



Conservation Easements

Nebraska Department of Revenue, Property Assessment Division

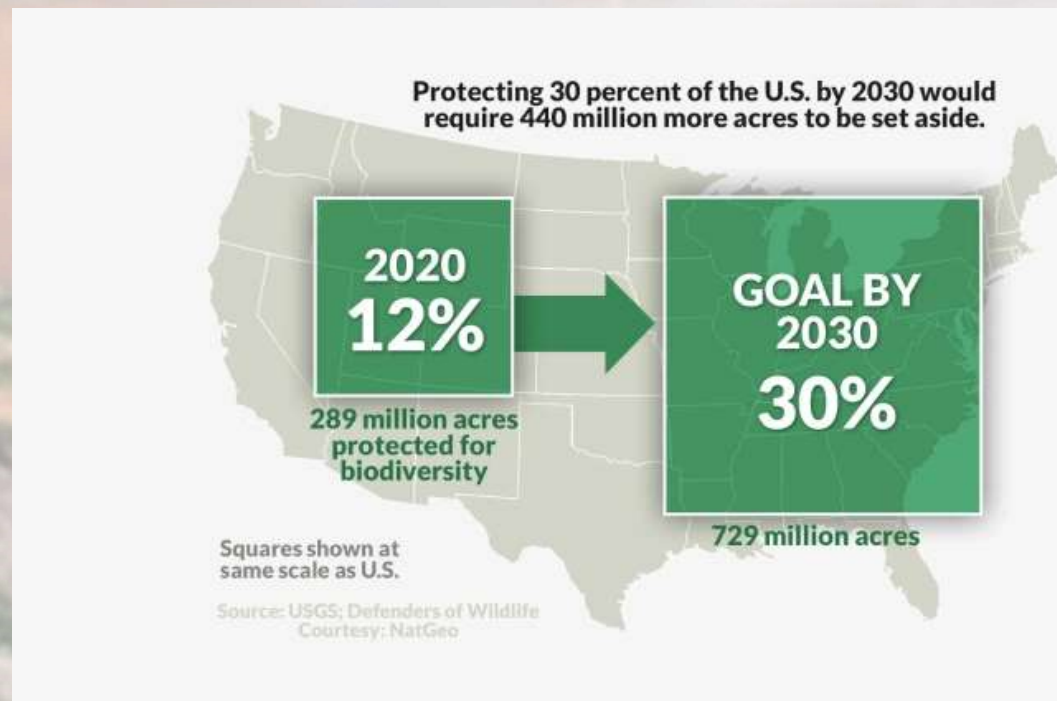
Fall 2021

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*This guidance document may change with updated information or added examples. If this guidance document has been provided in print as part of a presentation given by Department staff, it is meant to accompany the verbal presentation. The information contained in this guidance document is **accurate** as of **September 1, 2021**. Consult the Department's website at revenue.nebraska.gov to view the most current information and sign up for our free subscription service to get updates on your topics of interest.*

President Biden's Executive Order #14008 Tackling the Climate Crisis at Home and Abroad

- Sets a goal of conserving at least 30% of our lands and waters by 2030



Executive Order No. 21-08

Stop 30X30 – Protect Our Land & Water

Order Recognizes:

- Private property is a fundamental tenet of the American free enterprise system and critical to the success of Nebraska's top industries including agriculture and manufacturing
- Achieving the 30% goal would require conserving a land area the size of Nebraska each year for 9 years
- Federal conservation mandates have great potential to devastate Nebraska's economy
- The 30% goal would interfere with the States' constitutional and traditional power over land and water uses



STATE *of* NEBRASKA
OFFICE OF THE GOVERNOR
LINCOLN

Executive Order No. 21-08

Stop 30X30 – Protect Our Land & Water

Order Requires Department of Revenue, Property Assessment Division to:

- Host a minimum of 3 workshops to **help county officials understand the tax consequences** of conservation and preservation easements, and to advise counties of their **rights to review** conservation easements.
- Work to **identify existing conservation easements** across the state and **maintain an inventory to assist county assessors** in accurately determining land values for the purpose of assessment and taxation.

Executive Order No. 21-08

Stop 30X30 – Protect Our Land & Water

Order requires the Nebraska Department of Agriculture (NDA) to publish a list of local governments that have taken a position on 30 x 30. To date, over 50 counties in Nebraska have passed formal resolutions opposing the 30 x 30 plan. A list of these counties is available through NDA's website at nda.nebraska.gov/30x30.

Real Property & Property Rights

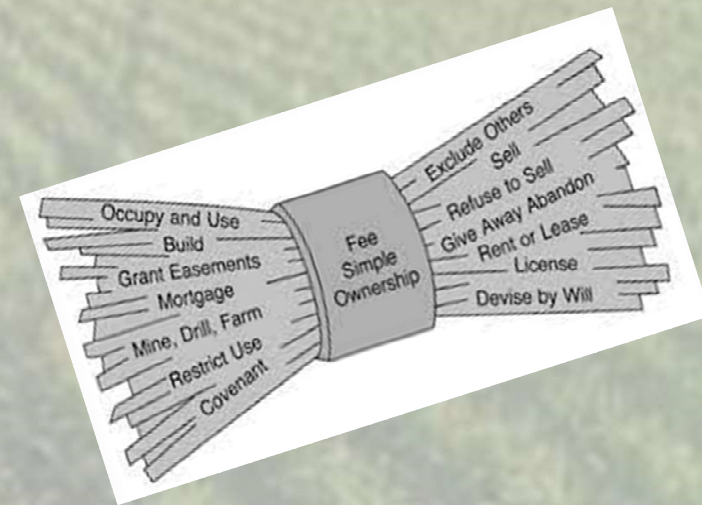
[Neb. Rev. Stat. §77-103](#)

Real Property shall mean:

- (1) All land;
- (2) All buildings, improvements, and fixtures, except trade fixtures;. . .
- (5) electric generation, mobile homes, cabin trailers, mines, minerals and quarries
- (6) **All privileges pertaining to real property** described in subdivisions (1) through (5) of this section.

Property Rights

- Bundle of rights – rights of property ownership bestowed upon the holder of the title to real estate.
 - Right to use
 - Right to sell
 - Right to lease or rent
 - Right to enter or leave
 - Right to give away
 - Right to refuse to do any of these



Conservation Easement Defined

- Conservation easements are contracts used to surrender a portion of property rights to a land trust or to the government for conservation purposes.
- [Neb. Rev. Stat. §76-2,111](#)
 - (1) Conservation easement shall mean a **right**, whether or not stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property **imposing a limitation upon the rights of the owner** or an affirmative obligation upon the owner appropriate to the **purpose of retaining or protecting the property** in its natural, scenic, or open condition, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use, protecting air quality, water quality, or other natural resources, or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code;



Preservation Easement

- Similar to a conservation easement, for the purpose of preserving historical, architectural, archaeological, or cultural aspects of real property.
- [Neb. Rev. Stat. §76-2,111](#)

(2) Preservation easement shall mean a **right**, whether stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property **imposing a limitation upon the rights of the owner** or an affirmative obligation upon the owner appropriate to the purpose of preserving the **historical, architectural, archaeological, or cultural aspects** of real property, or for such other historic preservation purpose as may qualify as a charitable contribution under the Internal Revenue Code; and

Conservation Easement Defined (Cont.)

(3) **Holder** shall mean **anyone acquiring** a conservation or preservation easement by purchase, exchange, gift, or devise and having the right to enforce it by its terms, **which may be:**

(a) Any **governmental body** empowered to hold an interest in real property in this state under the laws of this state or the United States having among its purposes the subject matter of the easement;

(b) In the case of a conservation easement, any **charitable corporation or trust whose purposes include retaining or protecting** the natural, scenic, or open condition of real property, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use or protecting air quality, water quality, or other natural resources; or

(c) In the case of a preservation easement, any **charitable corporation or trust whose purposes include the preservation** of the historical, architectural, archaeological, or cultural aspects of real property.

Conservation Easements (Cont.)

- [Neb. Rev. Stat. §76-2,112](#)

(1) A conservation or preservation easement shall be an interest in real property, created by an instrument in which the purpose for the easement is clearly stated. **The instrument shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the conservation or preservation easement is located.**

Issues with Current Practices

- Currently, most permanent easements are being reported with the Register of Deeds
 - Register of Deeds (ROD) reporting to county assessor and inventory by county assessor is not consistent
- CRP, CREP, and other temporary conservation programs are NOT being recorded, but should be going forward.

[Neb. Rev. Stat. §76-2,111](#)

(1) Conservation easement shall mean a right, **whether or not stated in the form of an easement, restriction, covenant, or condition in any deed**, will, agreement, **or other instrument** executed by or on behalf of the owner of an interest in real property....

Nebraska Department of Agriculture (NDA) Working to Assist Counties

- Pursuant to Executive Order No. 21-08 NDA Director Steve Wellman sent a letter to USDA Secretary Tom Vilsack July 15, 2021
 - Copies of the letter were sent to several state and federal officials including offices of the NRCS and FSA
- It was requested that notice regarding future conservation easements be provided to NDA and the applicable county/counties



New Form - Conservation Easement Application

- Completed by Owner of Land or Holder of Easement
- Filed with the Appropriate Governing Body
- Governing Body approves or denies and provides to Property Assessment Division

To be filed with
the Appropriate
Governing Body

Conservation Easement Application

Name and Address of Owner of the Land		Name and Address of Owner or Holder of the Conservation Easement	
Name		Name	
Street or Other Mailing Address		Street or Other Mailing Address	
City	State	City	State
	Zip Code		Zip Code
Email Address	Phone Number	Email Address	Phone Number
County Name		Parcel ID Number	
Legal Description			

Description of the Land and Conservation Easement Restrictions

I request that the conservation easement described on this form be approved.

**sign
here**

Signature of Owner of the Land or the Holder of the Conservation Easement _____ Date _____

Appropriate Governing Body Member, Commissioner, or Chairperson Signature _____ Date _____

For the Appropriate Governing Body Use Only

Date Reviewed _____

COMMENTS: _____

Approved

Denied

Appropriate Governing Body member, Commissioner, or Chairperson Signature _____

Instructions

A conservation or preservation easement is an interest in real property, created by an instrument (document) in which the purpose of the easement is clearly stated. The instrument is to be filed, duly recorded, and indexed in the Register of Deeds office in the county where the real property and conservation or preservation easement is located.

Who May File. This form is to be filed with the conservation easement deed by the Owner of the land or the owner or holder of the conservation easement.

When and Where to File. To minimize conflicts with land-use planning, this form and applicable deed should be filed with the appropriate governing body for approval prior to filing with the Register of Deeds.

Appropriate Governing Body. The appropriate governing body must first refer the proposed acquisition to and receive comments from the local planning commission that has jurisdiction over the subject property. The local planning commission has 60 days to provide comments; if no comments are received the proposed acquisition will be deemed approved.

The appropriate governing body depends on where the subject property is located as follows:

- The governing body of a city or village if the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village; or
- The county board if the if the property is located entirely outside the boundaries or zoning jurisdiction of any city or village; or
- Niobrara Council if the property is located in the Niobrara scenic river corridor and is not incorporated within the boundaries of a city or village.

Denial of proposed acquisition. Upon a finding of the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and in force at the time of the conveyance; (b) any national, state, or local program furthering conservation or preservation; or (c) any known proposal by a governmental body for use of the land.

Signature. This form must be signed by the owner of the Land or the holder of the conservation easement.

The Governing Body must electronically submit this completed form and conservation easement deed to the Nebraska Department of Revenue, Property Assessment Division. Please electronically submit to: pat.tech@nebraska.gov.

County Authority – [Neb. Rev. Stat. §76-2,112](#)

(3) In order to minimize conflicts with land-use planning, each conservation or preservation easement shall be approved by the appropriate governing body. Such approving body shall first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. If the property is located in the Niobrara scenic river corridor as defined in section [72-2006](#) and is not incorporated within the boundaries of a city or village, the Niobrara Council approval rather than city, village, or county approval shall be required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land.

County Authority (Continued)

- Governing Body

County – if the property is outside the boundaries or zoning jurisdiction of any city or village

City/Village – if property is partially or entirely located within the boundaries or zoning jurisdiction of a city or village

Niobrara Council – if the property is in the Niobrara scenic river corridor as defined by Neb. Rev. Stat. §72-2006

Responsibility of Governing Body

- Refer proposed easement to local planning board, with jurisdiction over the property, for review and comment
 - Planning board has 60 days to comment regarding the conformity of the proposed easement to comprehensive planning of the area
 - If no comments are received, the easement shall be deemed approved by the planning board.

Responsibility of Governing Body (Cont.)

- Approval of the proposed acquisition (easement) may be denied if it is not in the public interest, when the easement is inconsistent with any of the following:
 - a) a comprehensive plan (zoning) for the area which has been officially adopted and is in force at the time of the conveyance
 - b) any national, state, regional, or local program further conservation or preservation
 - c) any known proposal by a governmental body for use of the land.

Assessed Value of Property Subject to Easement

Components of Assessed Value

1. Value Property subject to easement restrictions
2. Value the easement

Assessed Value of Property Subject to Easement

- [Neb. Rev. Stat. §76-2,116](#)

Property subject to easement; how assessed.

Real property subject to a conservation or preservation easement shall be assessed with due regard to the restricted uses to which the property may be devoted. The conservation or preservation **easement in the hands of the holder shall be subject to assessment, taxation, or exemption from taxation** in accordance with general laws applicable to assessment and taxation of interests in real property.

Real Property Exemptions - Governmental

- U.S. Const. Article VI, Clause 2
 - Supremacy Clause prevents States from imposing taxes on the Federal Government
- [Neb. Rev. Stat. §77-202](#)
 - (1) The following shall be exempt from property taxes:
 - (a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivisions for a public purpose.

Real Property Exemptions - Permissive

- [Neb. Rev. Stat. §77-202](#)

(d) Property owned by educational, religious, **charitable**, or cemetery organizations, or any organization **for the exclusive benefit of** any such educational, religious, **charitable**, or cemetery organization, and **used exclusively for** educational, religious, **charitable**, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections [44-1072](#) to [44-10,109](#); and

Real Property Exemptions – Permissive (Cont.)

- Charitable organizations that hold conservation easements must file a [Form 451](#), Exemption Application and be approved by the County Board of Equalization (CBOE) to be exempt.
- See [Neb. Rev. Stat. §77-202.03](#)
- **Platte River Whooping Crane Maintenance Trust, Inc. v. Hall County BOE**
(2/19/2018) 298 Neb. 970, 906 N. W.2d 646
 - Supreme Court held that the Platte River Crane Maintenance Trust, Inc. is a charitable organization and that its property in Hall County was used exclusively for charitable purposes

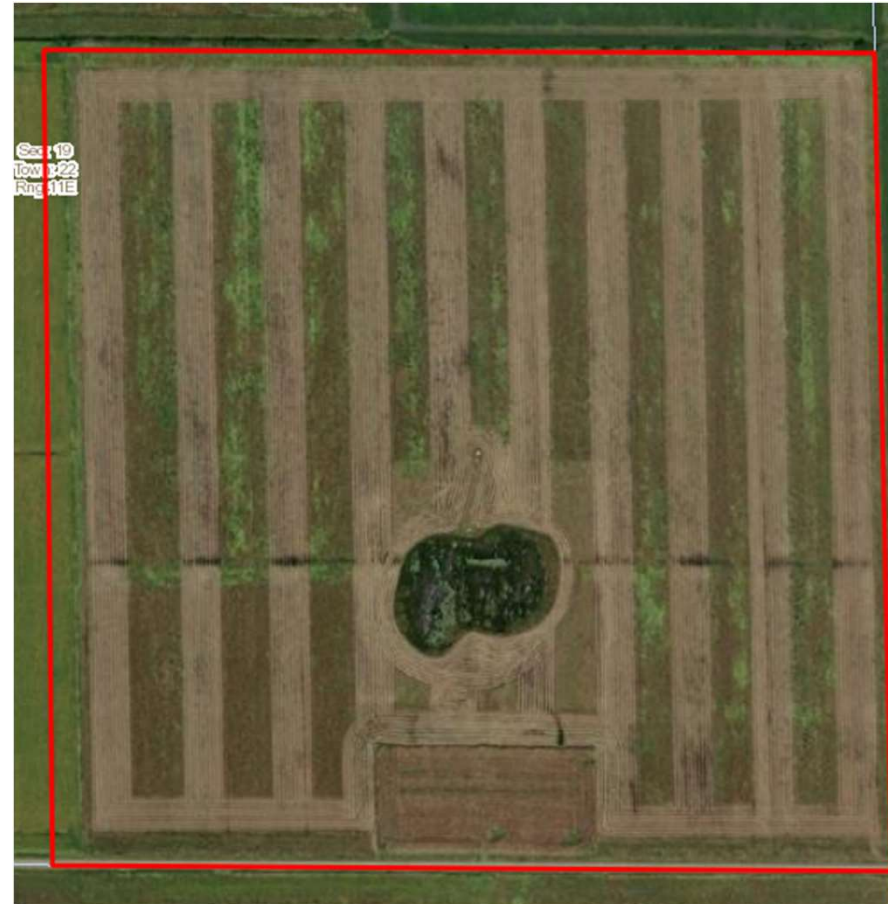
Tax Consequences of Conservation and Preservation Easements

Burt County 160 Acres

Sale Before Easement - November 15, 2007 \$365,000

Conservation Easement – July 29, 2010

Sale After Easement – November 9, 2020 \$212,500



Tax Consequences of Conservation and Preservation Easements

Holt County 157 Acres

Sale Before Easement – April 4, 2007 \$210,000

Conservation Easement – February 18, 2013

Sale After Easement – January 27, 2020 \$80,000



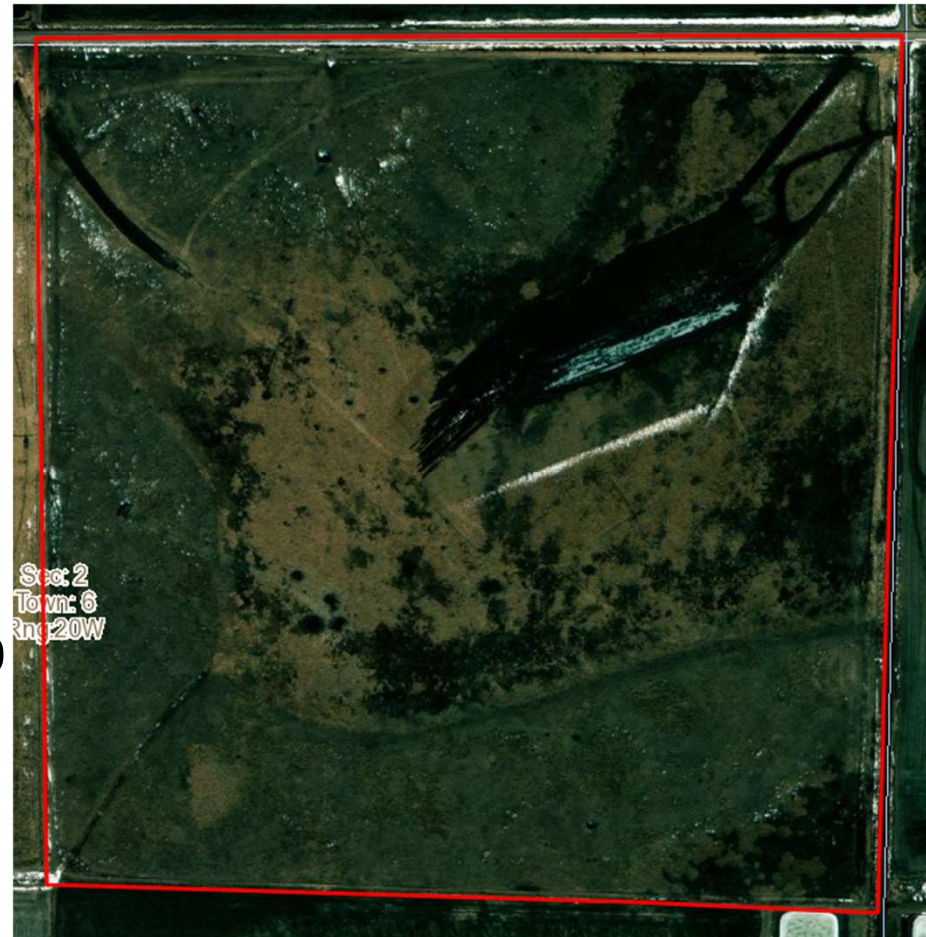
Tax Consequences of Conservation and Preservation Easements

Phelps County 156 Acres

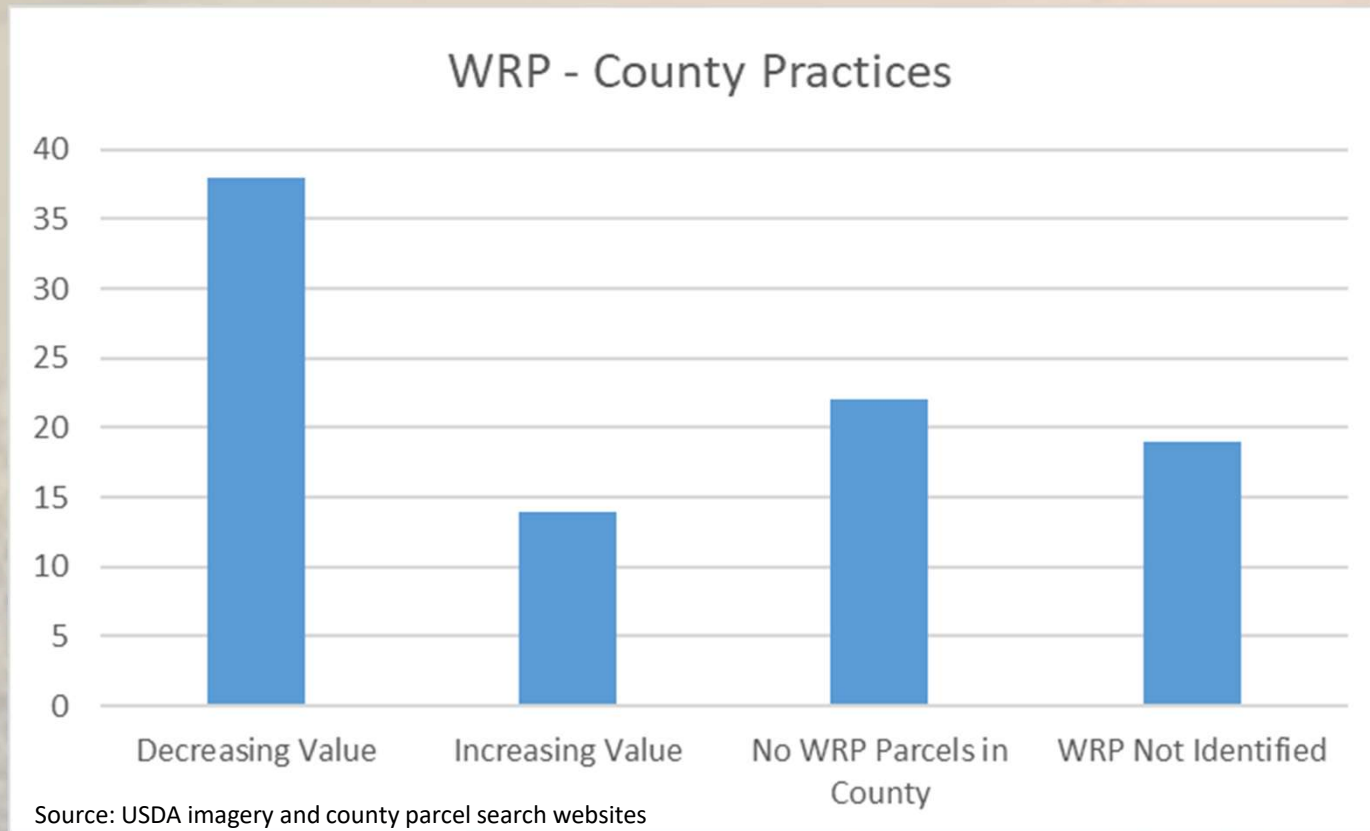
Sale Before Easement – February 4, 2015 \$388,700

Conservation Easement – September 5, 2019

Sale After Easement – December 10, 2020 \$260,000



Tax Consequences of Conservation and Preservation Easements – WRP Land



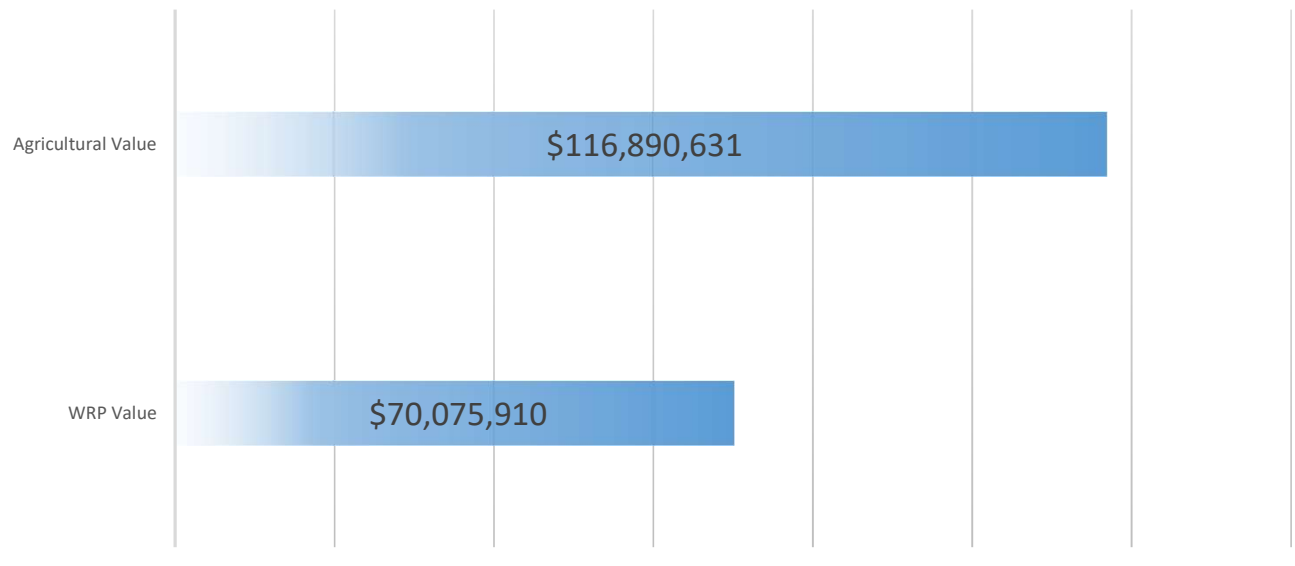
Counties with increasing value have 10 or fewer WRP parcels each – and are generally valuing WRP at 100% of grassland value, as non-agricultural use.

Counties with decreasing value generally have established market value utilizing comparable sales and/or information from adjoining counties.

Tax Consequences of Conservation and Preservation Easements – WRP Land

Total Value loss attributable to WRP: \$46.8 Million Assessed Value

STATEWIDE COMPARISON OF ASSESSED VALUE OF AGRICULTURAL VS. WRP ASSESSMENT

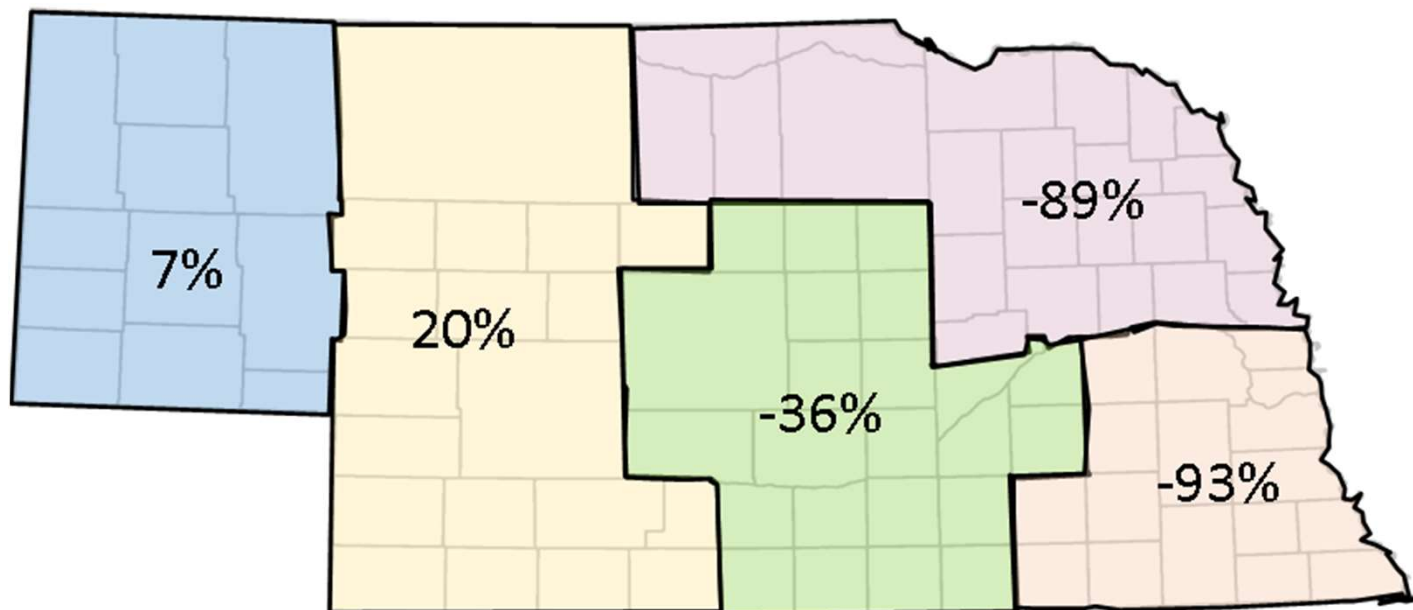


On average land in WRP is assessed 40% lower than it would be as agricultural land.

Value loss attributable to WRP varies widely across the state.

Tax Consequences of Conservation and Preservation Easements – WRP Land

2021 Value Difference of acres enrolled in WRP when compared to agricultural value

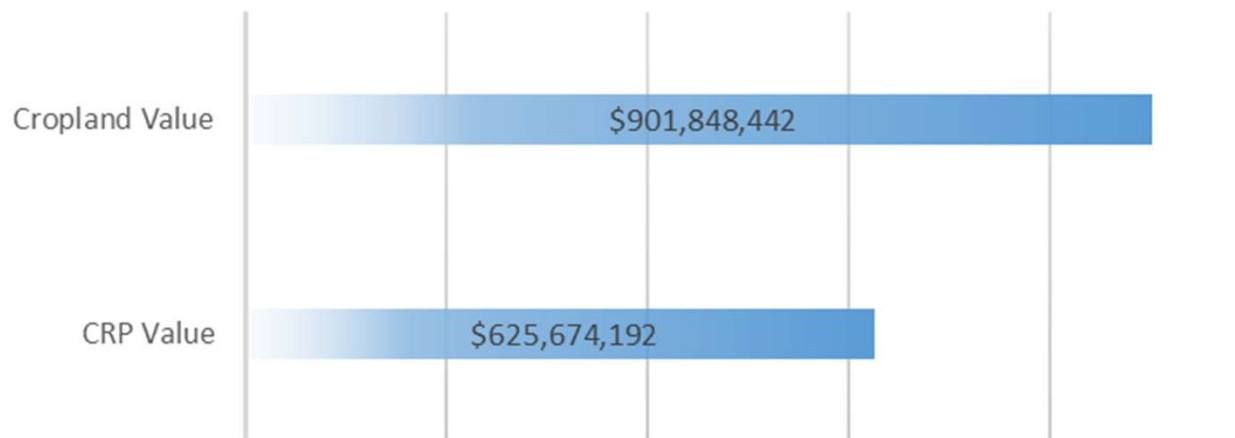


Source: USDA imagery and county parcel search websites

Tax Consequences of Conservation and Preservation Easements – CRP Land

Total Value loss attributable to CRP: \$276 Million Assessed Value

STATEWIDE COMPARISON OF ASSESSED VALUE OF CROPLAND VS. CRP ASSESSMENT

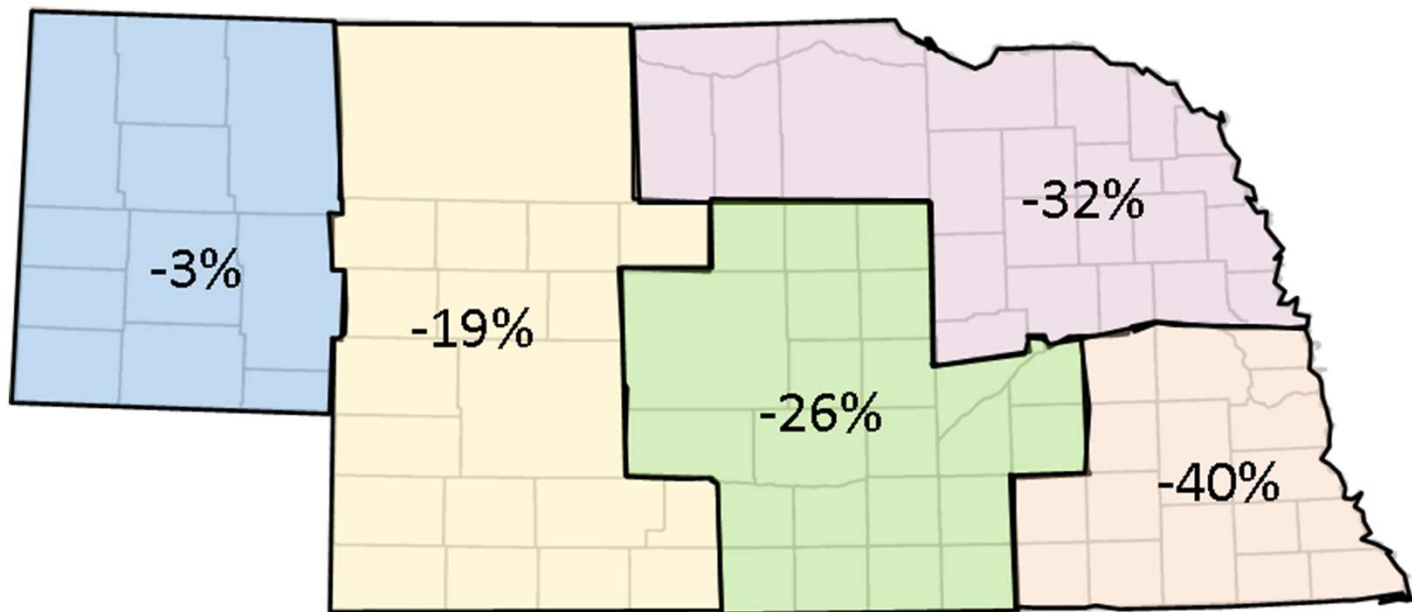


On average land in CRP is assessed 17% lower than it would be as cropland.

Value loss attributable to CRP varies widely across the state.

Tax Consequences of Conservation and Preservation Easements – CRP Land

2021 Value Difference of acres enrolled in CRP when compared to cropland value



Source: 2021 County Abstract of Assessment, Form 45



Other Common Conservation Easements in Nebraska

- Individual Natural Resource Districts
 - Often for conservation of water rights
- Nebraska Land Trust
- Ducks Unlimited and Pheasants Forever
- Other Land Trusts or Non-profit organizations

Tax Consequences of Conservation and Preservation Easements

Clay County –

July 29, 2010 Wetlands America Trust (WAT) - (Ducks Unlimited) receives grant funds from Nebraska Environmental Trust & North American Wetlands Conservation Fund to acquire property for conservation purposes.

Sale 1 – February 25, 2011

Transfer from Private Landowner to WAT, deed refers to grant contract restrictions, for the stated purpose of protecting and restoring wetlands.

This [deed](#) creates a conservation easement.



Tax Consequences of Conservation and Preservation Easements (continued)

Sale 1: 9/15/08 Landowner to WAT \$143,182

Sale 2: 12/3/09 WAT to U.S. Fish & Wildlife \$0

Current Assessed Value: **\$0**

Clay County has approximately 710 acres that have become exempt since 2008 through WAT.



Inventory of Conservation Easements

- Available in the State Sales File
- Information on:
 - WRP, CREP & Public Hunting Lands – with specific parcel information
 - NE Department of Natural Resources has provided detailed CREP information
 - CRP – with landowner information, but not parcel information at this time.
 - Requires information from FSA
 - New Conservation Easement Application information will be added as it is received.

Additional Workshops

- Northeast District – Norfolk – September 17
- Panhandle District – Gering – September 22
- West Central District – Ogallala – September 23
- Southeast District – Lincoln – October 18

A photograph of a rural farm scene. In the foreground, a dirt road curves from the bottom right towards the center. To the left of the road is a grassy field with a wooden post-and-rail fence. In the middle ground, there are several large red barns with white trim and windows. Behind the barns are several trees with green and yellowing leaves, suggesting autumn. The sky is bright and overcast. The word "QUESTIONS?" is overlaid in large, bold, black capital letters on the left side of the image.

QUESTIONS?

The logo for the Nebraska Department of Revenue features the word "NEBRASKA" in a bold, blue, sans-serif font. A thin yellow line curves over the letters "A", "S", and "K".

NEBRASKA

Good Life. Great Service.

DEPARTMENT OF REVENUE

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