



Document 2023 2559

Book 2023 Page 2559 Type 06 001 Pages 46

Date 10/18/2023 Time 3:35:14PM

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Prepared by: Ross A. Baxter, Iowa Natural Heritage Foundation 505 5<sup>th</sup> Ave, Suite 444 Des Moines, IA 50309 Phone: (515) 288-1846

Return document to: Iowa Natural Heritage Foundation 505 5<sup>th</sup> Ave, Suite 444 Des Moines, IA 50309 Phone: (515) 288-1846

Tax statements to: McLaughlin Farms, L.L.C. of 3272 140<sup>th</sup> Street Cumming, IA 50061

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**DEED OF CONSERVATION EASEMENT**

**THIS DEED OF CONSERVATION EASEMENT** ("Easement") is made this 18<sup>th</sup> day of October, 2023, by and between McLaughlin Farms, L.L.C. of 3272 140<sup>th</sup> Street Cumming, IA 50061 (hereinafter together with its heirs, personal representatives, successors and assigns collectively referred to as "**Grantor**"), and Iowa Natural Heritage Foundation of 505 Fifth Ave., Suite #444, Des Moines, Iowa 50309 (hereinafter together with its successors and assigns collectively referred to as "**Grantee**").

**RECITALS:**

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property in Madison County, Iowa, which is 107.211 acres, more or less, and is more particularly described in Exhibit "A" (PAGE 17) attached hereto and made a part hereof ("the Property"); and

**WHEREAS**, the Property possesses natural, scenic, agricultural, and open-space values, (collectively, the "Conservation Values"), and has substantial value and potential as agricultural open-space and wildlife habitat appropriate for conservation and preservation under the standards of Chapter 457A of the Code of Iowa; and

**WHEREAS**, the Property consists primarily of productive agricultural land with over 59% of the soils on the Property have been classified as "prime" by the USDA - Natural Resources Conservation Service; and

**WHEREAS**, the Property is within 4 miles of over 2,100 acres of public and privately protected land including Badger Creek State Recreation Area, Blue Flag Marsh, Great Western Trail and three private conservation easements. Preservation of the Property as wildlife habitat and scenic open-space increases the protected land in the area and enhances the wildlife habitat and scenic value of the public land; and

**WHEREAS**, the Property is within the Badger Creek-North River watershed and has been identified to receive funding as part of a watershed initiative; and

**WHEREAS**, INHF staff documented Species of Greatest Conservation Need including: field sparrow and eastern meadowlark. The Grantor also noted bobolinks are plentiful and northern bobwhite quail, eastern whip-poor-will and eagles have been known to inhabit the area; and

**WHEREAS**, by encumbering the Property with this Easement, more wildlife habitat is being permanently protected which helps meet Iowa's Wildlife Action Plan (2006, updated 2015) goal of permanently protecting an additional 2% of Iowa's wildlife habitat by the year 2030; and

**WHEREAS**, 64% of the Property is vegetated with perennial grass, reconstructed prairie, woodland cover, and a small stream, which collectively provide for excellent wildlife habitat for birds, insects, reptiles, amphibians, waterfowl, and mammals; and

**WHEREAS**, protection of the grassland on the Property allows for sustainable grazing, perennial crops, improved water quality and soil conservation; and

**WHEREAS**, by protecting the Property's grassland from tillage, more carbon can be sequestered and stored in the soil, thereby reducing the production of carbon dioxide, a greenhouse gas; and

**WHEREAS**, protection of the Property provides public benefit by preserving the agricultural character, open-space, perennial vegetation, scenic beauty, and water quality of the area; and

**WHEREAS**, the Property is viewable from 140<sup>th</sup> Street, a public gravel road and development of the Property would contribute to the degradation of the scenic, agricultural, and open-space character of the area; and

**WHEREAS**, Grantee herein warrants and represents that it has the commitment and the resources to carry out, and will carry out, all of the duties and responsibilities of Grantee as detailed herein; and

**WHEREAS**, Grantor and Grantee have mutually concluded that the grant of this Conservation Easement will not impair the qualification or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986 (the "Code"), as amended, and the regulations thereunder, and Chapter 457A of the State of Iowa Code, and will enhance the protection of the Property's significant Conservation Values; and

**WHEREAS**, the specific Conservation Values of the Property on the effective date of this Conservation Easement are documented in a baseline documentation report attached as **Exhibit B** ("Baseline Documentation Report"), dated October 13, 2023; a copy of which is on file with both Grantor and Grantee. Grantor and Grantee agree that the Baseline Documentation Report provide an accurate representation of the condition of the Property as of the effective date

(hereinafter defined) of this Deed of Conservation Easement and is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement; and

**WHEREAS**, Grantor further intends to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

**WHEREAS**, Grantee is a private, non-profit, publicly supported, tax-exempt organization, qualified under Section 170(h) of the Internal Revenue Code and Chapter 457A of the State of Iowa Code, whose primary purpose is the preservation, protection and enhancement of land in its natural, scenic, historical, agricultural, and/or open space condition; and

**WHEREAS**, Grantee is a tax-exempt organization under Section 501(c)(3) of the Code, an organization other than a private foundation under Section 509(a)(1) of said Code, and a "qualified organization" under Section 170(h)(3) of said Code, and Grantor is entitled to and may rely upon these affirmative representations made by Grantee; and

**WHEREAS**, Grantee agrees by accepting this Deed to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come; and

**WHEREAS**, protection of the Property will accomplish a number of the factors determining "significant public benefit" under Treas. Reg. Section 1.170A-14(d)(4)(iv); and

**WHEREAS**, accordingly, protection of the Property will preserve a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, and therefore the Easement meets the requirements of Section 170(h)(4)(A)(ii) of the Code; and

**WHEREAS**, accordingly, protection of the Property will preserve open-space views for the scenic enjoyment of the public and will therefore meet the requirements of Section 170(h)(4)(A)(iii)(I) of the Code; and

**WHEREAS**, accordingly, protection of the Property will preserve open space pursuant to clearly delineated Federal, State and local governmental conservation policies and will yield a significant public benefit, and will therefore meet the requirements of Section 170(h)(4)(A)(iii)(II) of the Code; and

**WHEREAS**, Iowa's General Assembly recognizes the importance of preserving the state's finite supply of agricultural land, as stated in Iowa Code 352.1; and

**WHEREAS**, Iowa has a vital public interest in preserving open spaces devoted to agriculture; good stewardship requires protection of land and soil for future generations as stated in Iowa Code 161A.2; and

**WHEREAS**, Grantee warrants that Grantee is a charitable organization described in Section 501(c)(3) of the Code, whose primary purpose is stated in Article III of its Articles and is authorized by the laws of the State of Iowa, including in particular Chapter 457A of the Iowa Code, to accept, hold, and administer interests in land, including conservation easements; and

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby conveys to Grantee a Conservation Easement on the Property as more fully described in this agreement.

### **Summary of Easement Provisions**

**1. Purpose.** It is the purpose of this Easement to assure that the Property will be preserved forever in its agricultural, forested, natural, scenic and/or open-space condition and to prevent any use of the Property that would significantly impair or interfere with its Conservation Values. The primary Conservation Value intended to be preserved hereby is the agricultural character and open-space of the Property; to the extent that other Conservation Values may be preserved and maintained without impairment of that primary Conservation Value, their protection shall also be considered purposes of this Easement. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purposes of this Easement.

**2. Rights of Grantee.** To accomplish the purposes of this Easement, the following rights are conveyed to Grantee:

- (a) to preserve and protect in perpetuity the Conservation Values of the Property; and
- (b) to enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement, and to require the restoration (to the condition immediately prior to the activity complained of) of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the provisions of paragraph 6 hereof.

**3. Permitted Uses.** Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein, that are not inconsistent with the purposes of this Easement, and that do not have a significant adverse impact on the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the following rights, subject to any terms and conditions as may be stated herein, and subject further, to all requirements and restrictions under applicable laws, ordinances and regulations.

- (a) Maintenance, but not replacement, of the old school house as shown in **Exhibit B**. Once the school house is removed from the Property, whether by natural or human causes, it cannot be replaced. For purposes of this Easement, the school house is not considered an impervious surface due to its current condition and temporary lifespan;
- (b) Agricultural practices, including but not limited to, disking, tilling, tiling, row-cropping, haying, grazing of livestock, placement of food plots, vegetable production, orchards and/or vineyards in the designated “Row Crop Area,” as shown in **Exhibit B**;
- (c) Grazing of livestock, forage production, including but not limited to alfalfa, red clover and perennial grass hay, and pasture re-establishment all according to a Natural Resources Conservation Service Grazing Plan;
- (d) Commercial enterprises related to agriculture and forestry including but not limited to agritourism, orchards, vineyards or nut production anywhere on the Property, provided tillage may only occur in the designated “Row Crop Area,” as shown in **Exhibit B**;
- (e) De minimus grazing equipment, including but not limited to, feeders, watering tanks, bale rings and corrals. Limited gravel may be placed near the grazing equipment;
- (f) Installation, maintenance and replacement of fencing, including solar fencing;
- (g) Drilling, maintenance, and replacement of water wells, lines and waterers including minimally intrusive utilities;
- (h) Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the protected Property;
- (i) Ecological restoration of natural habitats including but not limited to prescribed burning, prairie reconstruction, and removal of non-native and/or invasive species;
- (j) Enrollment and participation in conservation programs offered by the United States Department of Agriculture, its successor or similar conservation entity, consistent with the terms and purpose of this Easement;

- (k) Creation and maintenance of trails or creek crossings, and motorized vehicle use, anywhere on the property, provided best management practices are utilized to prevent significant soil erosion;
- (l) Undeveloped recreational uses, including but not limited to, hunting, trapping, fishing, leased hunting, tent-style camping, campfires, picnicking, hiking, snowshoeing, cross-country skiing, wildlife observation, horseback riding and harvesting wild fruit, nuts, and mushrooms, provided such activities do not negatively impact the Conservation Values hereby protected;
- (m) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration or creation;
- (n) Placement of permanent or temporary hunting or wildlife observation blinds such as tree stands, elevated box blinds, or ground blinds, provided utilities shall not service the blinds. For purposes of this Easement the above described blinds are not considered structures;
- (o) Collection of deadwood, fallen wood or wood cut for forest management for firewood.

**4. Prohibited Uses.** Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Construction, erection or placement of any building or structure;
- (b) Agricultural practices, including but not limited to, disking, tilling, tiling, clearing of vegetation, row-cropping, food plots, haying or grazing, except as permitted in paragraph 3;
- (c) Logging, except as permitted in paragraph 3;
- (d) Establishment of any livestock feed lot or animal confinement operation;
- (e) Dumping of ashes, trash, rubbish, garbage, offal, or any other unsightly or offensive materials;
- (f) Placing billboards, outdoor advertising structures, or advertisements of any kind on the Property; except for real estate, entrance, boundary, and educational signs all of reasonable size;
- (g) Any exploitation of mineral resources, by either subsurface or surface means;

- (h) Use of any motorized vehicle of any type, except as permitted in paragraph 3;
- (i) Willful introduction of invasive plant or animal species;
- (j) Removal of natural materials, except as permitted in paragraph 3;
- (k) Alteration of the topography of the Property or its drainage systems, except as permitted in paragraph 3 or with prior written approval of Grantee, for purposes such as erosion control, repairing cattle paths, public safety considerations, or for purposes protective of the natural integrity of the Property;
- (l) Installation or upgrading of utility structures or lines, except as permitted in paragraph 3 or with the prior written approval of Grantee;
- (m) Construction or enlargement of any developed roads, access lanes or parking lots;
- (n) Subdivision, parcelization or de facto subdivision of the Property, thus keeping the entire Property, as described in **Exhibit A**, as one unit, never to be split into separate ownerships;
- (o) Hunting of confined animals.

**5. Approval; Discretionary Consent.** In the event that Grantor desires to undertake activities not explicitly permitted by Paragraph 3, and not prohibited by the provisions of Paragraph 4, or activities with respect to which Grantee's approval is specifically required by the provisions of Paragraph 3 or Paragraph 4, Grantor shall request such approval from Grantee in writing prior to Grantor undertaking such activity. The request shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Under no circumstances may Grantor undertake the requested activity until approved in writing by Grantee. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

**6. Grantee's Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement, or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the

violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement, and/or to require the restoration of the Property to the condition that existed immediately prior to such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate, and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**6.1 Third Party Enforcement.** Grantee shall have the right, but not the obligation, to pursue all legal and equitable remedies provided under paragraph 6 against any third party responsible for any violation of the terms of this Easement and Grantor shall, at Grantee's option, assign their right of action against such third party to Grantee, join Grantee in any suit or action against such third party, or appoint Grantee their attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

**6.2 Costs of Enforcement.** In connection with any act to enforce the terms of this Easement, Grantor and Grantee shall each be responsible for their respective costs of enforcement and other costs and expenses, including, without limitation, reasonable attorneys' fees, unless (i) either Grantor or Grantee admits fault, or (ii) a court of competent jurisdiction determines that one of the parties is at fault, in which case the party at fault agrees to reimburse the other party for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the contested matter.

**6.3 Forbearance is Not a Waiver.** Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term on any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**6.4 Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

**6.5 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, trespass, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under



emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from any such cause.

**6.6 Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purposes of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, that if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fifteen (15) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator, or both as the case may be, in accordance with (Iowa statutory authority) or any successor statute then in effect. The matter shall be settled in accordance with (Iowa statute or other appropriate procedural reference) then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys' fees, which shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

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

**8. Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

**8.1 Taxes.** Grantor 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 any Taxes imposed upon or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of Taxes, upon three (3) days' prior written notice to Grantor, in accordance with any bill, statement, or estimate procured by the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of (i) the prime rate of interest from time to time charged by Bankers Trust or (ii) the maximum allowed by law.

**8.2 Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in

any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter relating to or occurring on or about the Property, regardless of cause, unless due solely to negligence of any of the Indemnified Parties; (b) the obligations specified in paragraphs 8 and 8.1; and (c) the existence or administration of this Easement. Grantee agrees to hold harmless, indemnify, and defend Grantor from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, and fees, including reasonable attorney's fees actually incurred, Grantor may suffer or incur as a result of or arising out of the negligent act or omission of Grantee or Grantee's representatives, or other actions by Grantee or Grantee's representatives other than as expressly permitted by this Easement.

**8.3 Transfer Fee.** Upon each successive title transfer of the Property, a transfer fee equal to 2% of the Fair Market Value shall be paid at time of closing to Grantee for the continuation of the easement monitoring fund. This transfer fee shall constitute a lien against the Property until paid. The transfer fee shall be waived if transferred to lineal descendants of Lewis and Margaret McLaughlin.

**9. Extinguishment.** See **Exhibit C - Minimum Deed Terms For The Protection of Agricultural Use, Section II Paragraph 4.**

**9.1 Proceeds.** See **Exhibit C - Minimum Deed Terms For The Protection of Agricultural Use, Section II Paragraph 4.**

**9.2 Condemnation.** See **Exhibit C - Minimum Deed Terms For The Protection of Agricultural Use, Section II Paragraph 4.**

**10. Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Chapter 457A of the Code of Iowa (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance, continue to be observed.

**10.1 Executory Limitation.** If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under Iowa law, and a prior assignment is not made pursuant to paragraph 10, then Grantee's rights and obligations under this Easement shall become immediately vested in The Nature Conservancy. If The Nature Conservancy is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if The Nature Conservancy is not qualified or authorized to hold conservation easements as provided with respect to assignments pursuant to paragraph 10, or if it shall refuse such rights and obligations, then the rights and obligations of this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Iowa law and with due regard to the requirements for an assignment pursuant to paragraph 10. Should no qualified

charitable organization desirable to the Grantor be in existence, this easement may be assigned or transferred to a unit of government.

**11. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**12. Estoppel Certificates.** Upon request by Grantor, Grantee shall, within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

**13. Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors:

McLaughlin Farms, L.L.C.  
3272 140<sup>th</sup> Street  
Cumming, IA 50061

To Grantee:

President, Iowa Natural Heritage Foundation  
505 Fifth Ave., Suite #444  
Des Moines, IA 50309-2321  
Phone (515)288-1846

Or to such other address as a party may designate by written notice to the other.

**14. Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Easement is recorded in the official records of Madison County, Iowa, after all required signatures have been affixed hereto. This Easement shall be timely recorded. Grantee may re-record this instrument or record any other instrument at any time as may be required to preserve its rights in this Easement.

**15. General Provisions.**

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Iowa.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the purposes of this Easement and the policy and purposes of Chapter 457A of the Code of Iowa. If any provision in

this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render that provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 16.

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

(f) Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

(g) Successors. The 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, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement shall terminate upon transfer of that party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**16. Amendments.** See **Exhibit C - Minimum Deed Terms For The Protection of Agricultural Use, Section II Paragraph 5.**

**17. Environmental Compliance.**

(a) Remediation. If, at any time, there occurs or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic,

polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefore.

(b) Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an owner or operator with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation, and Liability act of 1980, as amended (hereinafter referred to as "CERCLA"), and any corresponding state statutory laws.

**18. Minimum Deed Terms For The Protection Of Agricultural Use.**

This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The **EXHIBIT C** is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 et seq. and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in **EXHIBIT A** is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in **EXHIBIT C** appended to and made a part of this easement deed.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement on this 18<sup>th</sup> day of October, 2023.

**GRANTOR**

McLaughlin Farms, L.L.C.

Dennis McLaughlin  
Dennis McLaughlin, President

Cecilia Stumpf  
Cecilia Stumpf, Secretary

**GRANTEE**

Iowa Natural Heritage Foundation

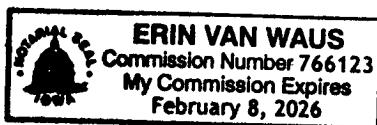
Joseph A. McGovern  
Joseph A. McGovern, President

**GRANTOR ACKNOWLEDGMENT**

STATE OF IOWA COUNTY OF Madison

This instrument was acknowledged before me on October 18, 2023, by  
Dennis McLaughlin, as President, of McLaughlin Farms, L.L.C.

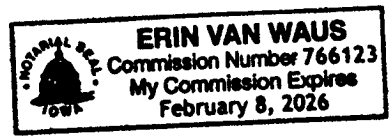
Erin Van Waus  
Notary Public



STATE OF IOWA COUNTY OF Madison

This instrument was acknowledged before me on October 18, 2023, by  
Cecilia Stumpf, as Secretary, of McLaughlin Farms, L.L.C.

Erin Van Waus  
Notary Public

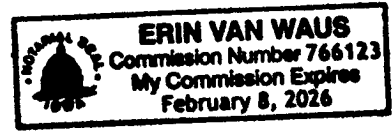


**GRANTEE ACKNOWLEDGMENT**

STATE OF IOWA COUNTY OF Polk

This instrument was acknowledged before me on October 18, 2023, by  
Joseph A. McGovern, as President, of the Iowa Natural Heritage Foundation.

Erin Van Waus  
Notary Public



## **EXHIBIT A**

### Legal Description

The West Half (1/2) of the Southeast Quarter (1/4) and the Southeast Quarter (1/4) of the Southeast Quarter (1/4) of Section Twenty-three (23), Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5<sup>th</sup> P.M., Madison County, Iowa, [**EXCEPT** Parcel "B" located in the South Half (1/2) of the Southeast Quarter (1/4) of said Section Twenty-three (23), containing 12.789 acres, as shown in Plat of Survey filed in Book 2022, Page 780 on March 16, 2022 in the Office of the Recorder of Madison County, Iowa.]



## **Exhibit B**

### **Table of Contents:**

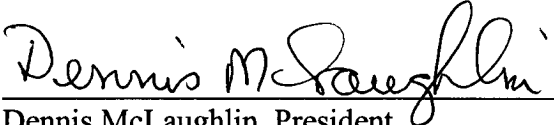
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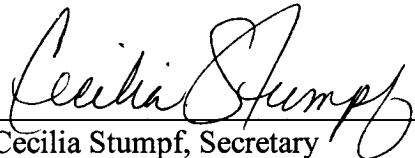
**EXHIBIT B**  
**OWNER ACKNOWLEDGEMENT OF CONDITION**

Grantor and the Iowa Natural Heritage Foundation agree that the Baseline Documentation Report is an accurate representation of the protected Property at the time of the transfer.

**GRANTOR**

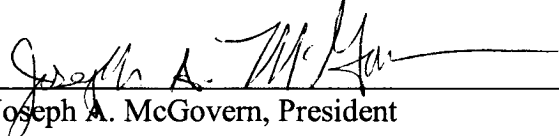
McLaughlin Farms, L.L.C.

  
\_\_\_\_\_  
Dennis McLaughlin, President

  
\_\_\_\_\_  
Cecilia Stumpf, Secretary

**GRANTEE**

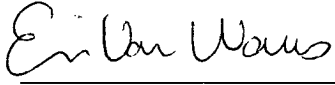
Iowa Natural Heritage Foundation

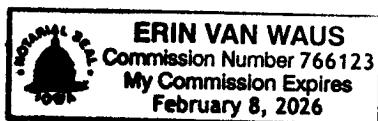
  
\_\_\_\_\_  
Joseph A. McGovern, President

**GRANTOR ACKNOWLEDGMENT**

STATE OF IOWA COUNTY OF Madison

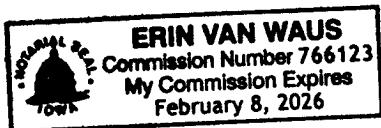
This instrument was acknowledged before me on October 18, 2023, by  
Dennis McLaughlin, as President, of McLaughlin Farms, L.L.C.

  
\_\_\_\_\_  
Notary Public



STATE OF IOWA COUNTY OF Madison

This instrument was acknowledged before me on October 18, 2023, by  
Cecilia Stumpf, as Secretary, of McLaughlin Farms, L.L.C.

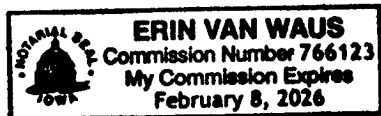


Erin Van Waus  
Notary Public

**GRANTEE ACKNOWLEDGMENT**

STATE OF IOWA COUNTY OF Polk

This instrument was acknowledged before me on October 18, 2023, by  
Joseph A. McGovern, as President, of the Iowa Natural Heritage Foundation.



Erin Van Waus  
Notary Public

**Purpose:** It is the purpose of this Easement to assure that the Property will be preserved forever in its agricultural, forested, natural, scenic and/or open-space condition and to prevent any use of the Property that would significantly impair or interfere with its Conservation Values. The primary Conservation Value intended to be preserved hereby is the agricultural character and open-space of the Property; to the extent that other Conservation Values may be preserved and maintained without impairment of that primary Conservation Value, their protection shall also be considered purposes of this Easement. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purposes of this Easement.

**Conservation Values**, written by Tylar Samuels, Conservation Easement Specialist  
The 107.211-acre Property is in Section 23, Township 77 North, Range 26 West in Madison County. Conservation has always been a part of the McLaughlin family's land ethic. The family acquired the property in 1874 and it has been their livelihood for 148 years. McLaughlin Farms, L.L.C. owns the farm and consists of 5 siblings from across the country coming together to protect their family's land. Protection of the Property provides public benefit by preserving the agricultural character, open-space, perennial vegetation, scenic beauty, and water quality of the area.

The property is in one of the fastest growing areas of the state. Rural cul-de-sac subdivisions are located ¼ mile to the east and are a threat to agricultural land and wildlife habitat. 64% of the Property is vegetated with perennial grass, reconstructed prairie, woodland cover, and a small stream. Protecting the agricultural character of the Property ensures the land will be available in the future for consistent agricultural uses while also providing wildlife habitat for birds, insects, reptiles, amphibians, waterfowl, and mammals. Based on USDA agricultural census data, between 2007 – 2012, Madison County experienced a 20% decrease in pasture. This is a significant decline and reiterates the importance of protecting the McLaughlin Property with an NRCS-Agricultural Land Easement.

Many bird species utilize the pasture and wooded creeks. INHF staff documented Species of Greatest Conservation Need (SGCN), including field sparrow and eastern meadowlark. The landowners noted bobolinks are plentiful and northern bobwhite quail, eastern whip-poor-will and eagles have been known to be in this area. The property is within the Badger Creek-North River watershed and protection of perennial habitat will positively benefit water quality. By encumbering the Property with the Agricultural Land Easement, more wildlife habitat is permanently protected, which helps meet Iowa's Wildlife Action Plan (2006, updated 2015) goal of permanently protecting an additional 2% of Iowa's wildlife habitat by the year 2030.

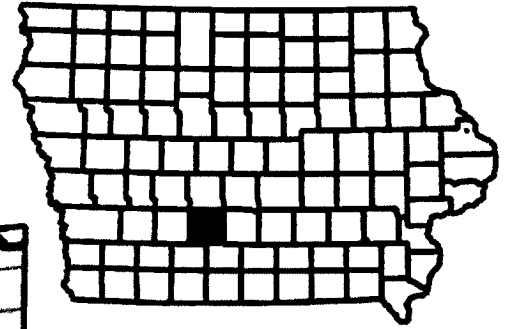
The Property is within 4 miles of over 2,100 acres of public and privately protected land including Badger Creek State Recreation Area, Blue Flag Marsh, Great Western Trail, NRCS Wetland Reserve Easements and three private INHF-held conservation easements. Preservation of the Property as wildlife habitat and scenic open-space increases the protected land in the area and enhances the wildlife habitat and scenic value of the public land.

The easement will allow for sustainable grazing, row cropping in designated areas, and fruit, nut and vegetable production, all according to an NRCS Soil Conservation Plan or Grazing Plan. The easement will prohibit buildings, mining, and splitting of the property into separate ownerships.

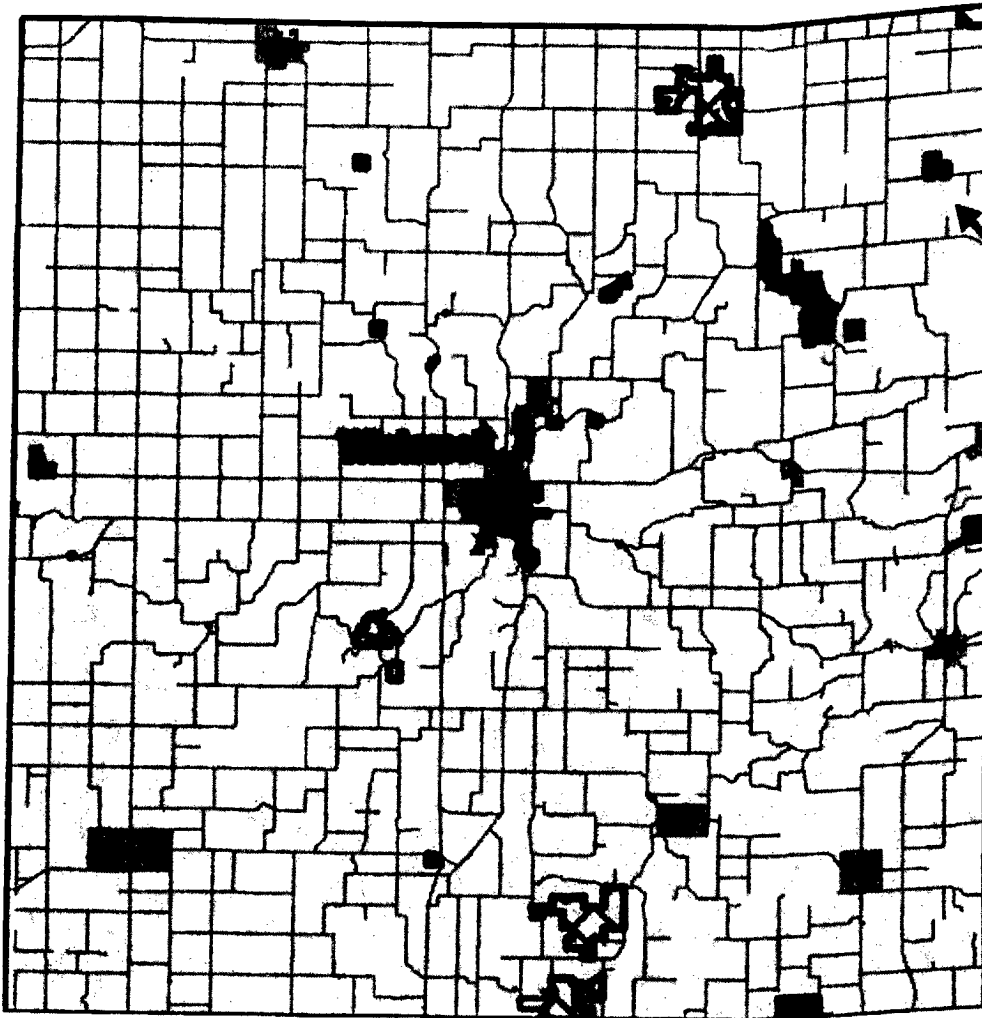
A complete list of permitted and prohibited uses is contained in paragraphs 3 & 4 of the conservation easement. The Property, with its abundant Conservation Values, and the associated Conservation Easement, provide a fine example of permanently protecting important agricultural land, wildlife habitat, and open-space, while providing important public benefit.

**Verification of the condition of the Property and it's Conservation Values:**

The Baseline photographs were taken on July 26, 2022. Because of the length of time between collection of the photographs and the time of closing on the Easement, the Property was visited again on October 9, 2023 and a few supplemental photos were taken. During that visit, it was found that there were no changes to the Conservation Values of the Property, and the condition of the Property was the same as it was on July 26, 2022.



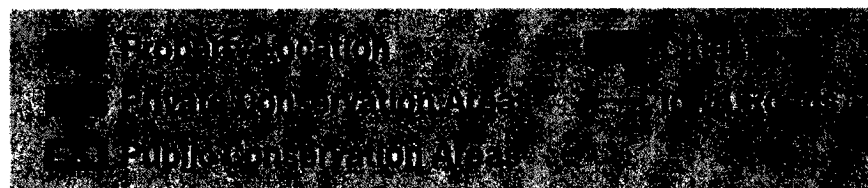
Location of Madison County



Property Location



Map of Madison County Showing Location of the Property, Public and Private Conservation Areas





2021 Aerial Photograph Showing the Approximate Property Boundary



 Approximate Property Boundary



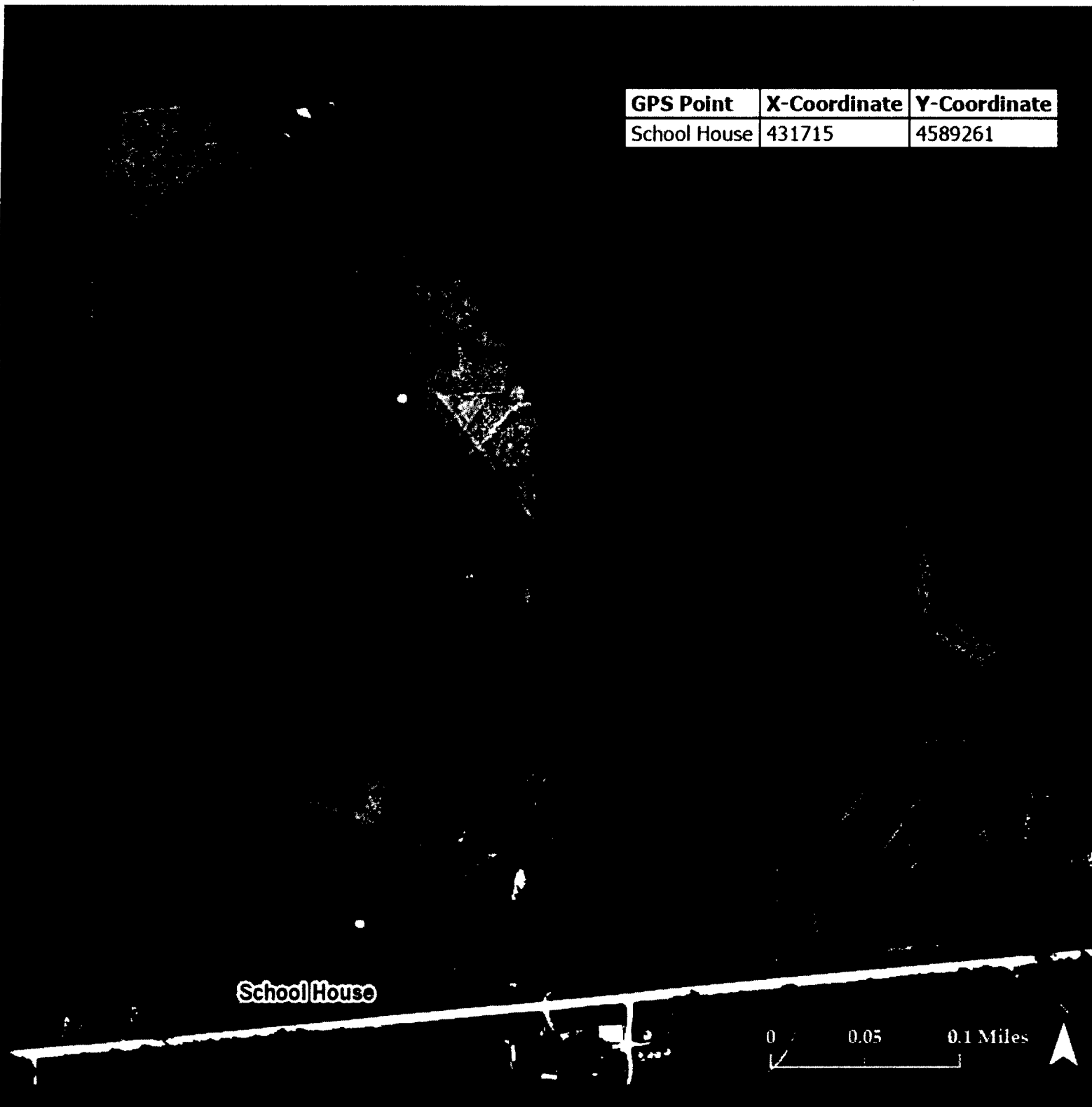
Topographic Map Showing the Approximate Property Boundary  
1:24,000 Scale



 Approximate Property Boundary






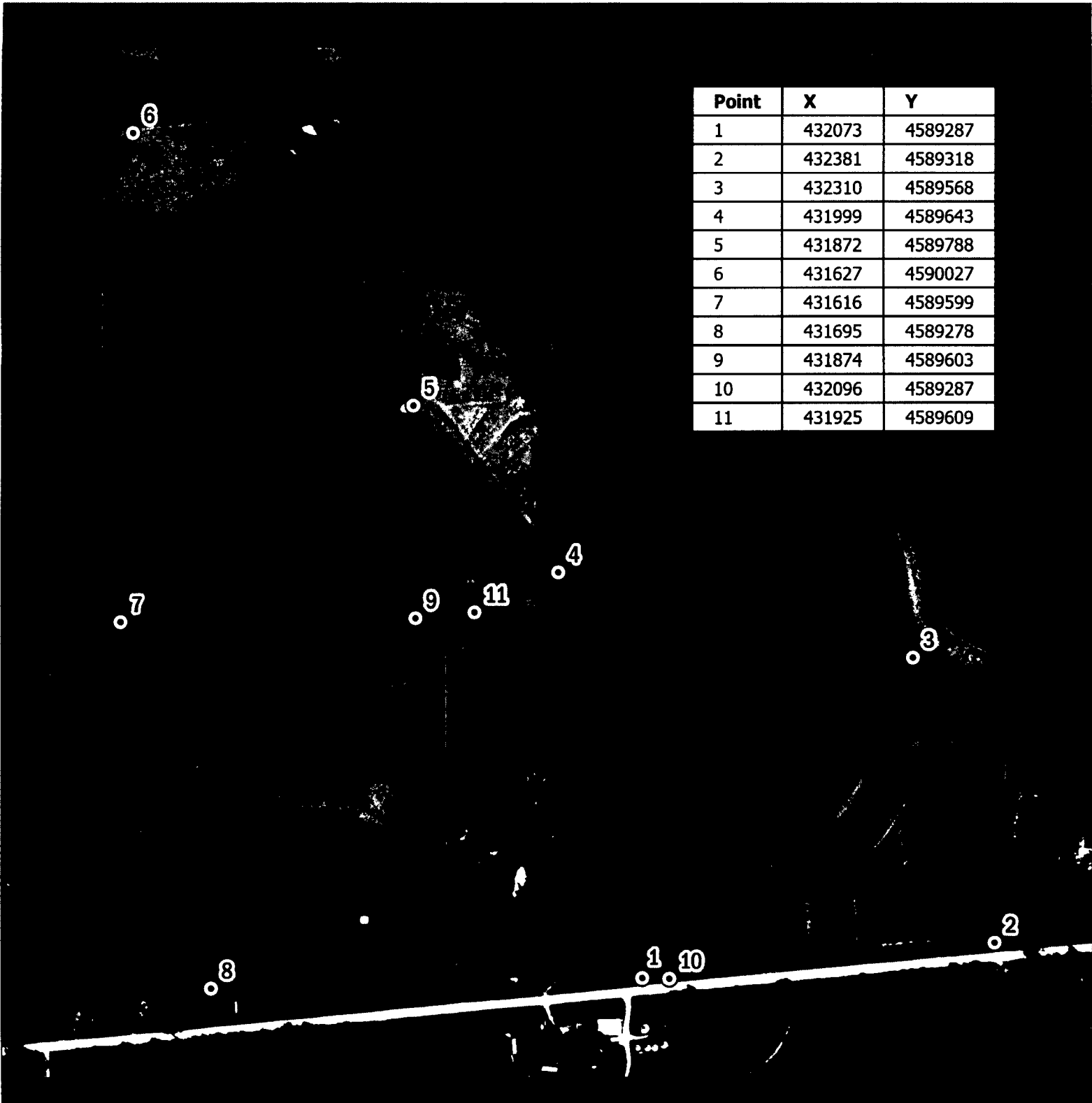
GPS Point	X-Coordinate	Y-Coordinate
School House	431715	4589261



2021 Aerial Photograph Showing the Approximate Property Boundary, School House Location, and Row Crop Area



-  Approximate Property Boundary
-  School House Location
-  Row Crop Area



Point	X	Y
1	432073	4589287
2	432381	4589318
3	432310	4589568
4	431999	4589643
5	431872	4589788
6	431627	4590027
7	431616	4589599
8	431695	4589278
9	431874	4589603
10	432096	4589287
11	431925	4589609

2021 Aerial Photograph Showing the Approximate Property Boundary & the Photo Point Locations for the Baseline Photographs



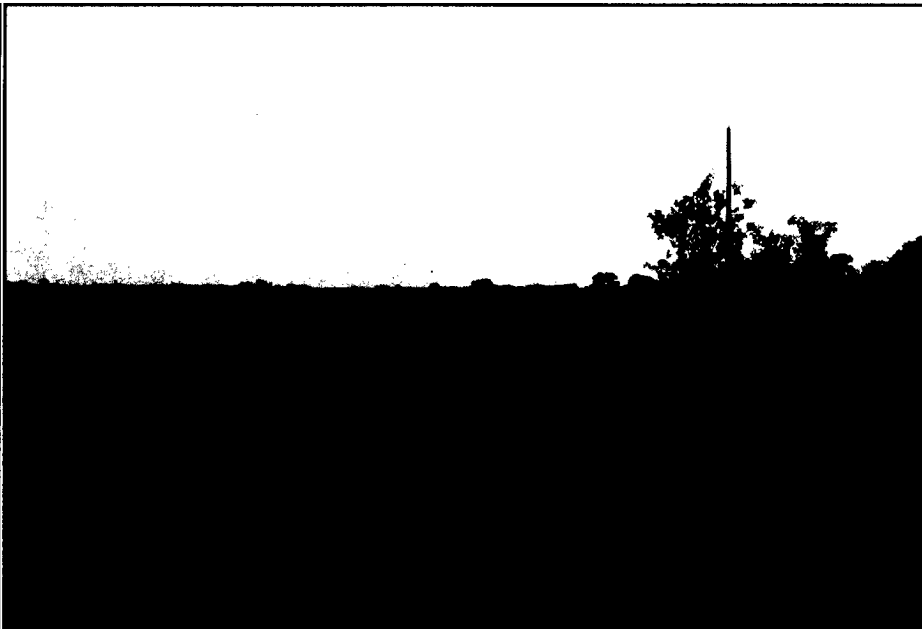
Iowa  
Natural Heritage  
Foundation

 Approximate Property Boundary     Photo Points

**Photo point 1A**

**Magnetic Azimuth: 70°**

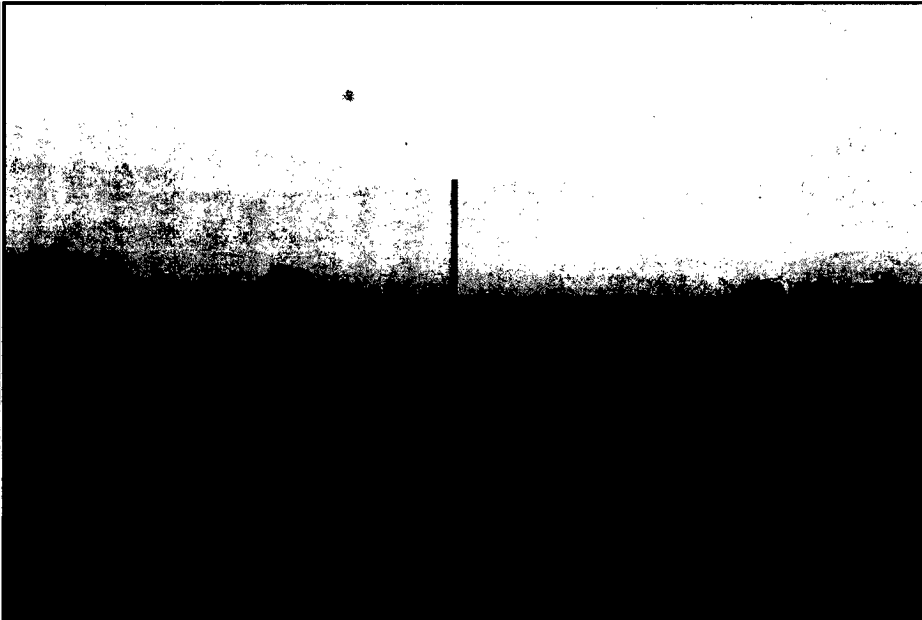
**Comments: Looking Easterly from the southern edge of the Property. 140th Street, a public road, is visible in the right edge of the photo. One-quarter of a mile east of the Property is a rural subdivision and other rural residences. Development pressure is increasing rapidly in this area. The agricultural character, including scenic open-space values, will be protected in perpetuity for the public to enjoy as they pass by the farm.**



**Photo point 1B**

**Magnetic Azimuth: 335°**

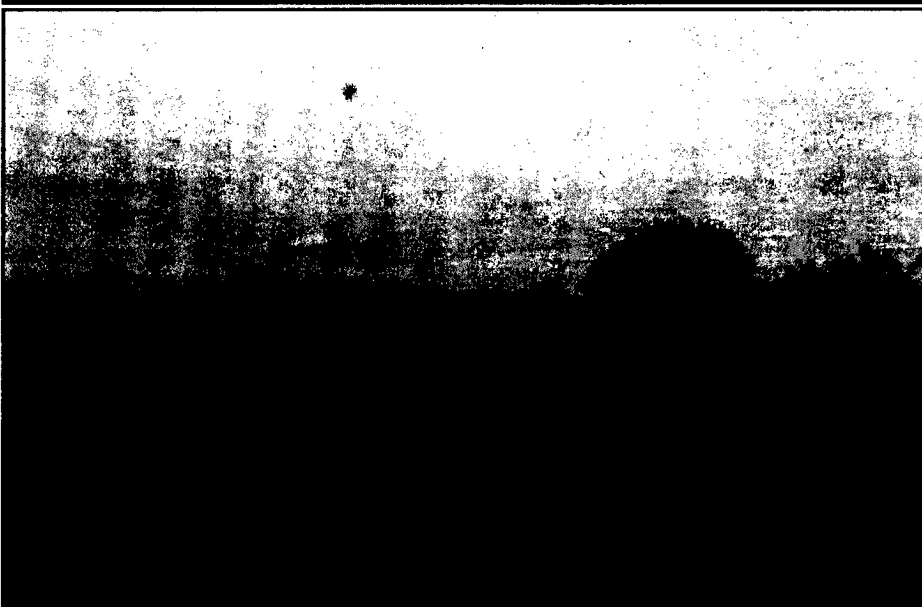
**Comments: Looking Northwesterly from the southern edge of the Property. Row crop is visible in the photo. The approximate Property boundary goes north from this photo point until it meets the alfalfa marked by the arrow and follows the arc to the treeline.**



**Photo point 2A**

**Magnetic Azimuth: 350°**

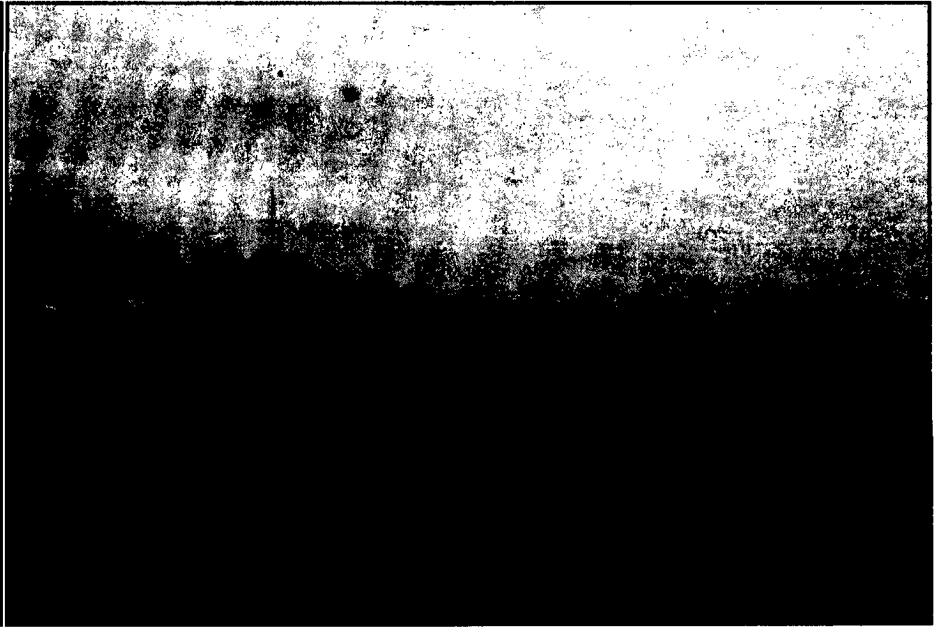
**Comments: Looking Northerly from the southeastern corner of the Property. Full year cover crop is visible in the photo. Everything to the left of the fenceline / treeline is part of the Property.**



**Photo point 2B**

**Magnetic Azimuth: 270°**

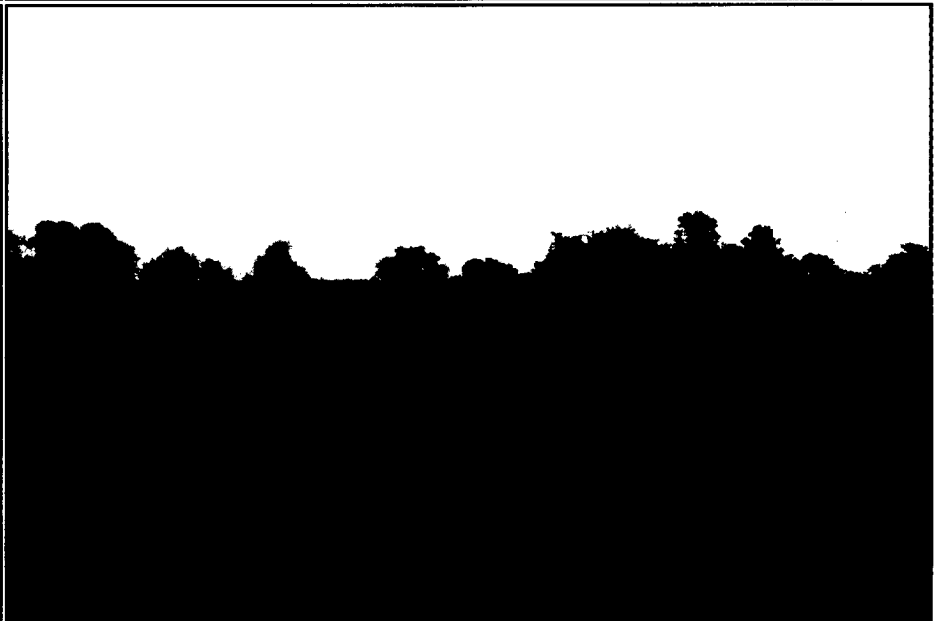
**Comments: Looking West from the southeastern corner of the Property. 140th Street, a public road, is visible in the left side of the photo. Full season cover crop plantings are visible in the foreground of the photo.**



**Photo point 3A**

**Magnetic Azimuth: 20°**

**Comments: Looking Northerly from the east side of the Property. A pollinator prairie reconstruction will be planted in 2022-2023 in a large portion of the area between the trees and the beans. Protection of this prairie planting provides nectar for pollinators and important wildlife habitat for grassland species.**



**Photo point 3B**

**Magnetic Azimuth: 90°**

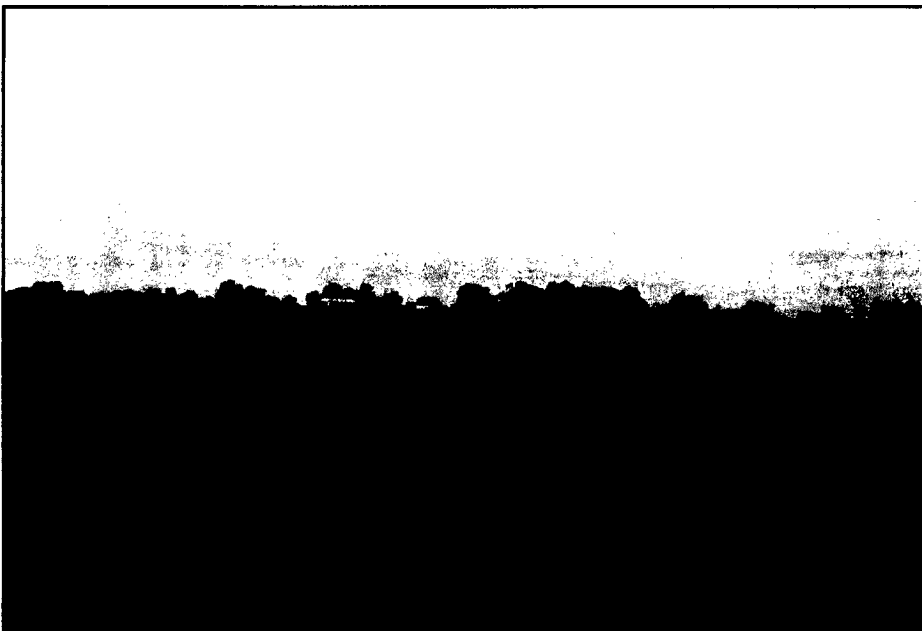
**Comments: Looking east toward the east boundary marked by the fence and trees. The photo shows both the permitted row crop area and future prairie planting. The whole property can be grazed, including the crop residue and prairie planting, according to an NRCS plan.**



**Photo point 3C**

**Magnetic Azimuth: 230°**

**Comments: Looking Southwesterly from the eastern side of the Property. In the background is the McLaughlin Farmstead (not part of the easement Property).**



**Photo point 4A**

**Magnetic Azimuth: 50°**

**Comments: Looking Northeasterly from the wooded area in the middle of the Property. The woodland in this area contains elm, mulberry, locust, and hackberry trees.**



**Photo point 4B**

**Magnetic Azimuth: 160°**

**Comments: Looking Southerly from the wooded area. The permitted row crop area can be seen in the background.**



**Photo point 4C**

**Magnetic Azimuth: 230°**

**Comments: Looking Southwesterly from the wooded area. An interior fence line can be found between the grassland to the west and woodland.**



**Photo point 4D**

**Magnetic Azimuth: 340°**

**Comments: Looking Northerly from the wooded area in the middle of the Property. Pasture can be seen in the background of the photo. The woodland on the Property provides wildlife habitat for birds, insects, and mammals.**



**Photo point 5A**

**Magnetic Azimuth: 0°**

**Comments: Looking north from a high pasture hilltop. The pasture seen in the horizon is not part of the Property. Preservation of the pasture provides critical habitat for grassland species while also preserving the grassland for grazing uses.**



**Photo point 5B**

**Magnetic Azimuth: 75°**

**Comments: Looking Easterly towards the approximate Property boundary denoted by the treeline in the midground. The pasture hillside and trees seen in the background is not part of the Property.**



**Photo point 5C**

**Magnetic Azimuth: 180°**

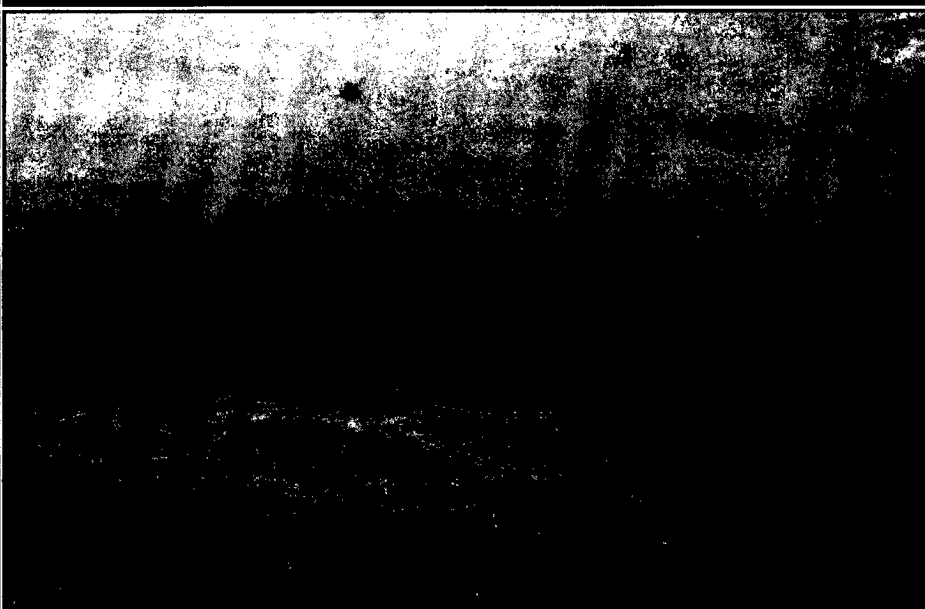
**Comments: Looking South across the pasture and shall be grazed according to an NRCS grazing plan. Protection of perennial grassland positively impacts the North River Watershed, thereby providing public benefit.**



**Photo point 5D**

**Magnetic Azimuth: 270°**

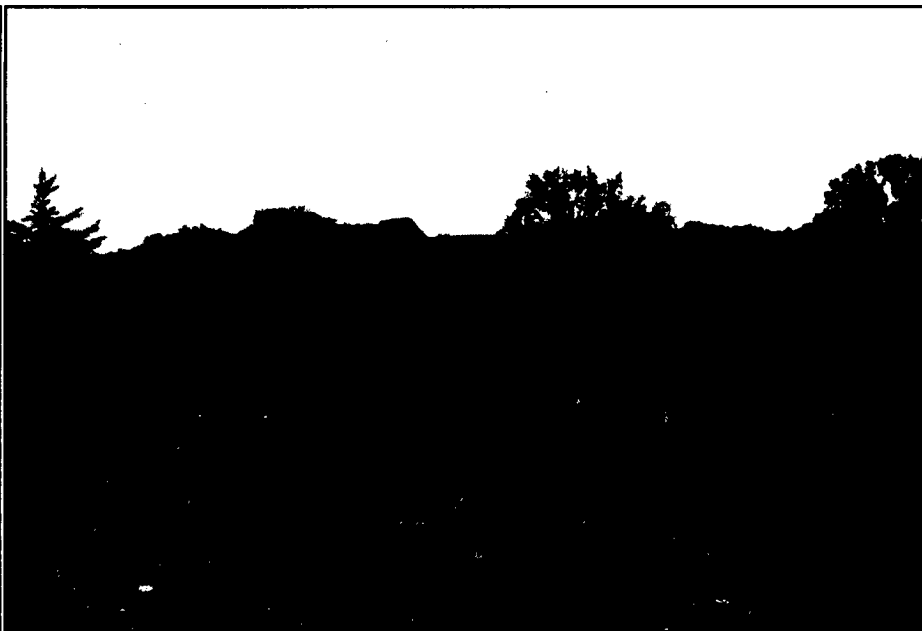
**Comments: Looking West across the Property. A water source for grazers is visible in the photo. There are multiple water sources and associated underground water lines throughout the Property.**



**Photo point 6A**

**Magnetic Azimuth: 90°**

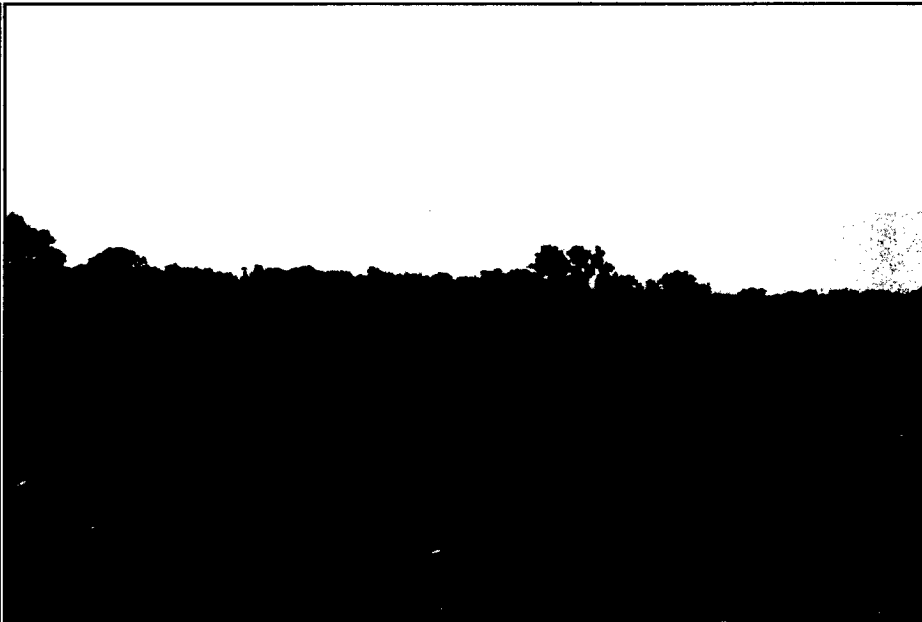
**Comments:** Looking East from the northwest corner of the Property. The approximate north Property line can be seen in the left side of the photo. By protecting the grassland on the Property from tilling, more carbon can be sequestered and stored in the soil, thereby reducing the production of carbon dioxide, a greenhouse gas.



**Photo point 6B**

**Magnetic Azimuth: 155°**

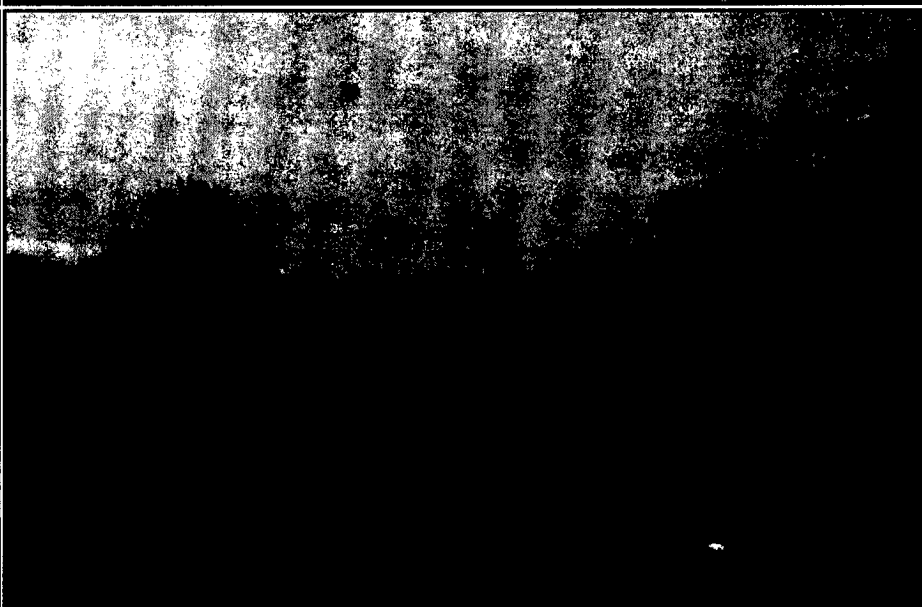
**Comments:** Looking Southeasterly across the Property towards Photo points 4 and 5. Everything seen in this photo is part of the Property. Protection of the Property provides public benefit by protecting the agricultural character, open-space, wildlife habitat, and scenic beauty of the area.



**Photo point 6C**

**Magnetic Azimuth: 245°**

**Comments:** Looking Southwesterly towards the west fence line. The northwest corner post is denoted by the red arrow.





**Photo point 7A**

**Magnetic Azimuth: 0°**

**Comments: Looking North across a small pasture area. Tree line on the left marks the approximate west Property boundary.**



**Photo point 7B**

**Magnetic Azimuth: 180°**

**Comments: Looking South across the Property. Elm, hackberry, locust, and mulberry trees are found in this area. Mixed habitat types provide benefits for grazers and for wildlife species.**



**Photo point 7C**

**Magnetic Azimuth: 260°**

**Comments: Looking Westerly towards the approximate west Property boundary. There is a fenceline within the treeline and posts denoted by red arrows.**



**Photo point 8A**

**Magnetic Azimuth: 15°**

**Comments: Looking Northerly from the southern edge of the Property across the pasture.**



**Photo point 8B**

**Magnetic Azimuth: 130°**

**Comments: Looking Southeasterly toward the edge of the Property. The old schoolhouse and firewood shed are visible in the photo and marked on a baseline map. The structures are in disrepair but may remain standing. The schoolhouse or similar structure can not be rebuilt on this Property.**



**Photo point 8C**

**Magnetic Azimuth: 260°**

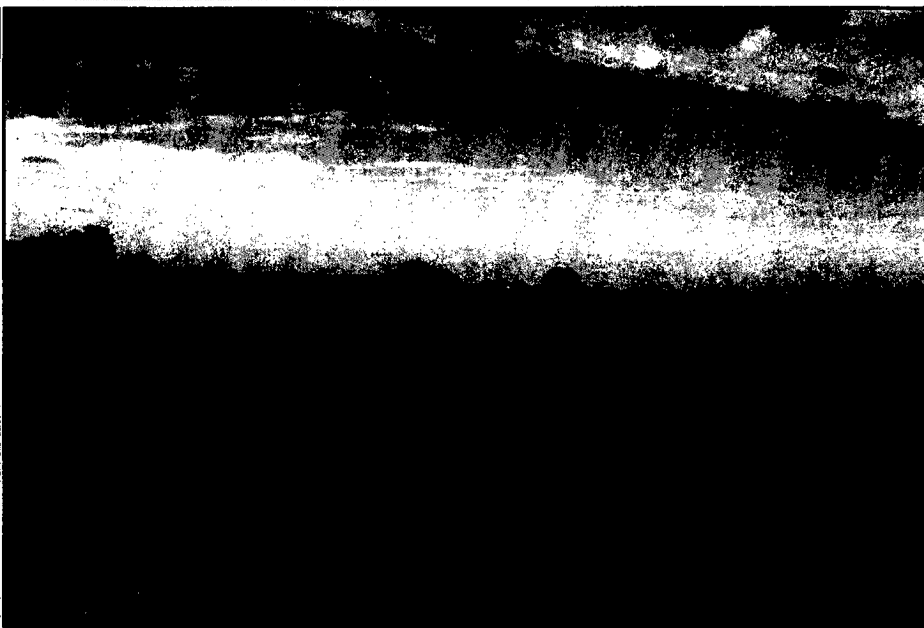
**Comments: Looking Westerly towards the approximate west boundary. 140th Street, a public road, is seen in the middle of the photo and marks the south Property boundary. An old woodpile is visible at the base of the slope.**



**Photo point 9A**

**Magnetic Azimuth: 0°**

**Comments: Looking North from the interior of the Property and across the large pasture. INHF staff documented Species of Greatest Conservation Need including: field sparrow and eastern meadowlark. The Grantor also noted bobolinks are plentiful, and northern bobwhite quail, eastern whip-poor-will and eagles have been known to inhabit the area too. Protection of the Property ensures the critical grassland will remain for the wildlife species.**



**Photo point 9B**

**Magnetic Azimuth: 140°**

**Comments: Looking Southeasterly toward an area not part of the protected Property.**



**Photo point 9C**

**Magnetic Azimuth: 210°**

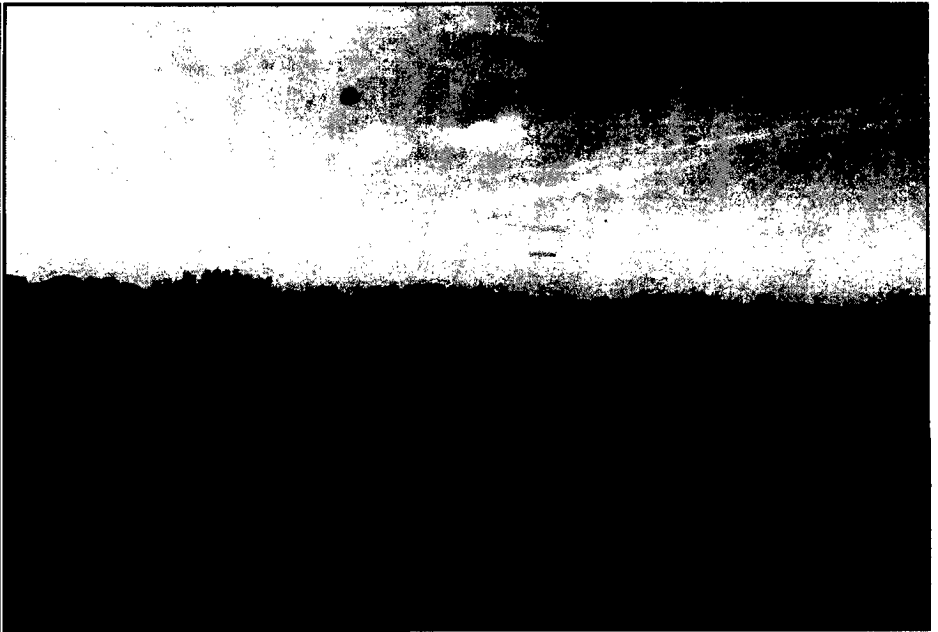
**Comments: Looking Southwesterly toward Photo point 8. The roof of the old school house is denoted by the arrow. Protection of the grassland on the Property allows for sustainable grazing, perennial crops, improved water quality and soil conservation.**



**Photo point 9D**

**Magnetic Azimuth: 285°**

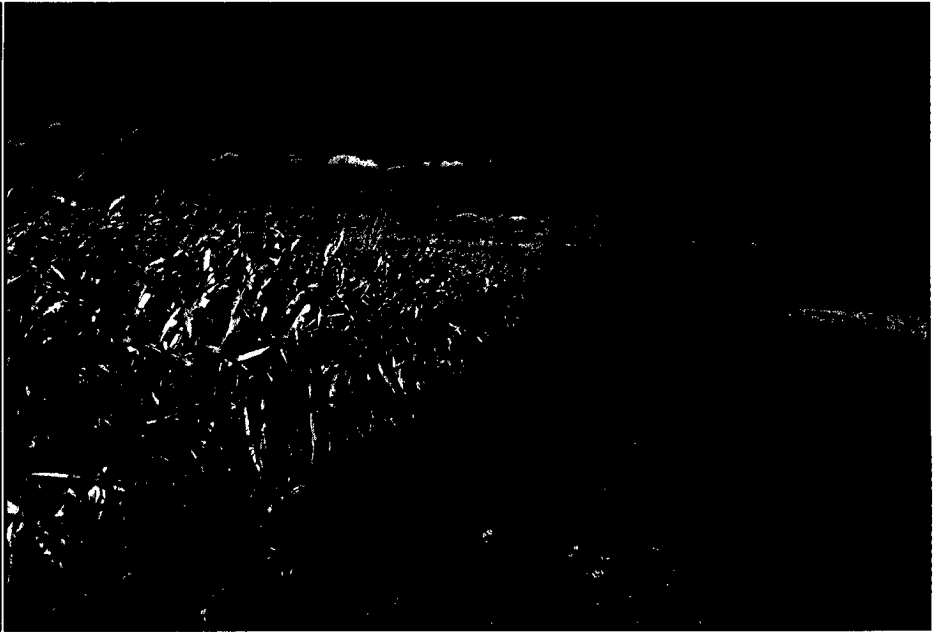
**Comments: Looking Westerly across the  
grassland and woodland on the Property.**



**Photo point 10A**

**Magnetic Azimuth: 85°**

**Comments: Looking easterly at the permitted crop field and 140th Street, a public gravel road. Protection of the Property ensures the open-space and agricultural character will remain in perpetuity.**



**Photo point 10B**

**Magnetic Azimuth: 5°**

**Comments: Looking northerly across the permitted row crop field. The trees in the background are part of the Property.**



**Photo point 10C**

**Magnetic Azimuth: 270°**

**Comments: Looking west toward photo point 1. Gravel road, 140th Street, can be seen on the left. The house, trees and part of the corn field are not part of the protected Property.**



**Photo point 11A**

**Magnetic Azimuth: 40°**

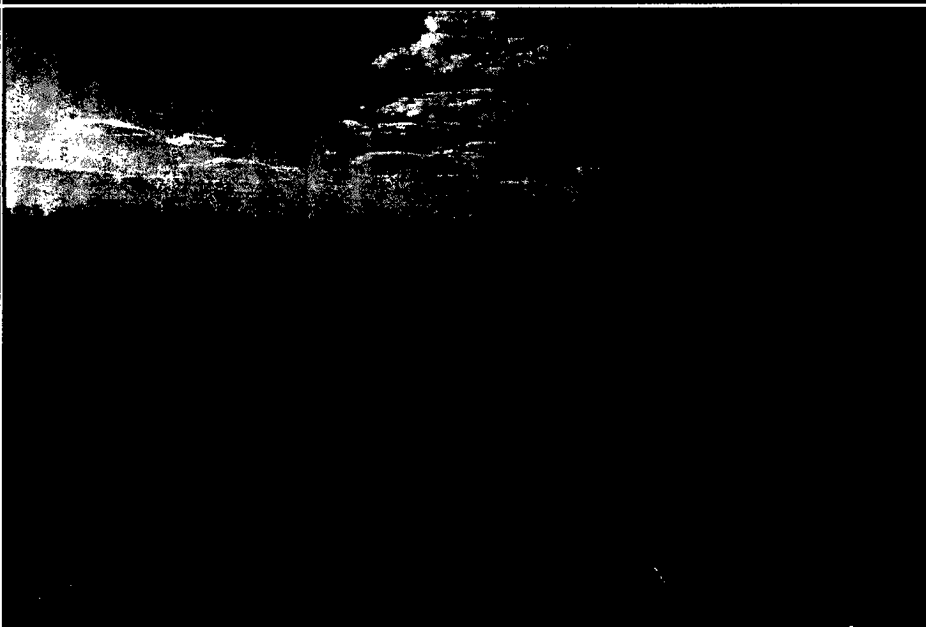
**Comments: Looking northeasterly across the pasture and tree lines. The far hillside is not part of the Property. Protection of this Property ensures the open-space and agricultural character of the Property is protected in perpetuity.**



**Photo point 11B**

**Magnetic Azimuth: 330°**

**Comments: Looking northwesterly across the pasture. The trees in the mid-ground are part of the Property whereas the hillsides in the background are not part of the Property. Howell's Tree Farm is located on the far hillsides and is a local agri-tourism attraction.**



**Photo point 11C**

**Magnetic Azimuth: 225°**

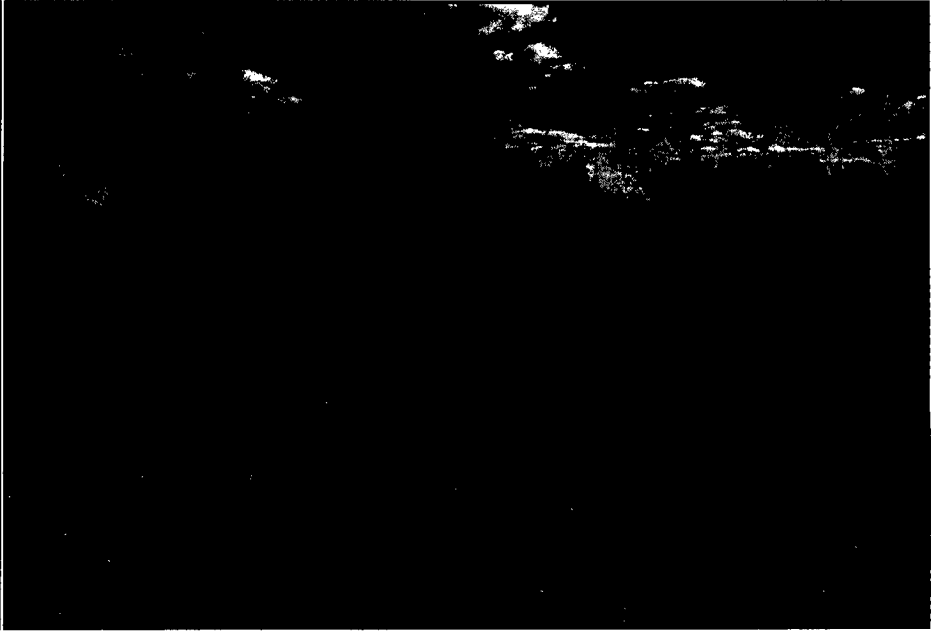
**Comments: Looking southwest across the Property and toward photo points 8. The old school house can be seen on the far hillside. The grassland may be grazed according to an NRCS grazing plan. Protection of the perennial vegetation benefits water quality of the area and provides foraging habitat for grassland birds.**



**Photo point 11D**

**Magnetic Azimuth: 105°**

**Comments: Looking easterly toward an approximate Property boundary. The eastern row crop area is just beyond the tree line.**



## EXHIBIT C

### MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (“ALE”), as described in this Agricultural Land Easement Deed (“ALE Deed”), on real property described in Exhibit A, hereafter referred to as “the Protected Property.” As used herein, references to the “ALE Deed” include this Exhibit, except where explicitly stated otherwise.

**McLaughlin Farms, LLC** (collectively “Grantor”), the **Iowa Natural Heritage Foundation** (collectively “Grantee”), and the **United States of America** (the “United States”), acting by and through the United States Department of Agriculture Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Grantee for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (the “Purpose of the ALE”).

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is appended to this easement deed.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the ALE Deed. Notwithstanding any other provision of the ALE Deed, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in the following Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other portions of the ALE Deed, Sections I and II will control; provided, however, that if other portions of the ALE Deed have terms and conditions that are more restrictive to the rights of the Grantor and are consistent with the provision or intent of the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other portions of the ALE Deed are more restrictive to the rights of the Grantor than Section I, Paragraphs 3 and 5, and Section II, then Section I, Paragraphs 3 and 5, and Section II will control.

#### **SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this ALE, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

The terms and conditions of the ALE Deed run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

**1. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 0% percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited



to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed.

**2. Limitations on Nonagricultural Uses.** Any activities inconsistent with the Purpose of the ALE are prohibited. The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of the ALE and in accordance with the terms and conditions of this ALE Deed;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and

(iv) Commercial enterprises related to agriculture or forestry including but not limited to agritourism or farm wineries.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, no structures or improvements, whether existing or in the future, may be constructed, replaced, or enlarged on the Protected Property.

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 3(C)** that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be located outside of the Building Envelopes with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE.

(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except for the following:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of the ALE; and

(iv) Agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed.

(F) *Surface and Subsurface Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference this ALE Deed.

**3. Preserving Agricultural Uses.** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Purpose of the ALE. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B)(i)–(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of agricultural crops and livestock are allowed provided these activities are conducted in a manner consistent with the terms of the ALE deed.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the Purpose of the ALE.

**4. Agricultural Land Easement Plan.** The Grantee shall prepare an agricultural land easement plan (the “ALE Plan”) in consultation with the Grantor and as needed NRCS. The Grantee agrees to update the ALE Plan, in consultation with the Grantor and as needed, NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible cropland on the Protected Property. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor and Grantee to develop and implement a revised conservation plan.

## **SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS**

**1. United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the “Secretary”) or the Secretary’s assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Grantor, including, but not limited to, attorney’s fees and expenses related to Grantor’s violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney’s fees and expenses related to Grantee’s violations or failure to enforce the ALE Deed against the Grantor, up to the amount of the United States’ contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE-Agreement with the Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor at the earliest practicable time.

**2. General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or

violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this ALE Deed or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

### **3. Environmental Warranty.**

As used herein, "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

As used herein, "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be

responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this ALE Deed may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is 60.3 percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee [**Calculate and enter the percent of fair market value of the ALE provided based on the sum of the Grantee's contributions and Grantor donations toward the acquisition value of the easement**], 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

**5. Amendment.** This ALE Deed may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.