

Recorded: 3/11/2022 at 1:45:01.0 PM
County Recording Fee: \$62.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$65.00
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2022 PG: 835

Original Preparer: David L. Dorff, Assistant Attorney General [PH: 515-281-5351; FAX 515-242-6072]
IOWA DEPARTMENT OF JUSTICE, Lucas Bldg., 321 E. 12th St., Ground Floor, Des Moines, IA 50319
Return original recorded document to: Office of State Archaeologist, 700 Clinton Street Bldg., Iowa City, Iowa 52242-1030

Information contained herein relating to the nature and location of archaeological sites is considered private and confidential and not for public disclosure in accordance with Section 304 of the National Historic Preservation Act (54 U.S.C. 307103); 36 CFR Part 800.6(A)(5) of the Advisory Council on Historic Preservation's rules implementing Sections 106 and 110 of the National Historic Preservation Act; Section 9(a) of the Archeological Resources Protection Act (54 U.S.C. 100707); and Chapter 22.7, subsection 20 of the Iowa Code

DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Easement") is made this 23rd day of February, 2022, between the Lake Delhi Combined Recreational and Water Quality District, (hereinafter together with its personal representatives, successors and assigns collectively referred to as "Grantor"), and the State Archaeologist (hereinafter together with the State Archaeologist's statutorily authorized successors and assigns, collectively referred to as "Grantee").

WHEREAS Grantor is the owner of certain real property in Delaware County, Iowa, which includes NRHP eligible archaeological sites 13DW118-121, the specific portions to which this conservation easement applies more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property").

WHEREAS the Property is near, adjacent to, and part of the Lake Delhi Combined Recreational and Water Quality District property known as the "Dredge Site".

WHEREAS Grantor intends to convey to Grantee the right to preserve and protect the archaeological data contained within the Property in perpetuity or until such a time that it is professionally recovered through controlled scientific archaeological data recovery should preservation in whole or part prove impractical and no longer of benefit to the Grantor. This instrument allows for release of its terms if data recovery funded by the Grantor or other source is conducted following procedures and standards acceptable to the Grantee and reflecting then current professional guidelines for archaeological investigations in Iowa.

WHEREAS Grantee's office is a unit of the University of Iowa established pursuant to Iowa Code Chapter 263B (2011) whose responsibilities include the preservation of archaeological remains in and for the State of Iowa.

WHEREAS Grantee agrees by accepting this grant to abide by the intentions of Grantor as stated hereinabove to preserve and protect the archaeological data contained within the Property in perpetuity for the benefit of this generation and generations to come.

THEREFORE, Grantor absolutely, in perpetuity, donates and grants this permanent conservation easement in the Property to Grantee and Grantee's successors and assigns, provided that such successors and assigns must be legally authorized to hold conservation easements in public trust. This Easement and the obligation of the Grantor shall run with the land in perpetuity and shall bind the Grantor, its successors and assigns, subject to the conditions set forth in Iowa Code chapter 457A (2013) and the conditions specified in this instrument. This grant of easement is subject to the following conditions:

Summary of Easement Provisions

1. Purpose. It is the purpose of this Easement to assure that sites 13DW118-121 contained within the Property will be preserved forever in current existing condition and to prevent any use of the Property that would impair or interfere with this preservation goal. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement.

2. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are conveyed to Grantee, its successors, or its assigns:

- (a) To preserve and protect archaeological sites 13DW118-121 contained within the Property.
- (b) To enter upon the Property from time to time as may be reasonable to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable written notice to Grantor, and that Grantee shall not unreasonably interfere with Grantor's use of the Property. Grantor authorizes Grantee use of drone technology as part of monitoring (drone flight area will be limited to the conservation easement area specified in Exhibit A).
- (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 of such areas or features of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that may be damaged by any inconsistent activity or use, pursuant to the provisions of paragraph 7 hereof. The Grantee's rights as preserved herein shall be limited to those areas identified as archaeological sites 13DW118-121, the general location of same shown on the attachment hereto.

3. Initial Grantor Responsibilities. To further accomplish the purposes of this Easement, Grantor agrees to take the following actions:

- (a) Maintain the current vegetation cover on the Property (perennial grasses or forbs) such that continuous vegetative cover is present year-round, subject to the exception set forth in paragraph (b) immediately below. Efforts will be made by the Grantor to maintain the archaeological sites 13DW118-121, the general location of same shown on the attachment hereto, free of "volunteer" trees equal to or exceeding six feet (6') in height, will not plant or allow the planting of trees/shrubs within said areas, and will remove existing trees by cutting them off flush with the ground, as a means of

preventing the disruption of preserved archaeological deposits by the root system of trees/large shrubs that may be caused, particularly by wind events that may blow over trees resulting in the unearthing of the tree root system/structure.

(b) While grantor may maintain mowed trails through the Easement with the understanding that the trails will have vegetative cover, any trails existing at the execution of this Easement lying over or through the boundaries of the archaeological sites 13DW118-121, the general location of same shown on the attachment hereto, will be discontinued and no mowing of said trails will be permitted hereafter.

(c) Monitor the Easement area and immediately alert the Grantee of any evidence of digging or excavating as possible attempts by unauthorized persons to tamper with the preserved archaeological deposits.

4. Permitted Uses. Grantor reserves to itself and its successors in interest, 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 and that are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following rights are hereby expressly reserved: vegetation in the form of perennial grasses or forbs may be planted, removed, or managed (including mowing of trails to encourage users of the area to stay on designated pathways), and chemicals applied within the Property for the purpose of maintaining its vegetation cover in an appropriate manner. Use of the Property, including excavation thereon, if related to the installation of a permanent dredge material carrying pipe with the express understanding that the location of any excavation related to the installation of a dredge material carrying pipe may not be on, over, across, or through the archaeological sites 13DW118-121. If Grantor desires to undertake activities not specifically permitted by the foregoing provision, and not specifically prohibited by the provisions of paragraph 5 below, Grantor shall notify Grantee in writing as soon as practical or not less than sixty (60) days prior to the date Grantor intends to undertake such activity. The notice 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 purposes of this Easement. The procedures shall be pursuant to paragraph 6 below.

5. Prohibited Uses. Any activities 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) Any ground disturbing activity which will result in more than minor displacement of the existing ground surface, such as significant rutting, the creation of washouts, etc., or in disturbance to underlying sediments or which contributes to erosion.

(b) Construction or erection of any building or structure whether commercial, residential or industrial.

(c) Dumping of trash, rubbish, garbage, or any other unsightly or offensive materials. Burning of natural debris on the property will be permitted so long as completed in a fashion that does not displace existing ground surfaces.

- (d) Placing signs, outdoor advertising structures, or advertisements of any kind on the Property excepting minimal "sensitive area – please remain on mowed trails" signs to control access or other signage agreed to by the parties hereto.
- (e) Any exploitation of subsurface materials.
- (f) Use of pesticides or herbicides, except for surface vegetation management purposes as provided in subparagraph 4.
- (g) The use of motorized vehicles, such as golf carts, ATV's, UTV's, motorcycles/minibikes, tractors, snowmobiles, mowing equipment, and other similar equipment, and horses or similar animals, on, over, and/or across the archaeological sites 13DW118-121.
- (h) Installation of utility structures or lines of any type whether buried or above-ground.
- (i) Exploitation or any destructive uses of the archaeological sites.
- (j) Unauthorized excavation, digging, unearthing, trenching, shoveling, boring, exhumation, extraction, or archeological investigation of the Property without Grantee's permission.

6. Notice of Intention to Undertake Certain Activities. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in paragraph 4, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing as soon as practical or not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice 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 purposes of this Easement. Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Should Grantee fail to respond to Grantor's notice within the said 30-day response period, Grantee shall be deemed to have approved the proposed activity.

7. Grantee's Remedies.

a. Enforcement. Grantor hereby grants to Grantee the right, in reasonable manner and reasonable times, to enforce by proceedings at law or in equity in the courts of the State of Iowa the covenants herein contained, including but not limited to, the right to require scientific data recovery and restoration of the Property to the condition that existed prior to violation of a condition of this Easement. In such case, the cost of such restoration and Grantee's reasonable costs of suit shall be borne by Grantor or those successors or assigns against whom a judgment is entered, or, in the event that the Grantee secures redress without a completed judicial proceeding, by Grantor or those otherwise determined to be responsible for the unauthorized activity. Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the covenants and purposes of this grant by any prior failure to act. This paragraph 7 shall not be construed to preclude Grantor from exhausting its legal remedies in determining whether an activity is inconsistent with this Easement.

b. *Waiver of certain defenses.* Grantor hereby waives any defense of laches, estoppel, or prescription.

c. *Best communication efforts.* Grantee intends and pledges that in exercising the rights and duties established by this instrument, the Grantee shall communicate with Grantor in a cooperative, courteous spirit and manner. Grantee shall not commence any legal proceeding to enforce a condition of this Easement against Grantor except as a last resort after failure of informal, good-faith negotiations to resolve a dispute.

8. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement. Grantor may allow access in accordance with typical use prior to the granting of this Easement if all Easement requirements are met in doing so.

9. **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 mechanic's liens and judgments arising out of any work performed for, or materials furnished to Grantor with regard to the Property.

9.1 **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee, the University of Iowa, the State of Iowa, and its 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, cost, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation reasonable attorney fees, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any Property, regardless of cause, unless due to negligence of Grantee, Grantee's agents, or invitees; (ii) the obligations specified in paragraph 9; and (iii) the existence or administration of this Easement.

10. **Extinguishment.** If circumstances arise in the future such as render the purposes of this Easement impossible to accomplish, this Easement may only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

11. **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 and employs a professionally trained monitor(s) that meets the Secretary of the Interior's Professional Qualification Standards for Archeology at the time of transfer under Section 457A.8 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 Easement is intended to advance, continue to be observed.

11.1 **Executory Limitation.** If Grantee shall cease to exist or to be authorized to acquire and hold conservation easements under Iowa law, the legislature fails to establish a successor entity, and a prior assignment is not made pursuant to paragraph 11, then Grantee's rights and obligations under this Easement shall become immediately vested 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 11.

12. 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.

13. 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.

14. 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 serve personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Lynch Dallas, P.C.
PO Box 2457
526 Second Avenue SE
Cedar Rapids, IA 52406-2457

Telephone: 319.365.9101

Attn: Doug Herman, Attorney for Grantor

To Grantee:

Office of the State Archaeologist
700 Clinton Street Building
University of Iowa
Iowa City, IA 52242
Telephone: (319) 384-0732
Attn: State Archaeologist

Or to such other address as either party from time to time shall designate by written notice to the other.

15. Recordation. Grantor shall record this instrument within 30 days of execution in the official records of Delaware County, Iowa, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

16. 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 in favor of the Grantee to effectuate the purposes of this Easement and the policy and purposes of Chapter 457A or 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 17.]

(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 of this instrument and shall have no effect upon construction or interpretations.

(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.

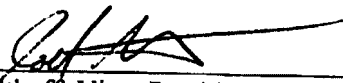
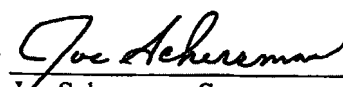
17. Amendments. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free jointly to amend this Easement; provided that no amendment shall be allowed that would affect the qualification of this Easement or the status of Grantee under any applicable laws, including Chapter 457A of the Code of Iowa, as amended, and any amendment shall be consistent with the purposes of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Delaware County, Iowa.

18. The Grantor shall withhold from the Public all information regarding the nature and location of archaeological sites 13DW118-121 in accordance with Section 304 of the National Historic Preservation Act (54 U.S.C. 307103); 36 CFR Part 800.6(A)(5) of the Advisory Council on Historic Preservation's rules implementing Sections 106 and 110 of the National Historic Preservation Act; Section 9(a) of the Archeological Resources Protection Act (54 U.S.C. 100707); and Chapter 22.7, subsection 20 of the Iowa Code and shall not release such information without the express written permission of the State Archaeologist.

IN WITNESS WHEREOF, Grantor has executed this Deed of Conservation Easement as follows:

GRANTOR

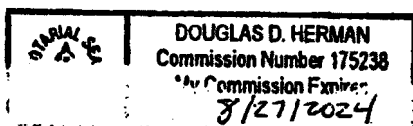
Lake Delhi Combined Recreational and Water Quality District

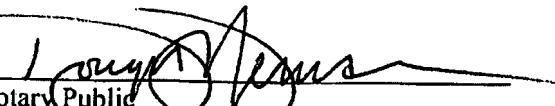
By:  ATTEST: By: 
Joel Althoff, Vice- President Joe Scherrman, Secretary

GRANTOR ACKNOWLEDGMENT

STATE OF IOWA)
)§
COUNTY OF DELAWARE)

On this 24th day of February, 2022, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joel Althoff and Joe Scherrman, to me personally known, and, who, being by me duly sworn, did say that they are the Vice-President and Secretary, respectively, of the Board of Trustees for the Lake Delhi Combined Recreational and Water Quality District; an Corporation created consistent with the provisions of Chapter 357E of the Iowa Code; and that the instrument was signed and sealed on behalf of the corporation, by authority of the Board of Trustees, as set forth in Resolution No. 2022-1 passed by the Board on the 20th day of January, 2022; and that Larry Burger and Joe Scherrman, in their capacities as set forth above, acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.




Notary Public

GRANTEE ACCEPTANCE

The State Archaeologist hereby agrees to accept a permanent conservation easement in accordance with the terms and conditions of this instrument. The State Archaeologist pledges to hold the conservation easement as a public trustee and to honor and defend the expressed intentions set forth in this instrument.

State Archaeologist

By: 

John F. Doershuk, State Archaeologist

GRANTEE ACKNOWLEDGMENT

STATE OF IOWA)
) §
JOHNSON COUNTY)

This instrument was acknowledged before me on the 23rd day of August, 2022, by John F. Doershuk, as State Archaeologist for the State of Iowa.




Notary Public

EXHIBIT A

EASEMENT DESCRIPTION Lake Delhi "Dredge Site"

The land covered by the terms and provisions of the Conservation Easement to which this Exhibit is attached is located within the following described property: Parcel "AA" being part of the Northwest Quarter of the Northeast Quarter (NW ¼ - NE ¼), part of the Southwest Quarter of the Northeast Quarter (SW¼ - NE ¼), part of the Southeast Quarter of the Northeast Quarter (SE ¼ - NE¼), part of the Northeast Quarter of the Southeast Quarter (NE ¼ - SE¼), and part of Lot Thirty (30) of The Cedars Sub-division in the Northwest Quarter of the Southeast Quarter (NW ¼ - SE ¼); all in Section Fourteen (14), Township Eighty-eight (88) North, Range Five (5) West of the Fifth Principal Meridian, Delaware County, Iowa, containing a total of 49.76 acres, more or less.

Beacon Delaware County, IA



Information contained herein relating to the nature and location of archaeological sites is considered private and confidential and not for public disclosure in accordance with Section 304 of the National Historic Preservation Act (54 U.S.C. 307103); 36 CFR Part 800.6(A)(5) of the Advisory Council on Historic Preservation's rules implementing Sections 106 and 110 of the National Historic Preservation Act; Section 9(a) of the Archeological Resources Protection Act (54 U.S.C. 100707); and Chapter 22.7, subsection 20 of the Iowa Code

See next page for details on site areas to be protected and modifications to current trails (as of easement signing) to be implemented with the 2022 mowing season.

