAY 01/31/2022 before me, the undersigned officer, personally appeared Suzan Erem, who acknowledged him/herself to be the Executive Director of Sustainable Iowa Land Trust, an Iowa nonprofit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer. IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

Emmal M. Greenwalt

Emmal M Greenwalt
NOTARY ID 107053
Online Notary Public
State of Nebraska
My Commission Expires Feb 23, 2025

Notarial act performed by audio-visual communication



EXHIBIT A

Legal Description of Easement Property

Parcel "D"

A parcel of land located in part of the Northwest Quarter of the Southwest Quarter and in part of the Northeast Quarter of the Southwest Quarter and in part of the Southwest Quarter of the Southwest Quarter and in part of the Southeast Quarter of the Southwest Quarter, all in Section 5, Township 76 North, Range 43 West of the Fifth Principal Meridian, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the West Quarter corner of said Section 5; thence South $87^{\circ}44' 48''$ East, along the North line of said Northwest Quarter of the Southwest Quarter, a distance of 1122.32 feet to the point of beginning; thence South $16^{\circ}03' 31''$ East a distance of 1128.38 feet; thence South $6^{\circ}26' 49''$ East a distance of 280.96 feet; thence South $19^{\circ}09' 40''$ East a distance of 433.25 feet; thence South $25^{\circ}14' 137''$ East a distance of 169.39 feet; thence South $3^{\circ}41' 139''$ West a distance of 198.05 feet; thence North $87^{\circ}44' 48''$ West a distance of 903.44 feet; thence South $3^{\circ}41' 124''$ West a distance of 553.73 feet to a point on the South line of said Southwest Quarter of the Southwest Quarter; thence South $87^{\circ}40' 131''$ East, along the South line of said Southwest Quarter of the Southwest Quarter, a distance of 415.96 feet to the Southeast corner of said Southwest Quarter of the Southwest Quarter; thence South $87^{\circ}40' 131''$ East, along the South line of said Southeast Quarter of the Southwest Quarter, a distance of 537.42 feet; thence North $3^{\circ}41' 39''$ East a distance of 2656.13 feet to a point on the North line of said Northeast Quarter of the Southwest Quarter; thence North $87^{\circ}44' 48''$ West, along the North line of said Northeast Quarter of the Southwest Quarter and along the North line of said Northwest Quarter of the Southwest Quarter, a distance of 731.29 feet to the point of beginning. Said parcel contains 30.038 acres, more or less. Said parcel is subject to an easement for Cougar Avenue right of way. Said Easement contains 1.079 acres, more or less. Said parcel is subject to all other easements of record, if any.

Note: The North line of the Southwest Quarter of said Section 5 is assumed to bear South $87^{\circ}44' 48''$ East for this description.

AND

Parcel "E"

A parcel of land located in part of the Northwest Quarter of the Northwest Quarter and in part of the Northeast Quarter of the Northwest Quarter, all in Section 8, Township 76 North, Range 43

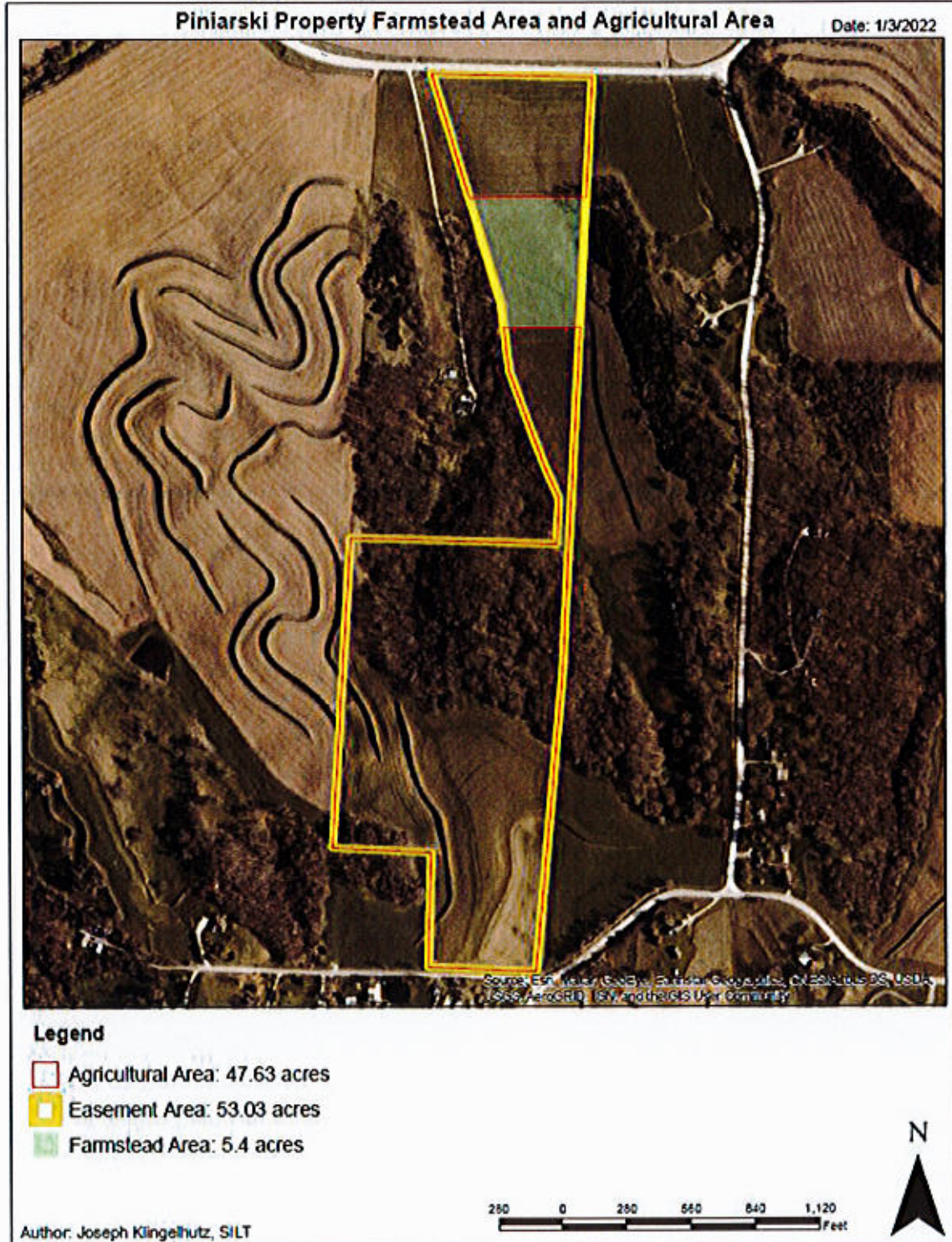
West of the Fifth Principal Meridian, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the North Quarter corner of said Section 8; thence North $87^{\circ}40'31''$ West, along the North line of said Northeast Quarter of the Northwest Quarter, a distance of 778.51 feet to the point of beginning; thence continuing North $87^{\circ}40'31''$ West, along the North line of said Northeast Quarter of the Northwest Quarter, a distance of 537.42 feet to the Northwest corner of said Northeast Quarter of the Northwest Quarter; thence North $87^{\circ}40'31''$ West, along the North line of said Northwest Quarter of the Northwest Quarter, a distance of 415.96 feet; thence South $3^{\circ}41'24''$ West a distance of 833.00 feet; thence South $88^{\circ}06'49''$ East a distance of 435.77 feet; thence South $3^{\circ}41'57''$ West a distance of 499.46 feet to a point on the South line of said Northeast Quarter of the Northwest Quarter; thence South $88^{\circ}10'48''$ East, along the South line of said Northeast Quarter of the Northwest Quarter, a distance of 517.81 feet; thence North $3^{\circ}41'39''$ East a distance of 1324.57 feet to the point of beginning. Said parcel contains 24.076 acres, more or less. Said parcel is subject to all easements of record, if any.

Note: The North line of the Northwest Quarter of said Section 8 is assumed to bear North $87^{\circ}40'31''$ West for this description.

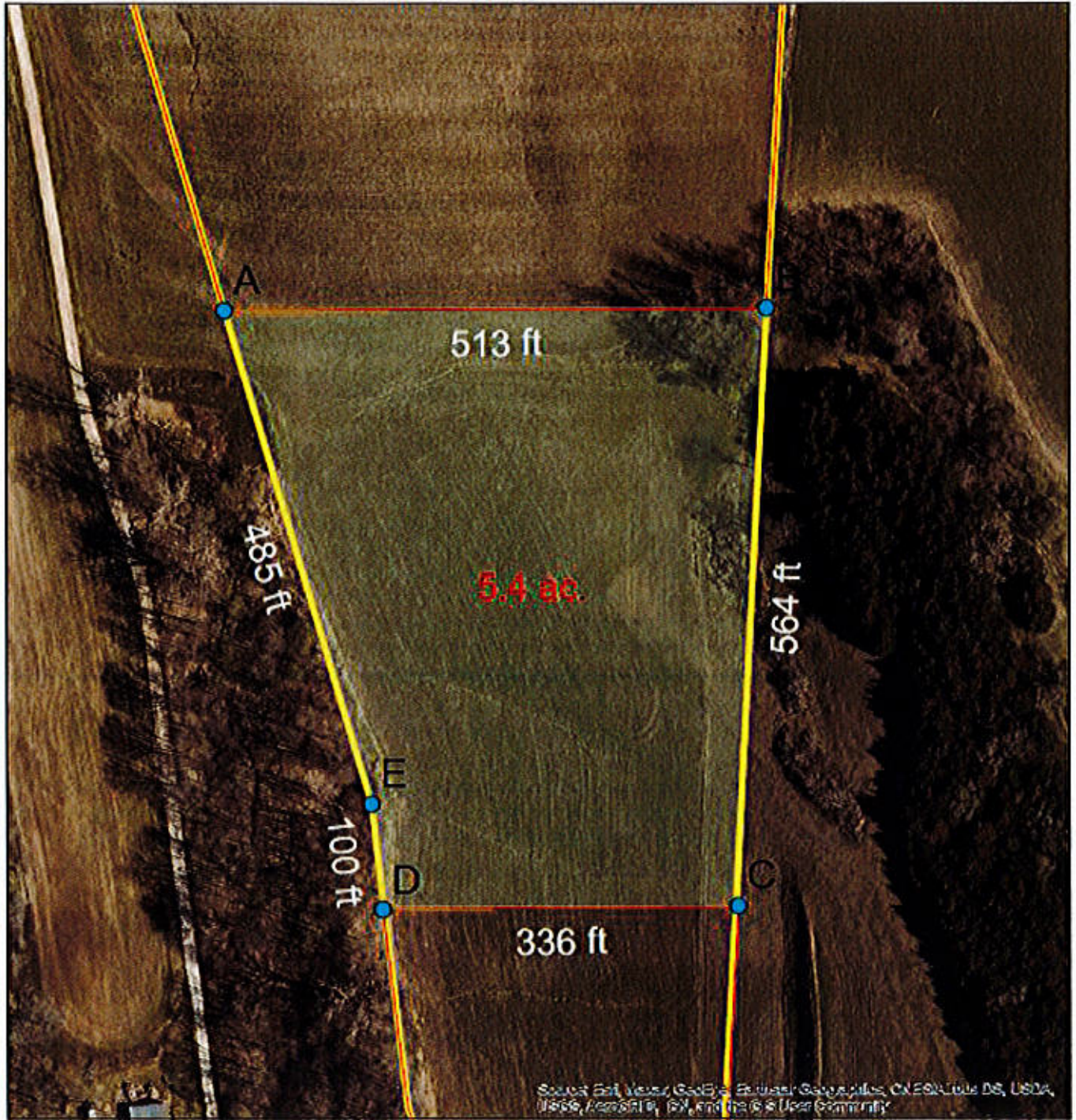
EXHIBIT B

Map of Farmstead and Agricultural Areas



Piniarski Property Farmstead Area

Date: 1/3/2022



Point_Name	Latitude	Longitude
A	41.410996	-95.817853
B	41.411105	-95.818983
C	41.409501	-95.816018
D	41.408462	-95.817243
E	41.409733	-95.817293

Legend

- Agricultural Area
- Easement Area
- Farmstead Area



Author: Joseph Klingelutz, SILT

EXHIBIT C

Acknowledgement of Baseline Documentation Report

Certifications

A. Certification of Accuracy – Baseline Preparer

In compliance with Treasury Regulation 1.170A-14(g)(5), this natural resources inventory (Baseline Documentation Report) is an accurate representation of the protected property at the time of the execution of the conservation easement. I certify that I am the principal preparer for this Report based on my field survey(s) occurring on August 19, 2021. In addition, I revisited the protected property on December 09, 2021 to ensure conditions had not changed substantially between the date(s) of the field survey(s) and my final visit to the protected property. This Report was completed shortly after my last visit to the protected property. The entirety of this Report is intended to aid in the enforcement of the conservation easement.

X Joseph Klingelutz Date January 03, 2022
Joseph Klingelutz, Farm Specialist, Sustainable Iowa Land Trust
Baseline Preparer
Qualifications and Experience: Bachelor's Degree in Environmental Sciences (2016), Iowa State University

B. Certification of Record – Custodian of Records

I certify that this natural resources inventory (Baseline Documentation Report) was prepared in the Sustainable Iowa Land Trust's regular course of business of creating baseline documentation reports to steward its conservation easement portfolio. This Report was completed shortly after the baseline preparer's final visit to the protected property and just before the closing of the conservation easement. The preparation of this Report complies with Sustainable Iowa Land Trust's general procedures for creating and maintaining business records and specifically with its procedures for the creation of baseline documentation reports.

Digitally signed by
Suzan Erem
Date: 2022.01.10
10:10:00
X Suzan Erem _____ Date _____
Suzan Erem, Executive Director
Sustainable Iowa Land Trust

C. Certification of Acceptance - Landowner

In compliance with Treasury Regulation 1.170A-14(g)(3)(1)(ii), I, the undersigned, have read and independently reviewed this natural and agricultural resources inventory (Baseline Documentation Report) and certify that it is an accurate representation of the protected property at the time of the execution of the conservation easement. I accept and acknowledge that the entirety of this Report is included in and is enforceable under the conservation easement. Since documentation (information, exhibits, or photographs) for this Report was prepared in advance of the closing and date of the execution of the conservation easement, I further certify that the condition of the protected property as depicted in this Report has not materially changed as of the date of this certification.

X *Lanna Piniarski*
Lanna Piniarski, Landowner

Date *11/01/20*

X *John Piniarski*
John Piniarski, Landowner

Date *11/01/20*