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OCT 06 2011

LANCASTER COUNTY
CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

DIRECTING THE COUNTY ENGINEER)
TO CONDUCT A STUDY REGARDING)
VACATING A PORTION OF NORTHWEST)
12TH STREET BETWEEN WEST RAYMOND)
ROAD AND WEST BRANCHED OAK ROAD,)
SUCH PORTION BEGINNING AT A POINT 575)
FEET NORTH OF THE SOUTHWEST)
CORNER OF THE NORTHWEST QUARTER,)
SECTION 34, TOWNSHIP 12 NORTH,)
RANGE 6 EAST OF THE 6TH PRINCIPAL)
MERIDIAN, THENCE NORTH ENDING)
AT A POINT 775 FEET NORTH OF SAID)
SOUTHWEST CORNER OF SAID)
NORTHWEST QUARTER, LANCASTER)
COUNTY, NEBRASKA)

RESOLUTION NO. R-11-0076

WHEREAS, the Board of County Commissioners of Lancaster County, Nebraska (hereinafter referred to as the "County Board") has deemed that the public interest may be served by vacating a portion of Northwest 12th Street between West Branched Oak Road, and West Raymond Road will be vacated, such portion beginning at a point 575 feet north of the Southwest corner of the NW1/4, Section 34, Township 12 North, Range 6 East of the 6th Principal Meridian, thence north ending at a point 775 feet north of said Southwest corner of said NW1/4, Lancaster County, Nebraska, see Exhibit "A" attached hereto and incorporated by this reference; and

WHEREAS, the Lancaster County Engineer is the person responsible for the maintenance of county roads in Lancaster County, Nebraska; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Lancaster County, Nebraska, that the Lancaster County Engineer, or such person designated by the Engineer, shall conduct a study of the use being made of the above-described portion of county road, and to submit in writing to the County Board within thirty days, a report upon the


study made and his recommendation as to the vacation thereof; and


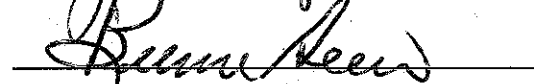

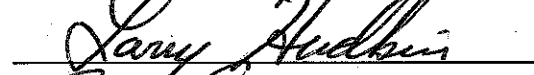
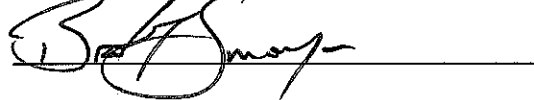
BE IT FURTHER RESOLVED, that in accordance with the provisions of Resolution No. 3049, a copy of this Resolution shall be served upon the Lincoln/Lancaster County Planning Department, which shall report in writing within thirty days, unless a longer period is granted by the County Board, as to the character and degree of conformity or nonconformity of the proposed vacation to the Comprehensive Plan.

DATED this 11 day of October, 2011.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 11 day of
October, 2011.


for JOE KELLY
County Attorney

C-11-0530

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SEP 16 2011

LANCASTER COUNTY
CLERK

SETTLEMENT AGREEMENT BETWEEN
UNITED STATES FISH AND WILDLIFE SERVICE
AND
LANCASTER COUNTY, NEBRASKA

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the United States Fish and Wildlife Service, hereinafter referred to as "the Service", and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "the County."

WHEREAS, the Service and the County, (collectively, "Parties"), have a dispute over alleged take of Salt Creek tiger beetles and alleged destruction of designated critical habitat resulting from the alleged placement of fill on or about July 28, 2010, on property, abutting a portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road in Lancaster County, Nebraska, which is a Category I Saline Wetland located at Little Salt Springs, and is the area designated on April 6, 2010, as Unit 1, Little Salt Creek North, within designated critical habitat of the Salt Creek tiger beetle.

WHEREAS, pursuant to the Endangered Species Act, 16 U.S.C. § 1531, et seq (ESA), the Salt Creek tiger beetle has been listed in 50 C.F.R. § 17.11 as an endangered species since October 6, 2005 (70 FR 58335). The ESA and its implementing regulations at 50 CFR Part 17 prohibit taking, attempting to take, soliciting another to take or causing the taking of endangered and threatened species of wildlife. 16 U.S.C. §§ 1538(a)(1)(B) and 1538(a)(1)(G) and 1538(g); 50 C.F.R. 17.21(a) and (c).

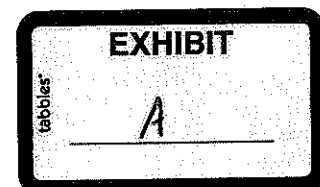
WHEREAS, Sections 301(a), 309 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319 and 1344 prohibit the placement of fill in a Category I Saline Wetland.

WHEREAS, the Parties, without any admission of liability by the County, enter into this Agreement as a complete and binding resolution and settlement of the allegations against the County and in order to avoid further proceedings or litigation.

IN CONSIDERATION OF THE ABOVE RECITALS, and in consideration of the mutual promises, covenants, terms and conditions set forth hereafter below:

NOW, THEREFORE, IT IS STIPULATED AND AGREED TO BY THE PARTIES AS FOLLOWS:

A. The County agrees:



1. Within ninety (90) days of the Effective Date of this Agreement, the County shall close a portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road, such portion beginning at a point 200 feet north of Southwest corner of Section 34, Township 12 North, Range 6 East, thence north ending at a point 200 feet south of the Northwest corner of said Section 34, excepting the portion to be vacated.
2. The closure of Northwest 12th Street near the intersection of Northwest 12th Street and West Branched Oak Road, at a point 200 feet south of the Northwest corner of Section 34, Township 12 North, Range 6 East, will be accomplished using a gate. The County will install and maintain two gates, 14 feet in width, at the intersection of Northwest 12th Street and West Branched Oak Road. Nebraska Game and Parks will pay for the costs of the gates. The County will pay the costs of installation and maintenance of the gates at the intersection of Northwest 12th Street and West Branched Oak Road. The gates may be used to access Northwest 12th Street.
3. The closure of Northwest 12th Street near the intersection of Northwest 12th Street and West Raymond Road, at a point 200 feet north of the Southwest Corner of Section 34, Township 12 North, Range 6 East, will be accomplished by placement of a permanent Type III barrier just north of the private landowner driveway closest to West Raymond Road. The County will pay the costs of installation and maintenance of such barricade. The County in its discretion, and at any time, may reopen any portion of Northwest 12th Street between West Raymond Road and the Southwest corner of the Northwest Quarter, Section 34, Township 12 North, Range 6 East for the purpose of providing landowners, with land adjacent to such portion of Northwest 12th Street, access to their land. If the County chooses to reopen such portion of Northwest 12th Street, then the County may move the road closure point and Type III barrier anywhere up to the Southwest corner of the Northwest Quarter, Section 34, Township 12 North, Range 6 East. Such movement of the road closure point and Type III barrier shall not constitute a breach of this Agreement. The County will be responsible and pay the costs of any movement and re-installation of such barricade.
4. Within ninety (90) days of the Effective Date of this Agreement, the County shall vacate a portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road, such portion beginning at a point 575 feet north of the Southwest corner of the NW1/4, Section 34, Township 12 North, Range 6 East, thence north ending at a point 775 feet north of said Southwest corner of said

NW1/4, Lancaster County, Nebraska. The County shall install permanent Type III barriers on either side of such vacated portion of Northwest 12th Street. The County will pay for the costs of the barricades and their installation. Additionally, the County shall remove the bridge deck of the bridge in the vacated portion of Northwest 12th Street. In removing the bridge deck, the County will coordinate with the Nebraska Game and Parks Commission and the Lower South Platte Natural Resource District in order to avoid any damage to the critical habitat and allow for any habitat restoration the Commission and the District wish to do in the vacated area.

5. The County waives the right to a hearing so long as this Agreement remains in effect, and waives any potential counterclaims against the Service, its law enforcement agents, biologists, attorneys, or other staff so long as this Agreement remains in effect.

B. The Service agrees:

1. In consideration of the County's fulfillment of the terms outlined above, the Service will not impose, or seek to impose, a civil penalty or seek to impose any criminal fine or penalty or seek any civil or criminal action against the County or its officers, members, affiliates, employees, agents or contractors, including but not limited to actions pursuant to the Endangered Species Act, 16 U.S.C. § 1531, et seq or the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319 and 1344, with respect to the alleged take of Salt Creek tiger beetles or alleged damage to critical habitat by the County or its employees that allegedly occurred on Northwest 12th Street between West Branched Oak Road and West Raymond Road on or about July 28, 2010, or with respect the alleged placement of fill in a Category I Saline Wetland abutting Northwest 12th Street between West Branched Oak Road and West Raymond Road by the County or its employees.
2. The County shall not be responsible or liable for the negligent, intentional, or wrongful acts or omissions of other parties, landowners, or members of the public that access the closed or vacated portions of Northwest 12th Street between West Branched Oak Road and West Raymond Road, or access designated critical habitat of the Salt Creek tiger beetle.
3. The County may remove the bridge deck of the bridge in the vacated portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road.

C. General Provisions

1. The Effective Date of this Agreement shall be the date of the last signature below.
2. If the County fails to perform any of the obligations of this Agreement, the Service may seek enforcement of the terms of this Agreement or may terminate the Agreement. This Agreement tolls any statute of limitations for such civil penalty proceedings, and for any claims of the County, for five years from the Effective Date. In the event the Service institutes any proceeding due to breach of this Agreement, the County shall be entitled to all required notices and opportunities for hearing. Should the Service seek to enforce the ESA violations referenced herein, this Agreement shall not be used as evidence to support or refute such allegations, although it may be used to document the tolling of the statute of limitations and to enforce compliance with its terms.
3. If the Service fails to perform any of the obligations of this Agreement, the County may seek enforcement of the terms of this Agreement or may terminate the Agreement. At anytime the Salt Creek tiger beetle is no longer listed as an endangered or threatened species pursuant to either Federal law or Nebraska State law, the County may terminate this Agreement and reopen the portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road.
4. This Agreement does not authorize under federal law or permitting requirements any take of listed species on the subject property, and any unauthorized taking outside the scope of the allegations herein may be subject to enforcement under the ESA.
5. The provisions of this Agreement shall apply to and be binding upon the Parties and their respective successors and assigns. The undersigned representatives represent that they are fully authorized to enter into this Agreement and to bind their respective Parties thereto.
6. Each Party shall bear its own costs, including but not limited to those incurred in the negotiations and execution of this Agreement, and attorneys' fees.
7. This Agreement constitutes the final and sole agreement between the Parties. Any modifications or amendments of this Agreement shall be in writing and duly executed by the Parties. The time frames in this Agreement may be altered by written agreement of the Parties.

8. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision herein.
9. It is further agreed by the Parties that this Agreement is a complete compromise of a disputed claim and is not to be construed as an admission of liability by any party hereto.
10. This Agreement shall be governed and interpreted by the Laws of the State of Nebraska insofar as it does not conflict with federal law.
11. Unless otherwise terminated pursuant to paragraphs C(2) or (3) above, this Agreement will terminate ten years from the Effective Date.

IT IS SO STIPULATED AND AGREED.

U.S. FISH AND WILDLIFE SERVICE

By: Sharon L. Benna
(name)

Date 9/29/11

LANCASTER COUNTY, by the
LANCASTER COUNTY BOARD OF
COMMISSIONERS

By: Deb Schorr
Deb Schorr
Chair

Date 9/20/11