

RESOLUTION #21-2021

WHEREAS, Custer County is a legal and political subdivision of the State of Nebraska the Custer County Board of Supervisors ("Board") is authorized to act; and

WHEREAS, in Section 216 of Executive Order 14008, President Biden directed the Secretary of the Interior, in consultation with the Secretary of Agriculture and other senior officials, to develop a program to conserve at least 30 percent of the lands and waters in the United States by 2030, which is called the "30 x 30" program; and

WHEREAS, under the 30 x 30 program, some 680 million acres of our Nation's lands would be set aside through conservation, preventing the productive use of these lands and their resources: and

WHEREAS, Custer County is strongly opposed to the 30 x 30 program, and any other program that would be instituted by the federal government placing restrictions on Custer County's ability to govern these issues at a local level: and

WHEREAS, Custer County is able to govern at a local level and balance the private landowners interests with that of restrictions in zoning laws; and

WHEREAS, Custer County is in a better position to listen and act appropriately to private landowners interests and concerns; and

WHEREAS, *Neb Rev Stat.* §76-2,111 defines a Conservation Easement as a limitation on the right of an owner of land, placed there by the owner for the purpose of retaining or protecting 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; and

WHEREAS, *Neb Rev Stat.* §76-2,111 defines a Preservation Easement as a limitation on the right of an owner of land, placed there by the owner for the purpose of preserving the historical, architectural, archaeological, or cultural aspects of real property, or for such other historical preservation purposes as may qualify as charitable; and

WHEREAS, *Neb Rev Stat.* §76-2,112 states that a conservation and 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; and

WHEREAS, *Neb Rev Stat.* §76-2,113 states that a conservation and preservation easement may be released by the holder of the easement to the owner of the land, except that such release shall be approved by the County Board which approved the easement, the release of an easement may be approved upon a finding by the County Board that the easement no longer substantially achieves the conservation or preservation purpose for which it was created; and

WHEREAS, *Neb Rev Stat.* §76-2,113 a conservation or preservation easement may be assigned or transferred to any governmental body or charitable corporation or trust authorized to secure such easement; and

WHEREAS, *Neb Rev Stat.* §76-2,115 a conservation or preservation easement that is duly recorded shall not be unenforceable for lack of privity or estate of contract, for lack of benefit to dominant estate, or on account the easement is assignable, a conservation or preservation easement shall run with the land and shall be perpetual *unless otherwise stated* in the instrument creating it; and

WHEREAS, *Neb Rev Stat.* §76-2,112 states that a conservation and preservation easement shall be referred to the local planning commission to assure conformity with the comprehensive plan and local zoning and make a recommendation within sixty (60) days to the County Board for final approval; and

WHEREAS, *Neb Rev Stat.* §76-2,112 states that a conservation and preservation easement may be denied by the planning commission or the County Board upon a finding 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 conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, (c) any known proposal by a governmental body for use of the land; and

WHEREAS, Custer County will have the final approval of any Conservation or Preservation Easements, through the Nebraska Revised Statutes, its zoning regulations, and Comprehensive Plan, making a finding that it *must* be in the public interest, with approval through the Planning Commission and final approval through the County Board; and

WHEREAS, *Neb Rev Stat.* §77-1343 is to provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes, special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses; and

WHEREAS, *Neb Rev Stat.* §77-1344 states agricultural or horticultural land which has an actual value reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special In order for the land to qualify for special valuation, all of the following criteria shall be met: (a) The land must be located outside the corporate boundaries of any sanitary and improvement district, city, or village except agricultural or horticultural land included within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement and (b) the land must be agricultural or horticultural land.

Status of real estate as being exempt is determined by when the tax is levied and not when it is valued by the assessor. *American Province of Servants of Mary Real Estate Corp. v. County of Douglas*, 147 Neb. 485, 23 N.W.2d 714 (1946).

NOW, THEREFORE, BE IT RESOLVED by the Custer County Board of Supervisors of Custer County, Nebraska, as follows:

1. The Board opposes the 30 x 30 program, including its objective of permanently preserving and/or conserving 30 percent of the Nation's lands and waters in its natural state by 2030, or any similar program that will set aside and prevent the productive use of millions of acres of privately owned lands.
2. The Board further opposes the designation of lands in Custer County as wilderness, wilderness study areas, wildlife preserves, open space, or other conserved lands, thereby restricting public access to such lands and preventing the development and productive use of the resources on or within such lands at the hands of the Federal Government.
3. The Board supports the continued private ownership of land in Custer County, recognizing the Nation's need for domestic sources of minerals, energy, timber, food, fiber, and recreation.
4. The Board recognizes and supports the State of Nebraska's water rights system, including the doctrine of first in right, first in time and other state laws and programs governing water rights and water use, and opposes any federal designation of waters and watercourses within the County that would impair or restrict water diversions and uses authorized under Nebraska law.
5. The Board supports reasonable national, regional, and global greenhouse gas emissions policies and goals that are comprehensive practical, cost-effective, non-draconian, and do not unnecessarily single out specific industries or activities but opposes the use of global climate change as a reason to set aside large tracts of land as conservation lands to fulfill the 30 x 30 program's objectives.

6. The Board also maintains that any lands or other rights that are acquired to fulfill the 30 x 30 program's objectives should be acquired only from willing landowners and for the payment of full and fair market value for all rights and interests acquired, and NOT through eminent domain or any other regulatory compulsion or federal mandate, and only after analyzing and considering the impacts of such land acquisitions on the well-being, health, safety, welfare, economy, and culture of Custer County, its businesses, and its citizens; and
7. The Board shall send a copy of this Resolution to the Department of Interior and all other relevant Federal and State agencies.
8. The Board supports the ability of private landowners to be able to have use of their land for lawful purposes and that the limitations of use should be narrowly tailored.
9. The County Board recognizes that *Neb Rev Stat.* §76-2,112 states that a conservation and preservation easement may be denied by the planning commission or the County Board upon a finding 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 conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, (c) any known proposal by a governmental body for use of the land; and
10. The Board will also take steps pursuant *Neb Rev Stat.* §77-1344 and *Neb Rev Stat.* §77-201 to make sure that the fair value of taxation for land that is placed in a Conservation and Preservation Easement does place an undue burden on the remaining taxpayers.

Dated and Approved this _____ day of _____, 2021.

CUSTER COUNTY BOARD OF SUPERVISORS
 CUSTER COUNTY, NEBRASKA

 Barry Fox, Chairman, Dist. 3

 Bobby Myers, Dist. 1

 Tammy Kleeb, Dist. 2

 Dwain Bryner, Dist. 4

 Don Olson, Dist. 5

 Lynn Longmore, Dist. 6

 Doug Stunkel, Dist. 7

 County Clerk, ATTEST