



LOWER PLATTE SOUTH natural resources district

Item #7

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581 | P: 402.476.2729 • F: 402.476.6454 | www.lpsnrd.org

Memorandum

Date: November 9, 2018
To: Each Director
From: Paul D. Zillig, General Manager
Subject: Executive Subcommittee Meeting Minutes

The Executive Subcommittee met at 4:00 pm on Thursday, November 8, 2018 at the NRD Office in Lincoln. Subcommittee members present included Ray Stevens, Larry Ruth, Dan Steinkruger, Milt Schmidt, and Greg Osborn. Others present included Adam Behmer of FHU (Felsburg Holt & Ullevig), David Potter, Dan Schulz, and myself.

Chair Stevens called the meeting to order, roll call showed Ruth, Steinkruger, Schmidt, Osborn, and Stevens in attendance and Eagan absent. Stevens noted that the public meetings law is posted in the room and the legal notice for this Executive Subcommittee Meeting was published in the Lincoln Journal Star on October 26, 2018.

The first item on the agenda was to consider approval of an Easement License Agreement with Dustan Biegler for North Oak 2-C, located just south of Valparaiso. Stevens reminded the Subcommittee that the NRD Board of Directors authorized the Executive Subcommittee to approve Easement License Agreements, for this reason a legal notice for this meeting was published.

I reported on the request from Biegler (see attached) and the attached Easement License Agreement. The Subcommittee discussed the situation and noted the insurance provisions in the agreement. It was agreed that this allows use of the floodpool easement and lake, and also protects the NRD's rights. It was moved by Osborn, seconded by Ruth, and unanimously approved by the Subcommittee to approve the Easement License Agreement for North Oak 2-C with Dustan Biegler.

The next item on the agenda was to consider long range planning for the NRD's involvement operating a Wetland Bank. Staff reported that the NRD's Blue Heron Wetland Bank was established 17 years ago and the wetland credits were purchased by the NRD eight years ago. Staff reported that the NRD has nearly recovered the NRD's cost to purchase the wetland bank credits and, based upon the past sale of credits, staff estimates that the credits will last another 12 years. The Subcommittee discussed the benefits to the NRD of having available credits in the wetland bank. The Subcommittee directed staff to discuss with Papio-Missouri River NRD the cost to establish a wetland bank, discuss with the Corps of Engineers their interest in the LPSNRD



developing a new wetland bank, and that staff look into plans to retain a portion of the available Blue Heron Wetland Bank credits.

The final item on the agenda was to consider a request (attached) from Otoe County to purchase a total of 0.3115 acres of wetland credits for unavoidable impacts on 0.1976 acres of wetlands for a new county road south of Palmyra, Nebraska. Adam Behmer, Environmental Scientist with Felsburg, Holt, and Ellevig explained the project and made the request on behalf of Otoe County.

Schulz reported that our records show there are 4.5334 acres of remaining credits in the Blue Heron Wetland Bank. The Corps is reviewing a further breakdown of the 5 specific "freshwater" wetland types and credits available in the bank. Schulz reported that there are enough credits available in the NRD's Blue Heron Wetland Bank for Otoe County's request. It was moved by Osborn, seconded by Ruth, and unanimously approved by the Subcommittee to **recommend the Board of Directors authorize selling 0.3115 total credits from the NRD's Blue Heron Wetland Bank for \$20,000 to Otoe County for the Palmyra Road G & H Connection Project (Control No. 13249, Project HRRR-7915(1)), dependent upon legal counsel review.**

There being no further business the meeting adjourned at 5:05 pm.

PDZ/pz

pc: Steve Seglin

To: NRD Board of Directors,

I am writing this letter to request that you allow the dock that was built in the easement on the pond of Oak Creek #2 to stay. It is built in a manner that is very heavy duty as you will see in the drawings. It is also a height above the water level (9'3") that positions it well out of any changes in the water level.

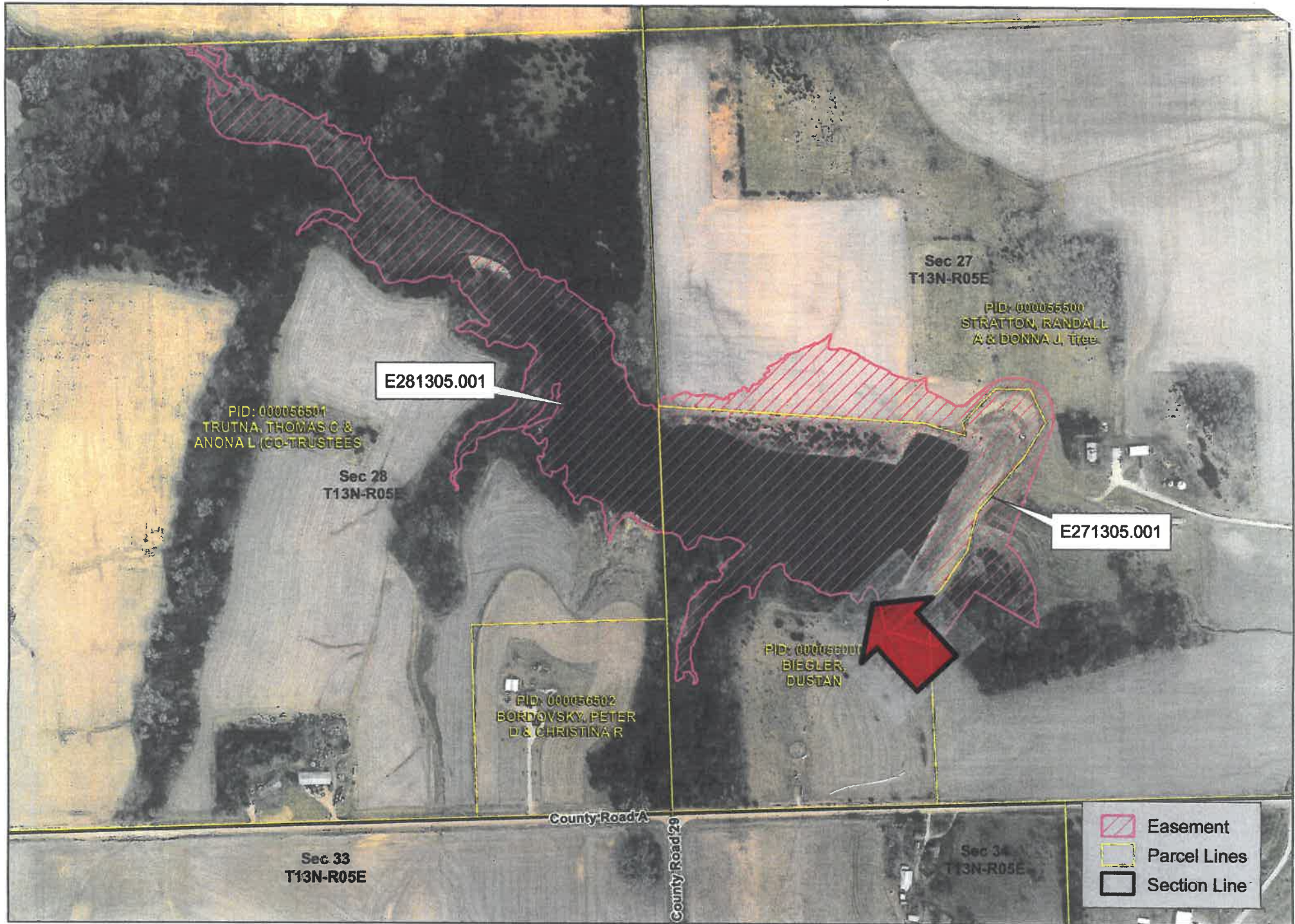
As an additional request I would like to put some rip rap rock in the area there and where the water flows down the hill into the pond as it has been eroding. The previous owner of the property had told me they tried to put branches and other debris there to stop the erosion, but it hasn't been effective and I would really like to see something more permanent to protect the edges of the pond in this area if possible. Thank you for your consideration on these matters and if there is any additional information I could provide that is missing I will be more than happy to do so!

Dustan Biegler
402-314-8895





North Oak 2-C, SW1/4 Sec 27 & SE1/4 Sec 28, T13N-R5E, Saunders Co



REAL ESTATE LICENSE AGREEMENT

THIS REAL ESTATE LICENSE AGREEMENT ("Agreement") is made effective this _____, 201____, by and between **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska, having its office at 3125 Portia Street, Lincoln, Lancaster County, Nebraska, herein referred to as the "Licensor" and _____Dustan Biegler_____ herein referred to as the "Licensee," collectively referred to as the "Parties."

WITNESSETH:

RECITALS

- A. Licensor holds a Flood Control Easement dated ____May 9, 1974____, upon, over and across the real property legally described and shown on Exhibit "A" attached hereto and incorporated herein by this reference, hereinafter referred to as the "Licensed Property."
- B. Licensee is the owner of the underlying land over which Licensor holds the Easement and desires to place and/or locate on the Licensed Property__ an observation platform____, hereinafter referred to as the "Temporary Structure " which shall be and remain temporary and shall not be permanently affixed to the Licensed Property.
- C. Licensor is willing to grant a License to Licensee for the purpose of locating such Temporary Structure on the Licensed Property, under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Grant of License.** Licensor hereby grants to the Licensee, a non-exclusive, nontransferable, non-assignable license to locate the Temporary Structure as shown and described on the plans, drawing or photos a copy or copies are attached hereto as Exhibit "B" and incorporated herein by this reference, on the Licensed Property as specifically shown. on Exhibit "C" attached hereto and incorporated herein by this reference, and only at such location (the "License").

2. **Use of Licensed Property.** Licensee may use the License granted herein for the following purposes and only for such purposes:

____Recreation____

3. **Persons entitled to use of Licensed Property.** Licensee, his or her family and guests are entitled to the use of the Licensed Property for the purposes stated herein without a fee. Nothing herein contained shall be construed as a grant of the use the Licensed Property to any other party or to the public.

4. **Termination of License.** This License may be terminated by the Licensor for any reason or for no reason upon giving Licensee thirty (30) days prior written notice at the address stated below Licensee's signature below ("Termination Date"). On or before the Termination Date, Licensee shall remove the Temporary Structure. If Licensor, within its sole discretion, determines that an emergency warrants the immediate removal of the Temporary Structure, then Licensee will remove such Temporary Structure as soon as reasonably possible after notice of such emergency is given to Licensee. If Licensee shall fail to remove such Temporary Structure in what the District considers to be a reasonable time, then Licensor may remove such item at Licensee's cost and expense.

5. **Limitation of Liability.**

(a) The Licensee acknowledges and agrees that neither Licensor, its board members, officers, employees or agents, will be liable for any loss or damage arising out of or resulting from Licensor's location and use of the Temporary Structure licensed under this Agreement; and Licensee hereby releases and discharges Licensor to the fullest extent available under law from any such liability, loss, damage or claim.

(b) To the full extent permitted by law, Licensor will in no manner be liable to Licensee or any third party for any loss or damage, however caused (including through negligence), which may be directly or indirectly suffered in connection with any use of the Temporary Structure.

(c) Licensor shall not be held liable by Licensee in any manner for any loss, damage or injury suffered by the Licensee or by any other person related to any use of the Temporary Structure or part thereof.

(d) Notwithstanding anything contained in this Agreement, in no event shall Licensor be liable for any claims, damages or loss which may arise from modification, operation or use of the Temporary Structure.

6. **Utilities Prohibition.** Licensee shall not install or connect any utilities of any kind onto, under, or across the Licensed Property to the Temporary Structure.

7. **Indemnity.** Licensee shall indemnify, defend and hold harmless the Licensor, its' board members, officers, employees and agents from and against all suits, claims, liabilities, expenses and damages (including third party claims) that Licensor may suffer or incur for any reason resulting in any way from:

- a. Licensee's, his or her family, guests, non-family, or non-guests without consent, use of the Licensed Property or Temporary Structure;
- b. Any breach of the terms of this License Agreement;
- c. Any other act of Licensee; and
- d. This indemnity will survive the termination of this Agreement.

8. **Insurance.** Licensee shall obtain liability insurance in the minimum amount of \$250,000 which shall include the addition of the Licensor as a named insured and a waiver of any claim for subrogation against the Licensor. Licensee shall furnish the District a Certificate of such insurance coverage before the Temporary Structure is placed in the Easement Area.

IN WITNESS WHEREOF, the Parties have executed this License effective the day and year first above written.

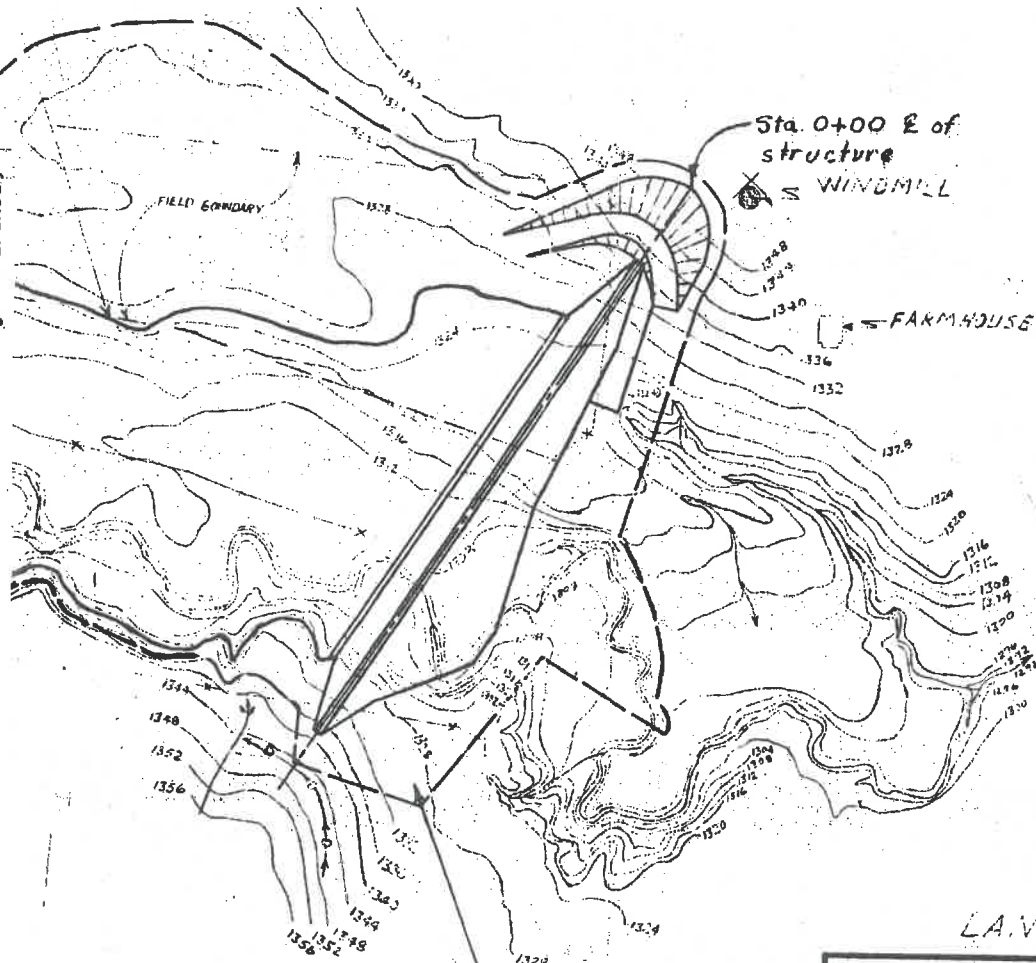
LOWER PLATTE SOUTH NATURAL RESOURCES
DISTRICT, A Political Subdivision of the State of Nebraska,

By: _____
Paul Zillig
General Manager

By: _____
Name _____
Address: _____

EXHIBIT A

That portion of the SW 1/4 of Section Twenty Seven (27), Township Thirteen (13) North, Range Five (5) East of the 6th P.M., Saunders County, Nebraska, lying below elevation one thousand three hundred thirty four feet (1,334') above sea level, upstream from the dam site (2-C), and also that portion adjacent to and downstream from the dam within the area designated as right-of-way boundary, all as shown on a portion of the land rights work map, drawing # 5, E-29, 731, dated March 23, 1973, revised June 6, 1973, which is attached hereto, marked Exhibit A, and incorporated herein by reference.



Construction
Area

LAND RIGHTS WORK MAP

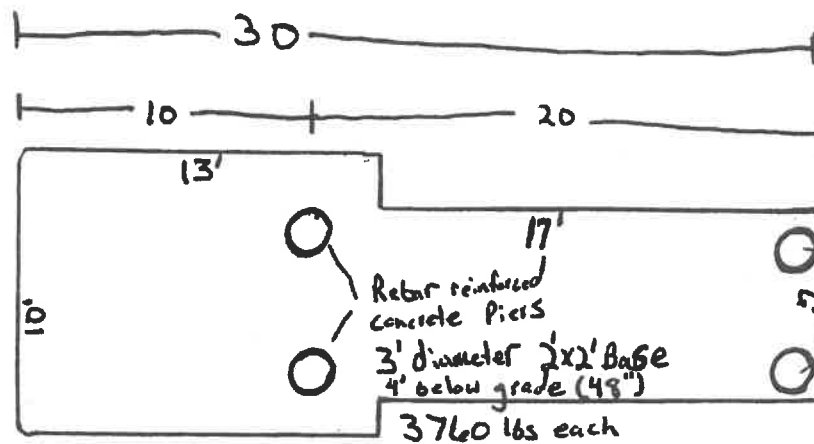
FLOODWATER RETARDING STRUCTURE 2-C
NORTH OAK CREEK WATERSHED

Sec. 2728, T.13N, R.5E
Saunders County, Nebraska

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Designed _____	Date _____	Approved by _____
Drawn _____		Title _____
Traced _____		Title _____
Checked _____		Sheet / Drawing No
		No / of
		5, E-29, 731

Rev. 6-6-73
REV. 1-1-72
REV. 1-24-71



Top View ↑

End view

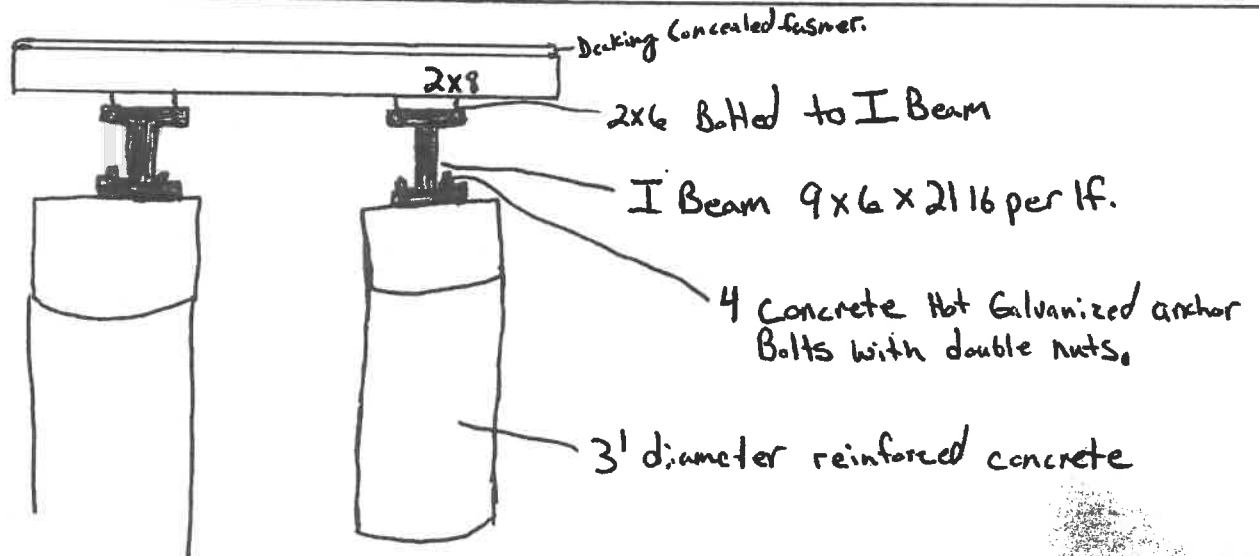
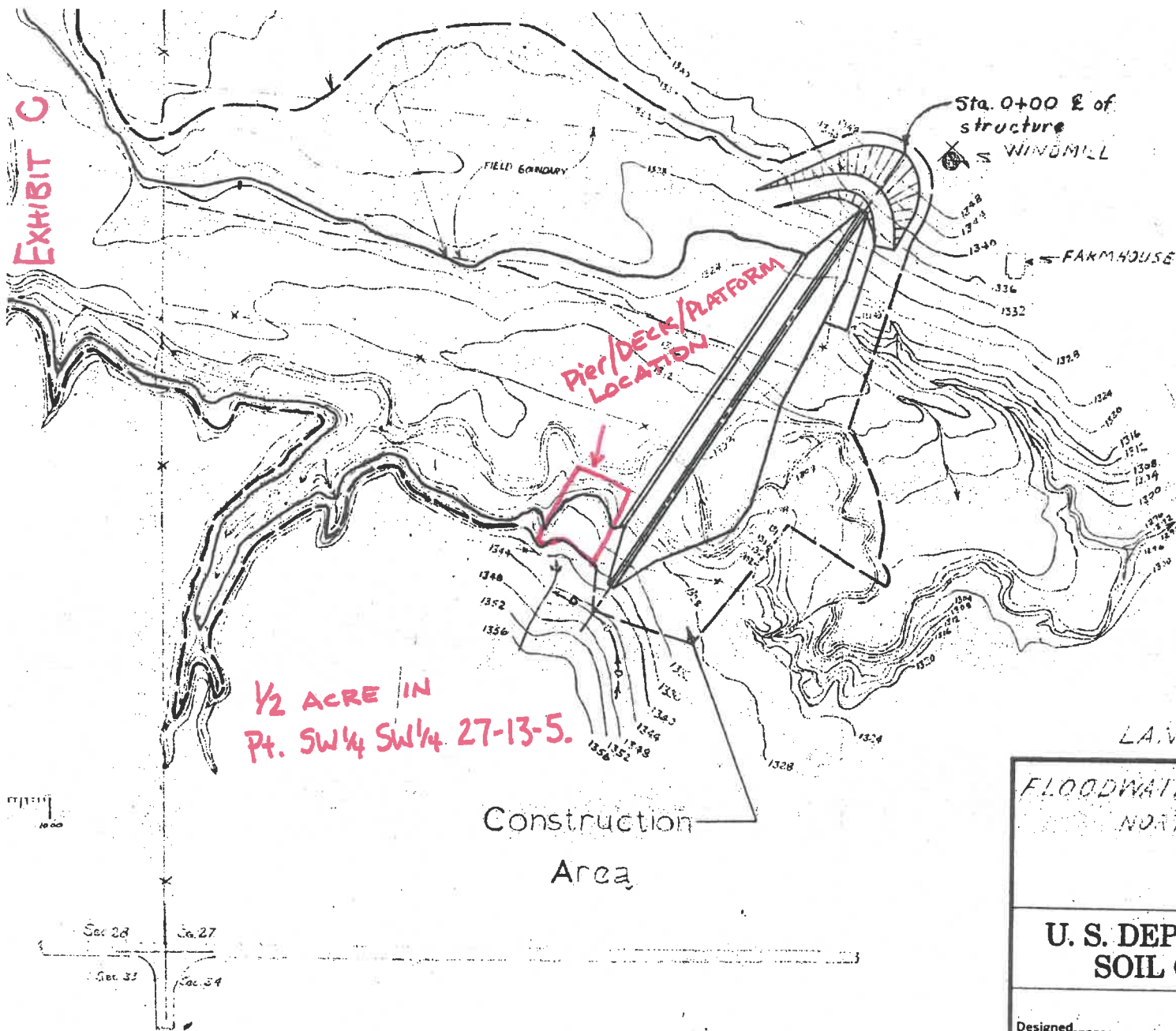




EXHIBIT C



LAND RIGHTS WORK MAP

FLOODWATER RETARDING STRUCTURE 2-C
NORTH OAK CREEK WATERSHED

Sec. 27, T. 13 N., R. 5 E.
Sauders County, Nebraska

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Designed _____	Date _____	Approved by _____
Drawn _____		Title _____
Traced _____		Sheet _____
Checked _____		Drawing No. _____
		No. _____
		of _____

5,E-29,731

Rev. 6-6-73
REV. 1-1-73
REV. 1-24-77



3 October 2018

Mr. Dan Schulz
Lower Platte Natural Resources District
PO Box 83581
Lincoln, NE 68501-3581

Reference: Palmyra Southwest - Request to Purchase Credits from Blue Heron Marsh Bank
Control No. 13249
Project No. HRRR-7915(1)
FHU Reference No. 117246-01

Dear Mr. Schulz:

On behalf of Otoe County and the Nebraska Department of Transportation (NDOT), Felsburg Holt & Ullevig (FHU) is submitting this request to purchase wetland credits from the Blue Heron Marsh Wetland Mitigation Bank to mitigate for unavoidable wetland impacts from the Palmyra Southwest construction project in Otoe County, Nebraska. Because the project would permanently impact over 0.1 acre of wetland, mitigation is required as a condition of the Section 404 Permit. The U.S. Army Corps of Engineers (Corps) has indicated that we first seek to mitigate through existing banks. Because this is a federal-aid project for a local public agency, NDOT wetland banks are not available for use. Information about the project, wetland impacts, and our request for the purchase of credits are provided below.

Project Description

Otoe County is proposing to construct a new rural county road on new alignment southwest of the Village of Palmyra, Nebraska (Figure 1). The project begins at the intersection of 'G' Road and North 6th Road and arcs to the northeast to tie into the existing bridge on 'H' Street just south of West 2nd Street. The length of the proposed project is approximately 4,800 feet (0.91 miles). The new county road would replace the north/south portion of North 6th Road between 'G' Road and 1st Street, which would be removed and returned to vacant land upon completion of the proposed project.

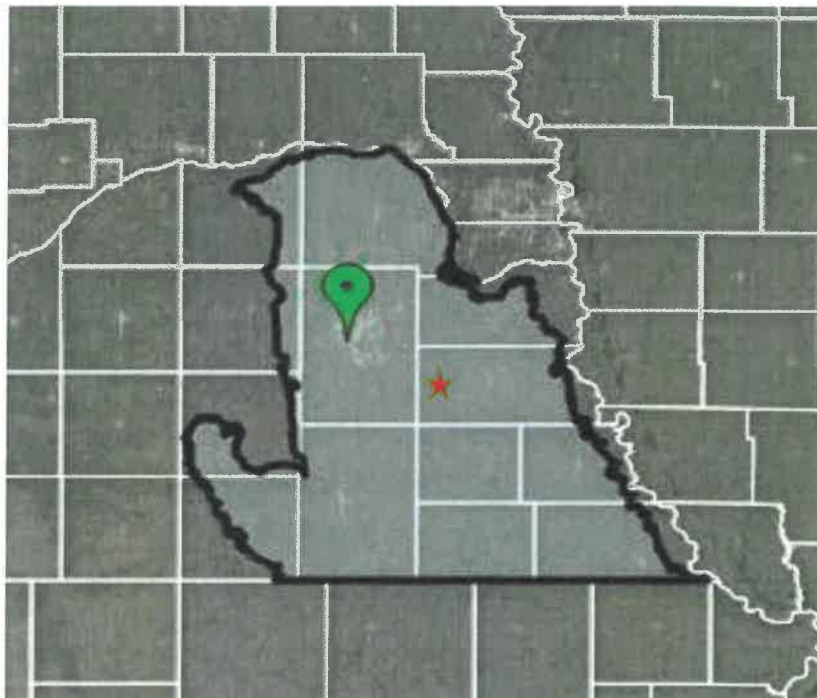
Wetland Impacts

The project has been designed to minimize wetland impacts as much as feasible. However, the proposed project would result in unavoidable impacts to an estimated 0.1976 acres of wetland, including 0.0836 acres of palustrine emergent temporarily or seasonally flooded (PEMA/PEMC) wetlands and 0.1140 acres of palustrine scrub/shrub temporarily flooded (PSSA) wetlands. Because permanent wetland impacts exceed the 0.1-acre threshold, mitigation is required by the USACE.

Mitigation

The Palmyra Southwest project falls within the service area of the Blue Heron Marsh Wetland Mitigation Bank (Figure 1).

Figure 1. Service Area of Blue Heron Marsh Mitigation Bank



Red Star = approximate location of the Palmyra Southwest project.

Blue Heron Marsh Bank Balance

The Blue Heron Marsh Wetland Mitigation Bank is approved to mitigate wetland impacts for: PEMA, PEMC, PSSA, and palustrine forested temporarily flooded wetlands (PFOA). Based on our conversation on 26 September 2018, the bank has the needed amount of credits available in *System* (Palustrine-P) and *Class* (Emergent vegetation-EM; Scrub/Shrub-SS) classifications to mitigate for impacts from the Palmyra Southwest project.

Typically, USACE requests in-kind mitigation (i.e., similar Nebraska Wetland Subclass) at a 1:1 ratio, while out-of-kind mitigation (i.e., different Cowardin Water Regime or Nebraska Wetland Subclass) would need to be at 2:1 ratio. Calculation of the needed credits is shown in **Table 1**. A total of **0.3115 credits** would need to be purchased. The types of credits needed include:

- **0.1672 PEMF credits**
- **0.1443 PSSA credits**

Proposed Credit Purchase

Based on the Bank Administration Procedure provided by the Lower Platte South Natural Resources District (see Attachment A), it is our understanding that the purchase of 0.5 credits or less would cost \$20,000. Otoe County is requesting the purchase of **0.3115** total credits (0.1672 PEMF and 0.1443 PSSA) for the price described in the Administration Procedure, \$20,000. This request is contingent upon USACE approval of the use of the Blue Heron Marsh Bank for mitigation, which is being proposed in the Section 404 Permit Application for the project. Should USACE not approve the use of this bank for mitigation, then this request for purchase would be withdrawn.

Table 1. Determination of credits for mitigation of wetland impacts at the Blue Heron Marsh Mitigation Bank.

Wetland ID	Cowardin Classification	Nebraska Wetland Subclass	Wetland Impacts (acres)	Mitigation Ratio	Mitigation Acreage
Wetland 4	PSSA	Floodplain Depressions	0.0837	1:1	0.0837
Wetland 5	PEMA/PEMC	Floodplain Depressions	0.0533	2:1	0.1066
Wetland 7	PEMA/PEMC	Riverine Floodplain	0.0236	2:1	0.0472
Wetland 10	PEMA/PEMC	Floodplain Depressions	0.0026	2:1	0.0052
Wetland 12	PEMA/PEMC	Riverine Floodplain	0.0015	2:1	0.003
Wetland 13	PEMA/PEMC	Floodplain Depressions	0.0026	2:1	0.0052
Wetland 15	PSSA	Riverine Floodplain	0.0303	2:1	0.0606
TOTAL			0.1976		0.3115

We appreciate your timely consideration of this request. Please let me know if you have any additional questions or require any additional information.

Sincerely,

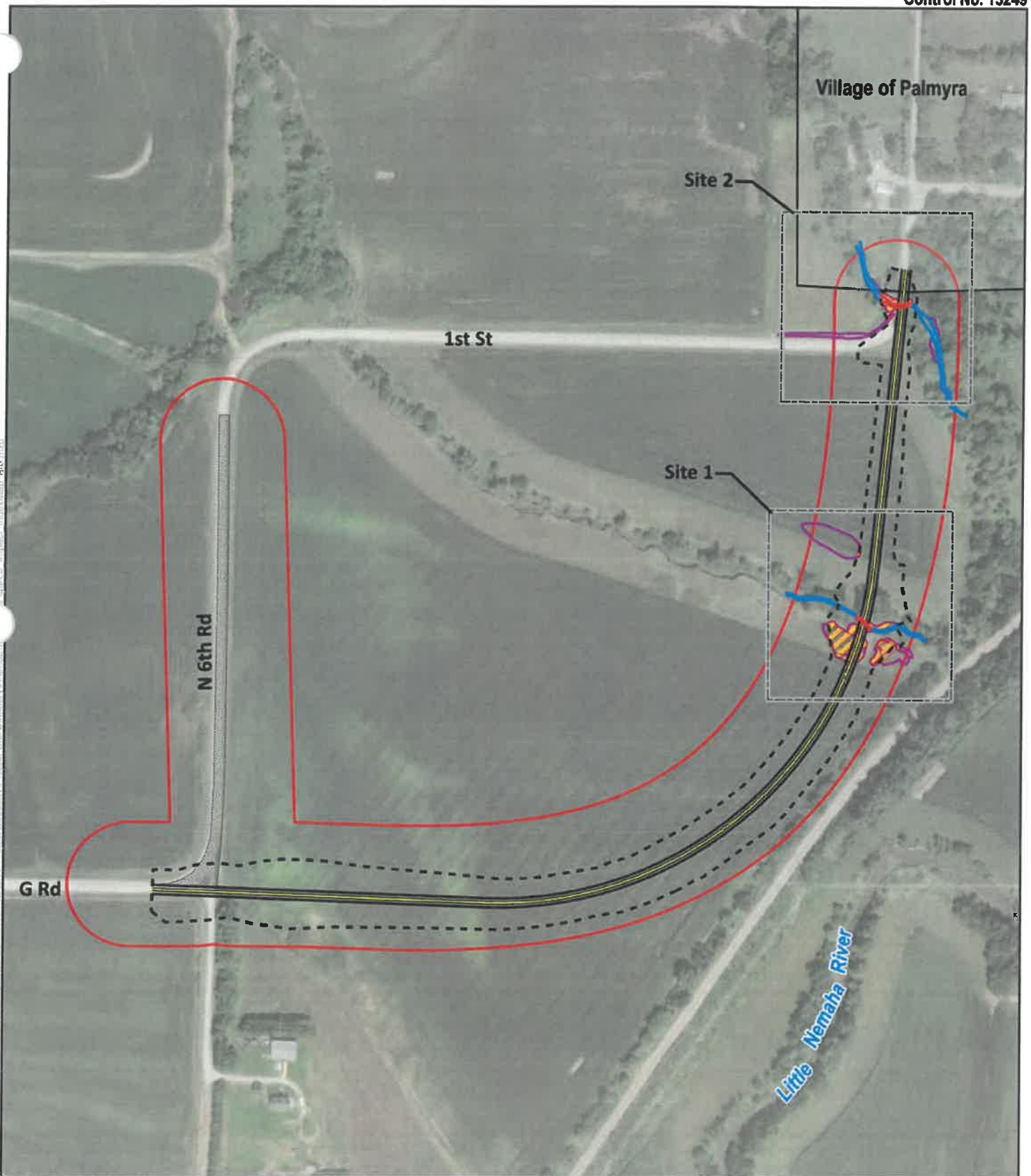


Adam Behmer
Environmental Scientist
FELSBURG HOLT & ULLEVIG

CC:
Jon Brinkman, Otoe County Roads Department
Roger Yerdon, NDOT Permits Unit
Ryan Walkowiak, NDOT Environmental
Glen Steffensmeier, NDOT Local Projects Division

Attachment A: LPSNRD Banks Procedure

Document Path: N:\Projects\117346-01 Palmyra Southwest\NE-FIN Project Directory\Project GIS Directory\AerialMap_117346-01 Palmyra Southwest\Impact Map_117346-01 Palmyra Southwest.aprx



- | | | |
|---------------------------|---------------------------|---------------------------|
| Limits of Construction | Permanent Channel Impacts | Permanent Wetland Impacts |
| Road Removal | Channel or Linear Wetland | Wetland |
| Footprint of Roadway Fill | Environmental Study Area | |
| Project Alignment | | |



Figure 3 - Site Index
Impact Sheet Index Map
Palmyra Southwest
Otoe County, Nebraska

Administration Procedure Blue Heron Marsh Wetland Mitigation Bank

The following shall be the Procedure by the Lower Platte South Natural Resources District for the Administration of the Blue Heron Marsh Wetland Mitigation Bank:

- Wetland mitigation credits shall be available for sale to public and private parties in accordance with the approved Banking Instrument
 - Within the Nebraska portion of Major Land Resource Area 106
 - For projects determined by the Corps of Engineers to be eligible for mitigation under Section 404 from this Bank
- Pricing for sale of mitigation credits shall be a minimum of \$20,000 for 0.5 credits or less and prorated from 0.51 credit to \$40,000 for 1.0 credit
- Each credit sale request shall be reviewed by the Executive Subcommittee and presented to the Board of Directors for final consideration.