

FILED
CASS COUNTY, NE.

2022 JUN 27 AM 10:47

INSTRUMENT NUMBER
2022-03170

Chantal Blum
REGISTER OF DEEDS

10 p \$64.⁰⁰

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Duane L. Smith (Trustee)
802 2nd Avenue
Nebraska City, Nebraska 68410

Space Above for Record's Use Only

**ENVIRONMENTAL
COVENANT**

This Environmental Covenant is executed this 23 day of MAY, 22, by Duane L. Smith (Trustee), Grantor and Holder, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

RECITALS:

A. Grantor, having a mailing address of 802 2nd Avenue, Nebraska City, Nebraska 68410, is the owner ("Owner") of real property ("Property") known as the Magellan Ammonia Pipeline, L.P. (Magellan), Mile Post 197.3 Site ("Site"), Greenwood, Nebraska. The Site makes up a small area on a large parcel of Property in the SW1/4 of Section 30, Township 12 North, Range 9 East and is located approximately 0.25 mile east of 190th Street and approximately 1.5 miles northwest of the Village of Greenwood, Cass County, Nebraska. As shown on the map attached hereto and incorporated herein as Exhibit A, hereinafter referred to as the "Property" and more particularly described by the following legal description:

Legal Description

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 12 NORTH, RANGE 9 EAST, OF THE SIXTH PRINCIPAL MERIDIAN, CASS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH ALONG THE WEST SECTION LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 990.93 FEET; THENCE EAST, ALONG A LINE DEFLECTING 090 DEGREES, 00 MINUTES, 00 SECONDS RIGHT, A DISTANCE OF 1810.82 FEET TO THE POINT OF BEGINNING; THENCE SOUTHEASTERLY DEFLECTING 042 DEGREES, 51 MINUTES, 48

SECONDS RIGHT, A DISTANCE OF 409.44 FEET; THENCE NORTHEASTERLY DEFLECTING 090 DEGREES, 50 MINUTES, 50 SECONDS LEFT, A DISTANCE OF 155.61 FEET; THENCE NORTHWESTERLY DEFLECTING 089 DEGREES, 06 MINUTES, 52 SECONDS LEFT, A DISTANCE OF 409.89 FEET; THENCE SOUTHWESTERLY DEFLECTING 091 DEGREES, 02 MINUTES, 52 SECONDS LEFT, A DISTANCE OF 155.89 FEET TO THE POINT OF BEGINNING, CONTAINING 1.46 ACRES, MORE OR LESS.

B. Holder/Grantee is Duane L. Smith (Trustee), as sole fee title Owner of the Property.

C. The Property has been used by the Grantor for cultivated agricultural purposes. A Magellan owned anhydrous ammonia buried pipeline crosses the property. On December 17, 2012, an anhydrous ammonia release was discovered in an agricultural field. It was determined the pipeline had released anhydrous ammonia into soil and groundwater at the Site. The Nebraska Department of Environment and Energy (NDEE) was notified and the NDEE assigned spill number SP# 121712-JB-0935.

D. The Property is the subject of an environmental response project or action pursuant to the NDEE-Title 118 Program. An environmental response action has been undertaken by Magellan. The environmental response project consisted of a source area excavation along with soil and groundwater investigations and a risk assessment of the affected area.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the NDEE.

F. The selected environmental response project or action is documented in the *Proposal & Justification for Closure, MP 197.3 Ammonia Release Site, Greenwood, Cass County, Nebraska, NDEE Spill No. SP#121712-JB-0935, Magellan Ammonia Pipeline, L.P.* dated October 2019 prepared by WSP USA Inc. for the NDEE. The NDEE has approved the response action plan, which includes the use of this Uniform Environmental Covenant. The administrative record for this project or action is available to the public and located at the Nebraska Department of Environment and Energy, 245 Fallbrook Blvd., Lincoln, Nebraska. Information regarding this release is contained in the NDEE ground water file (GW) and the release assessment file (RA) # 121712-JB-0935 and facility IIS# 998912. The administrative record for this project is also available online at <http://deq.ne.gov> by selecting "Public Records Search" at the bottom of the NDEE webpage and providing the site-specific NDEE "Facility Number".

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 10 below.

1. Representations and Warranties. The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the sole fee title owner of the Property;
- b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits or releases the Grantor from its duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

Groundwater limitations – Drilling or constructing water wells on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact is prohibited. This restriction does not prohibit drilling, construction or use of water wells for crop irrigation or for containing impacts to groundwater, or for impacted groundwater recovery, monitoring, or other remediation activities as approved in writing by the NDEE.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder/Grantee and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.

7. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

8. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Cass County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF _____ COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Groundwater limitations – Drilling or constructing water wells on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact is prohibited. This restriction does not prohibit drilling, construction or use of water wells for crop irrigation or for containing groundwater impacts, or for impacted groundwater recovery,

monitoring, or other remediation activities as approved in writing by the NDEE.

9. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.
10. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.
11. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
12. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.
13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.
14. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Cass County Register of Deeds.
15. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Cass County Register of Deeds.
16. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to each person identified in Neb. Rev. Stat. 76-2607(a) and 76-2608(c).
17. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Groundwater Section
Water Quality Division
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

ACKNOWLEDGEMENTS

GRANTOR and HOLDER:

IN WITNESS WHEREOF, Grantor, as the owner of the Property [and the Holder] of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 23 day of MAY, 2022

By: Duane L. Smith
Duane L. Smith (Trustee)
Grantor/Holder

STATE OF NEBRASKA)
) ss.
COUNTY OF Otoe)

The foregoing instrument was acknowledged before me this 23 day of May, 2022 by Duane L. Smith who acknowledged said Environmental Covenant on behalf of Grantor/Holder.

Janelle Lacy
Notary Public

(SEAL)



AGENCY:

IN WITNESS WHEREOF, NDEE, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEE a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

By: 
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster)

The foregoing instrument was acknowledged before me this 27 day of May, 2022 by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.


Notary Public

(SEAL)

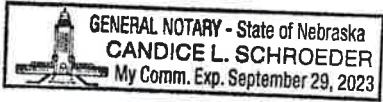
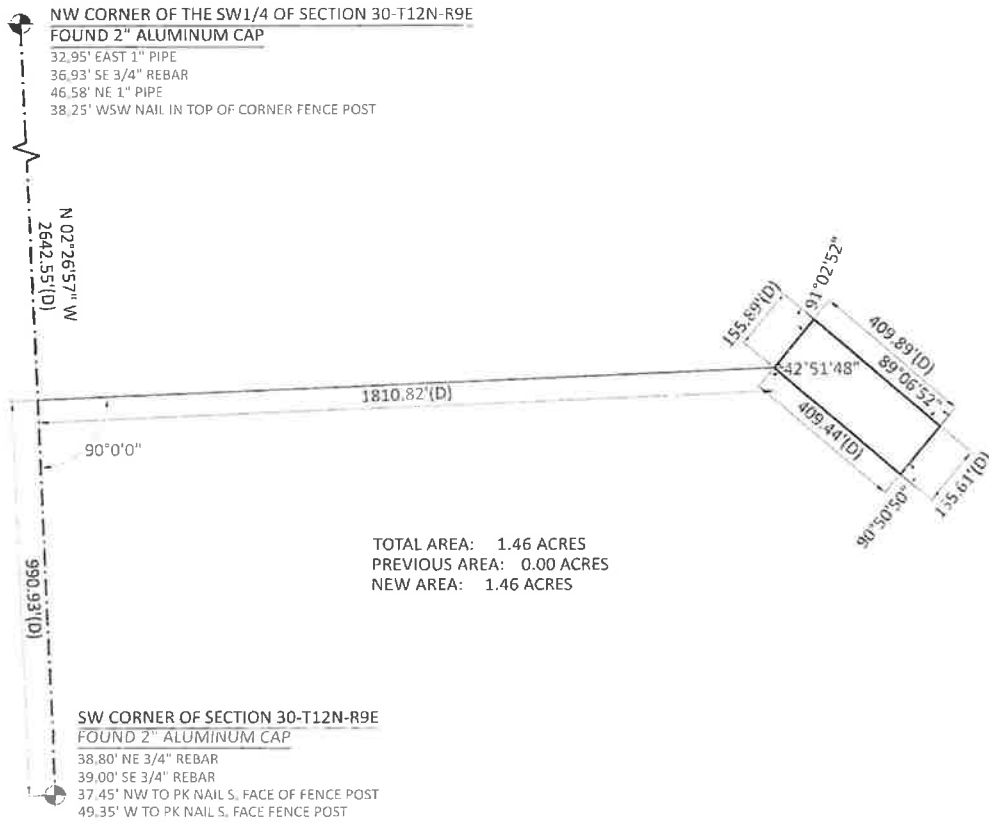


Exhibit A

ENVIRONMENTAL COVENANT

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER
OF SECTION 30, TOWNSHIP 12 NORTH, RANGE 9 EAST, OF THE
SIXTH PRINCIPAL MERIDIAN, CASS COUNTY, NEBRASKA



LAND SURVEYORS CERTIFICATE

THIS IS TO CERTIFY THAT THIS SURVEY WAS DONE BY THE UNDERSIGNED, THAT THE SURVEY WAS DONE ON THE GROUND IN ACCORDANCE WITH THE MOST RECENT MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS, AS SET FORTH BY THE NEBRASKA STATE BOARD OF EXAMINERS FOR REGISTERED LAND SURVEYORS AND THAT THE ACCURACY SPECIFICATION AND POSITION TOLERANCE ARE IN ACCORDANCE WITH RURAL AREA SURVEYS.

DATE: 7-21-2020
 THOMAS B. CATLETT



ENVIRONMENTAL COVENANT; LEGAL DESCRIPTION PROVIDED BY CLIENT

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 12 NORTH, RANGE 9 EAST, OF THE SIXTH PRINCIPAL MERIDIAN, CASS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

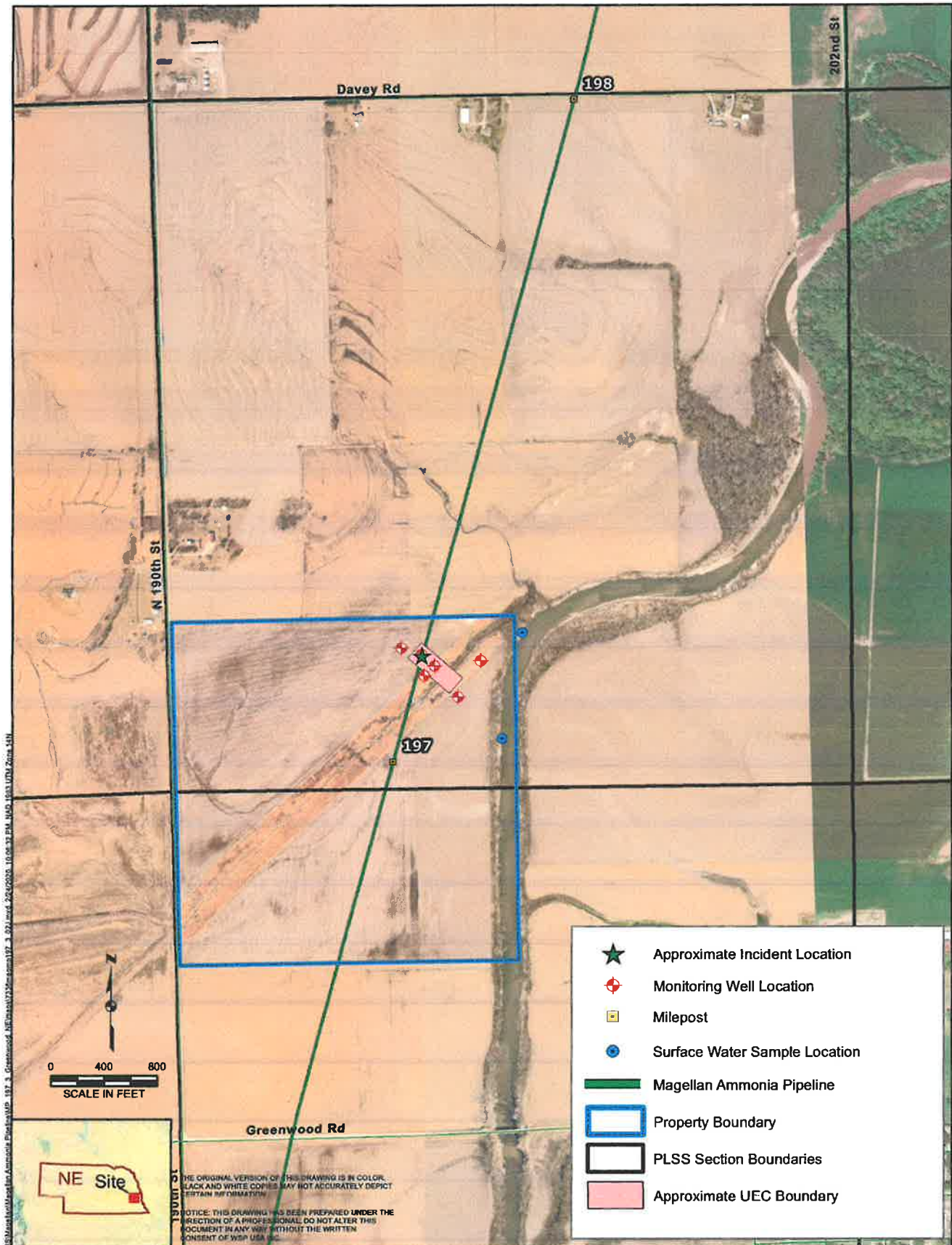
REFERRING TO THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH ALONG THE WEST SECTION LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 990.93 FEET; THENCE EAST, ALONG A LINE DEFLECTING 090 DEGREES, 00 MINUTES, 00 SECONDS RIGHT, A DISTANCE OF 1810.82 FEET TO THE POINT OF BEGINNING; THENCE SOUTHEASTERLY DEFLECTING 042 DEGREES, 51 MINUTES, 48 SECONDS RIGHT, A DISTANCE OF 409.44 FEET; THENCE NORTHEASTERLY DEFLECTING 090 DEGREES, 50 MINUTES, 50 SECONDS LEFT, A DISTANCE OF 155.61 FEET; THENCE NORTHWESTERLY DEFLECTING 089 DEGREES, 06 MINUTES, 52 SECONDS LEFT, A DISTANCE OF 409.89 FEET; THENCE SOUTHWESTERLY DEFLECTING 091 DEGREES, 02 MINUTES, 52 SECONDS LEFT, A DISTANCE OF 155.89 FEET TO THE POINT OF BEGINNING, CONTAINING 1.46 ACRES, MORE OR LESS.

LEGEND
 ⊕ - SECTION CORNER
 D - DEEDED DISTANCE
 --- SECTION LINE
 REFERENCE DATUM:
 NEBRASKA STATE PLANE

CATLETT LAND SURVEYING
 Bennet, Nebraska
 Cell: 402.217.5816 Fax: 402.782.9901
 tcatlett@catlettsurveying.com



Drawn By: JS
 Checked By: TC
 Crew:
 Date: 07/21/2020
 Job #: 2020-062
 Scale: 1" = 300'
 Sheet 1 of 1



Drawn: 2/24/2020
 Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
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**MP 197.3
 GREENWOOD, NEBRASKA**

**FIGURE 2
 PROPOSED UNIFORM ENVIRONMENTAL
 COVENANT BOUNDARY**