

Agenda Item: 7.

MEMORANDUM

TO: Finance, Expenditure and Legal Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Elbow Bend Floodway Buyout Area
OPPD Request for Right-of-Way Easement

DATE: December 4, 2013

The Elbow Bend Floodway Buyout Area is located east of the District's Missouri River Levee System Unit R-616 and southeast of Bellevue, Nebraska along the Missouri River between Cunningham Road and Missouri River Road. Enclosed is a location map. The District with FEMA and Sarpy County financial assistance has had a voluntary buyout program to purchase cabins in this floodway area and has purchased over 30 of the original 45 cabin sites. New FEMA funding is available as a result of the 2011 flood, so the District, Sarpy County and Bellevue are in the process of offering to buyout 8 of the remaining 15 properties.

Omaha Public Power District (OPPD) is working on the repair/replacement of existing power line facilities in the Elbow Bend area, due to flood damage caused by the 2011 Missouri River flood. OPPD has requested that the District donate right-of-way easements to allow for placement of power lines on District Elbow Bend property (Enclosed is a copy of the proposed easement). OPPD has concluded that they have no existing easements on the referenced property, so they want to obtain an easement prior to installing replacement power lines. Apparently the original power lines were placed on private properties with verbal concurrence of cabin owners several decades ago. OPPD and District staffs has discussed the potential for 100% buyout of the Elbow Bend cabin sites in the future and OPPD has agreed to remove power line facilities and release the easements from the Elbow Bend area at their cost, if this occurs. Enclosed is a proposed memorandum of understanding that covers this item.

It is Managements recommendation that the Finance, Expenditure and Legal Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed right-of-way easement and memorandum of understanding with Omaha Public Power District for the Elbow Bend Floodway Buyout Area, located near Bellevue, Nebraska, subject to changes as approved by District legal counsel.

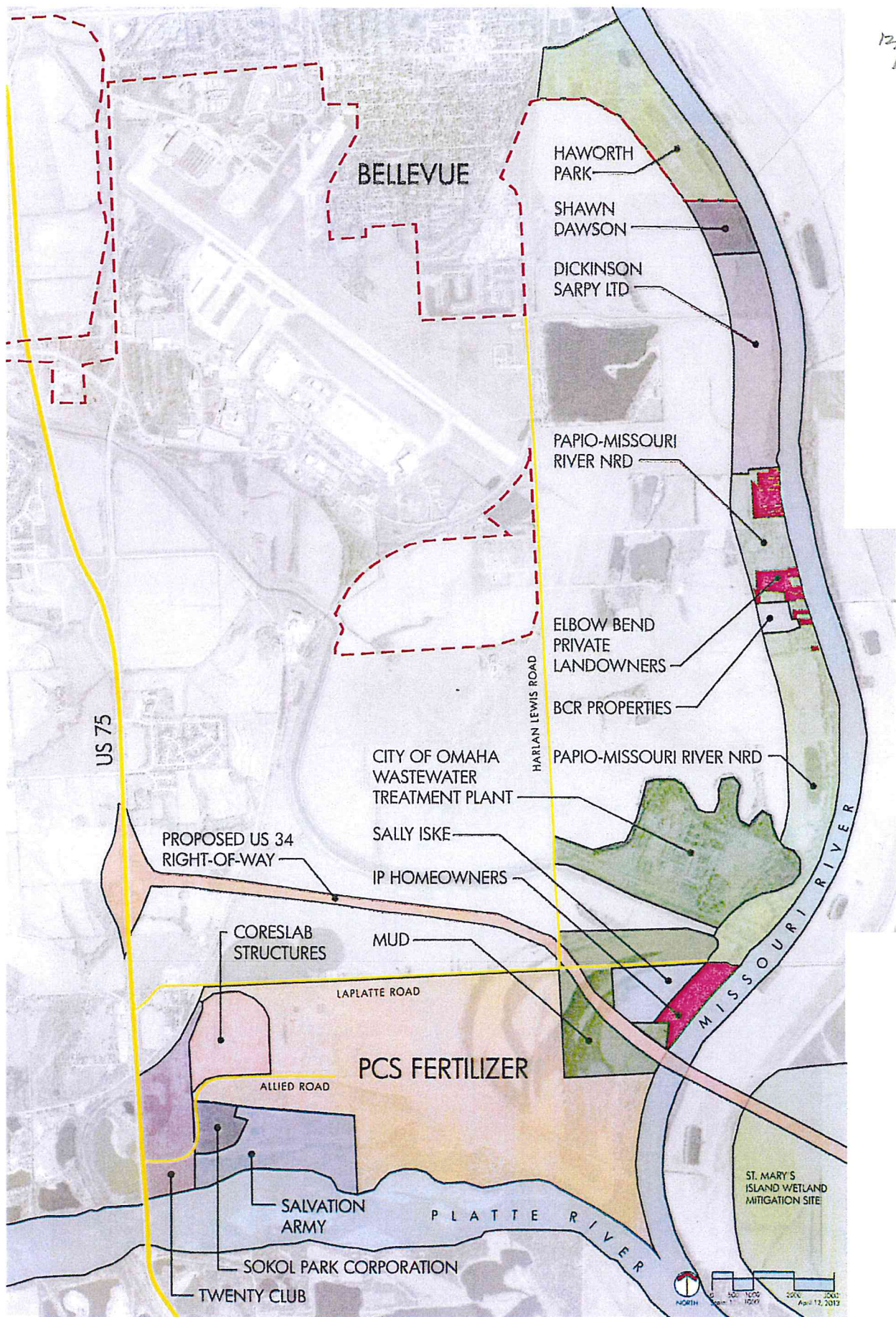


Google earth

Imagery Date: 9/21/2013 41°06'48.49" N 95°52'29.32" W elev 966 ft eye alt 17774 ft

1993

12/8/13
by MJP



APPENDIX "B" - PROJECT AREA PROPERTY OWNERS

Map from BtR - "Platte River Confluence Master Plan"
July 8, 2013



12/2/13
by MDP



12/2/13
by MDP

- Legend
- Sprpy_Topo_10ft
 - PARCELS
 - s_fid_haz_ar
 - FLD_ZONE, FLOODWAY
 - 0.2 PCT ANNUAL CF
 - A
 - AE
 - AE, FLOODWAY
 - AH
 - AO
 - X PROTECTED BY L
 - X



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this _____ day of _____ 2013, by and between **OMAHA PUBLIC POWER DISTRICT** ("OPPD"), a public corporation and political subdivision of the State of Nebraska, having its principal office at 444 South 16th Street Mall, Omaha, Nebraska 68102, and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (NRD) having its principal office at 8901 South 154th Street, Omaha, Nebraska 68138.

WHEREAS, OPPD and the NRD are engaged in easement negotiations to grant OPPD the ability to rebuild, install, operate and maintain overhead and underground electrical facilities, upon, over, across, under and through portions of the NRD's property located in:

The Northwest Quarter (NW ¼) Section Seventeen (17), and the Southwest Quarter (SW ¼) Section Eight (8) all in Township Thirteen (13) North, Range Fourteen (14) East of the 6th P.M., Sarpy County, Nebraska, hereinafter called the "ELBOW BEND AREA."

WHEREAS, OPPD is in the process of perfecting its easement rights within the ELBOW BEND AREA, with privately owned and NRD owned properties.

WHEREAS, the NRD is in the process of performing FEMA Buyouts on privately owned properties in the ELBOW BEND AREA.

NOW THEREFORE, the parties agree to the following:

1. If the need for OPPD to provide electrical services to the ELBOW BEND AREA is no longer required,
 - a. OPPD will remove all unnecessary electrical facilities.
 - b. OPPD will use commercially reasonable efforts to release all unnecessary easements acquired from the NRD.
 - c. OPPD will use commercially reasonable efforts to release all unnecessary easements obtained from privately owned property which then would be subsequently owned by the NRD.

The parties below have agreed to this MOU on the date first above written.

OMAHA PUBLIC POWER DISTRICT

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

Mohamad I. Doghman
Vice President – Energy Delivery & CCO

By:
Its:

COMBO
November 8, 2013

Doc# _____

RIGHT-OF-WAY EASEMENT

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

owner(s) of the real estate described as follows, and hereafter referred to herein as "Grantor",

See Exhibit "A" attached for description of property

in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant and convey to the OMAHA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska, its successors and assigns, hereafter referred to as "District", a permanent right of way easement with rights of ingress and egress thereto, to survey, construct, erect, reconstruct, relocate, add to, operate, maintain, install, repair, replace, renew and remove its:

(i) underground electric facilities, consisting of cables, wires, conduits, manholes, drains, splicing boxes and other appurtenances,

(ii) overhead electric facilities consisting of structures, down guys, anchors, wires, and other necessary fixtures and equipment.

See Exhibit "B" attached for sketch of easement area.

CONDITIONS:

The Grantor hereby grants to the District, its successors and assigns, the right, privilege and authority to clear all trees, roots, brush, and other obstructions from the surface and subsurface of the Easement Area and to temporarily open any fences crossing said area. Grantor agrees that the existing grade of the Easement Area shall not be reduced more than One foot (1') in elevation without the prior approval of the District.

In the event that the District desires to make any materially new or additional improvements in the Easement Area the District agrees to provide Grantor with prior written notice of such improvements and further agrees to use commercially reasonable efforts to minimize the impact of such improvements on Grantor's use of the real estate.

In granting this easement, it is understood that said cables shall be buried below plow depth in order to not interfere with the ordinary cultivation of the strip.

Grantor agrees that the property covered by said easement shall not be used in any way that will impair the rights of the District hereunder. Grantor agrees not to construct or erect any building or improvements other than paving, curbing and/or landscaping on or over the Easement Area provided, however, and notwithstanding any other provision of this easement, in the event Grantor determines to develop Grantor's property for recreational, sporting or other uses, and Grantor also determines that the District's facilities interfere with such use(s), the District agrees to move its overhead or underground facilities (at its sole cost) to routes across or locations on Grantor's property that Grantor determines provide the least interference with recreational, sporting or other uses of Grantor's property.

The Grantor covenants that he/they has/have lawful possession of said real estate, good, right and lawful authority to make such conveyance and that his/her/their heirs, executors, administrators, successors and assigns shall warrant and defend the same and will indemnify and hold harmless the District forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this conveyance.

The District shall have the right of ingress and egress across the Grantor's property for any purpose hereinbefore granted. Such ingress and egress shall be exercised in a reasonable manner and only when reasonably necessary.

The District shall pay the Grantor and/or lessee, as their interests may appear, for all damages to growing crops, fences or other property on said real estate which may be caused by the exercise of the hereinbefore granted rights.

This easement shall run with the land, constitutes the entire agreement between the parties, and shall be binding upon the respective grantees, licensees, lessees, successors, heirs and assigns of the parties.

| | | | | | | | |
|---|--------------------|--------------------------------|----|----------------|----|------------|----|
| <i>Yours faithfully</i> <i>Patrick</i> Omaha Public Power District | EXHIBIT "A" | Page 1 of 3 | | | | | |
| <u>Property Legal Description:</u> | | | | | | | |
| <p>Parcel A: Tax Lot 7B in the Southwest Quarter (SW 1/4) of Section 8, Township 13 North, Range 14 East of the 6th P.M., Sarpy County, Nebraska.</p> | | | | | | | |
| <p>Parcel B: Tax Lot 6 in the SW 1/4 of Section 8, Township 13, North, Range 11, East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows: commencing at the SW corner of Section 8-13-14 as place of beginning, thence North 193 feet, thence East 779 feet, thence South 193 feet, thence West 838.6 feet to place of beginning, except that part that for road right-of-way.</p> | | | | | | | |
| <p>Parcel C: Tax Lot 4, and part of Tax Lot 4B, located in the Northwest one-quarter of Section 17, T 13 N, R 14 E of the 6th P.M., Sarpy County, Nebraska, described as follows: Commencing at the Northwest Corner of said Section 17-13-14, thence South 00 degrees 06'13" West (Assumed Bearing) 90.00 feet to the Northwest Corner of said T.L. 4 and point of beginning; thence South 89 degrees 33'11" East 480.60 feet to the Northeast Corner of T.L. 4, thence South 03 degrees 47'11" East 481.50 feet to the SW corner of T.L. 3D1; thence South 89 degrees 26' 11" East 28.70 feet to the N.W. corner of T.L. 3D2; thence South 09 Degrees 06' 11" East 109.80 feet to the SW Corner of T.L. 3D; thence South 89 degrees 36' 11" East 183.63 feet to the NW Corner of T.L. 4C; thence South 06 degrees 51' 11" East 308.83 feet to the Northwest corner of T.L. 4B; thence South 89 degrees 35' 57" East 243.05 feet to the high bank of the west bank of the Missouri River as it existed in June 1994; thence South 10 degrees 00' 49" East 53.17 feet to the North line of T.L. 5B1 as decreed by Court Order in Doc. 39, Page 291, on Feb. 7, 1984; Thence South 87 Degrees 34' 44" West 215.16 feet along the North line of T.L. 5B1; thence South 15 degrees 49' 52" West 36.35 feet to the Southwest Corner of T.L. 5B1 and 4B (Also the SE Corner of T.L. 4); thence North 89 degrees 52' 56" West 808.16 feet to the Southwest corner of T.L. 4; thence North 00 degrees 06' 13" East 997.00 feet along the West line of T.L. 4 to the point of beginning, including any interest in roadway easements or rights-of-way.</p> | | | | | | | |
| <p>Parcel D: Tax Lot 1H, 2A, 2B1, 2B2, 2C1, and 2C2 located in the Northwest one-quarter of Section 17, Township 13 North, Range 14 East of the Sixth P.M., Sarpy County, Nebraska, including any accretion land adjacent thereto.</p> | | | | | | | |
| OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT | | | | | | | |
| Project Name: | | Cunningham RD & Elbow Bend Rd. | | Work Order No. | | 465676 | |
| Tract No: | | | | Date Prepared: | | | |
| SW | 1/4 | Section | 8 | Township | 13 | Range | 14 |
| W | 1/2 | | 17 | | 13 | East | |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | |

*Very
easy
to
read*

EXHIBIT "A"

Page 2 of 3

Omaha Public Power District

Property Legal Description:

Parcel E:

Tax Lot 1G, together with accretions thereto, located in the Northwest One-Quarter of Section 17, Township 13 North, Range 14 East of the 6th P.M., Sarpy County, Nebraska, and being further described as: Commencing at the Northwest Corner of said Section 17 thence S00°07'52"W (assumed bearing) 2206.23 feet along the West line of said Northwest One-Quarter; thence S89°52'05"E 1007.62 feet to the Northwest Corner of Tax Lot 1G and Point of Beginning, thence S89°51'28"E 309.39 feet to the West high bank of the Missouri River; thence S16°41'35"E 109.81 feet along said high bank; thence N89°51'28"W 340.54 feet; thence N00°08'32"E 105.10 feet to the P.O.B. described tract contains 34,188 Sq. ft., more or less, and includes any interest in road right-of-way.

Parcel F:

Tax Lot 9A2, Located in the Northwest Quarter of Section 17, Township 13 North, Range 14 East of the 6th P.M., Sarpy County, Nebraska. Being more particularly described as follows: Commencing at the Northwest Corner of said Section 17, thence S00°06'13"W (assumed bearing) for 1550.61 feet; thence S00°08'32"W for 342.39 feet to the Southwest Corner of Tax Lot 9A; thence S89°51'28"E for 129.27 feet along the South line of Tax Lot 9A to the Point of Beginning; thence N00°02'46"E for 317.33 feet; thence S83°29'22"E for 136.70 feet; thence S00°03'55"W for 302.16 feet; thence N89°51'28"W for 135.73 feet along the South line of Tax Lot 9A to the Point of Beginning. Above described tract contains 42,058 square feet, more or less.

Parcel G:

Tax Lot 9A3B, Located in the Northwest Quarter of Section 17, Township 13 North, Range 14 East of the 6th P.M., Sarpy County, Nebraska. Being more particularly described as follows: Commencing at the Northwest Corner of said Section 17, thence S00°06'13"W (assumed bearing) for 1550.61 feet; thence S00°08'32"W for 342.39 feet to the Southwest Corner of Tax Lot 9A; thence S89°51'28"E for 265.00 feet along the South line of Tax Lot 9A to the Point of Beginning; thence N00°03'55"E for 302.16 feet; thence S80°24'15"E for 91.65 feet; thence S00°08'32"W for 287.11 feet; thence N89°51'28"W for 90.00 feet along the South line of Tax Lot 9A to the Point of Beginning. Above described tract contains 26,575 square feet, more or less.

Parcel H:

The following tract of real estate situated in Section 17, Township 13 North, Range 14 East of the 6th P.M. Sarpy County, Nebraska, described as follows: Commencing at a point 1893 feet South and 355 feet East of the Northwest Corner of Section 17, Township 13 North, Range 14 East as the place of beginning, thence running East a distance of 355 feet; thence North 288 feet to the South side of the public road; thence Northwesterly along the South side of said public road to a point directly north of the place of beginning, thence South to the place of beginning; also known as Tax Lot 9A3A and with the mailing address of 2503 East Elbow Bend, LaPlatte, Nebraska.

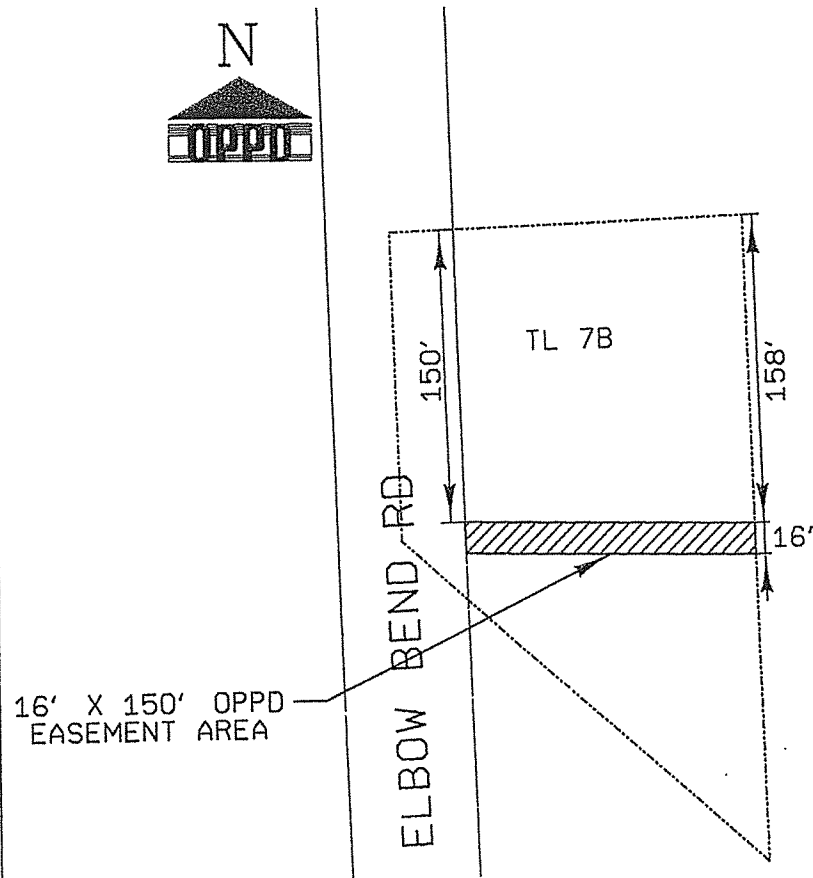
OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT

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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | Work Order No. | | 465676 | |
| Tract No: | | | | Date Prepared: | | 11-4-13 | |
| SW | ¼ | Section | 8 | Township | 13 | Range | 14 |
| W | ½ | | 17 | | 13 | | 14 |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | |

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| <i>your energy partner</i> Omaha Public Power District | EXHIBIT "A" | Page 3 of 3 | | | | | |
| <u>Property Legal Description:</u> <p>Parcel I: Tax Lot 1 D, together with accretions thereto, located in the Northwest One-Quarter of Section 17, Township 17 North, Range 14 East of the 6th P.M., Sarpy County, Nebraska, and includes any interest in road right-of-way.</p> <p>Parcel J: Lot 2, Schneider's Missouri River Park Replat 1, a subdivision as planned and recorded, Sarpy County, Nebraska.</p> <p>Parcel K: Lots 7 and 8 Schneider's Missouri River Park Replat 1 in the SW1/4, Section 17, Township 13 North, Range 14 East as surveyed, platted and recorded in Sarpy County Nebraska.</p> <p>Parcel L: Lot 4, Schneider's Missouri River Park Replat 1, a subdivision as planned and recorded, Sarpy County, Nebraska.</p> <p>Parcel M: Lot 5, Schneider's Missouri River Park Replat I, A subdivision, as platted and recorded, Sarpy County, Nebraska.</p> | | | | | | | |
| OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT | | | | | | | |
| Project Name: | | Cunningham RD & Elbow Bend Rd. | | Work Order No. | | 465676 | |
| Tract No: | | | | Date Prepared: | | | |
| SW | 1/4 | Section | 8 | Township | 13 | Range | 14 |
| W | 1/2 | | 17 | | 13 | | 14 |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | |

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| <i>24th Street Elbow Bend Public Power</i> Omaha Public Power District | EXHIBIT "B" Sketch is not drawn to scale | Page 1 of 9 |
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Easement Legal Description: Parcel A



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| OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT | | | | | | | | | | |
| Project Name: | | | | Cunningham RD & Elbow Bend Rd. | | | Work Order No. | | 465676 | |
| Tract No: | | | | Date Prepared: | | | 11-4-13 | | | |
| SW | 1/4 | Section | 8 | Township | 13 | Range | 14 | East | | |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | | | | |

with energy purchase

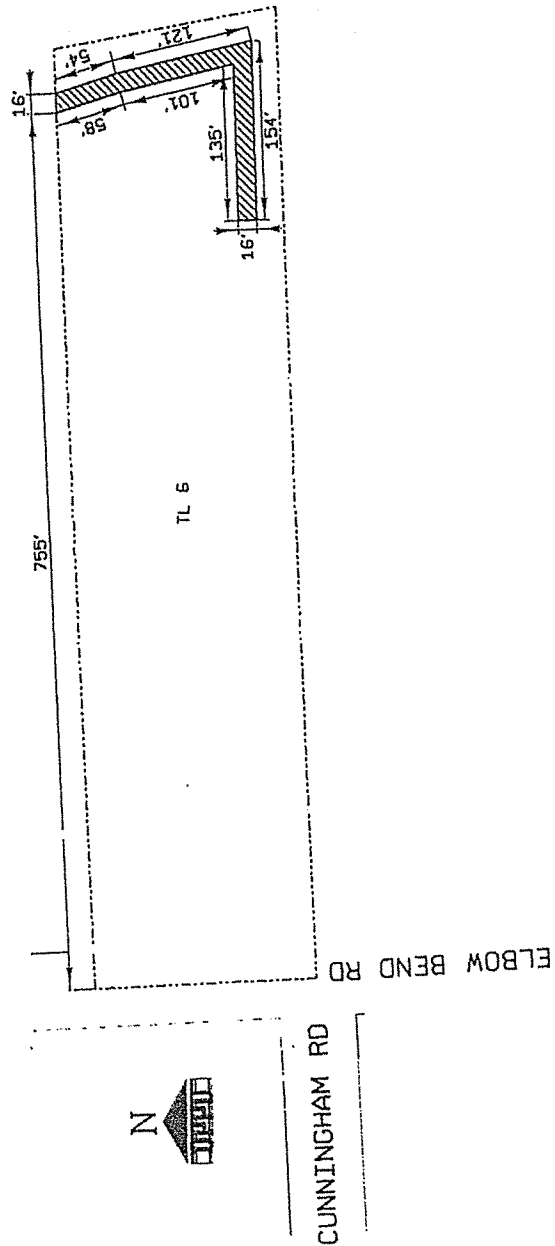
Omaha Public Power District

EXHIBIT "B"

Sketch is not drawn to scale

Page 2 of 9

Easement Legal Description: Parcel B



OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT

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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | Work Order No. | | 465676 | |
| Tract No: | | | | Date Prepared: | | 11-4-13 | |
| SW | ¼ | Section | 8 | Township | 13 | Range | 14 |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | |

Yours energy partner

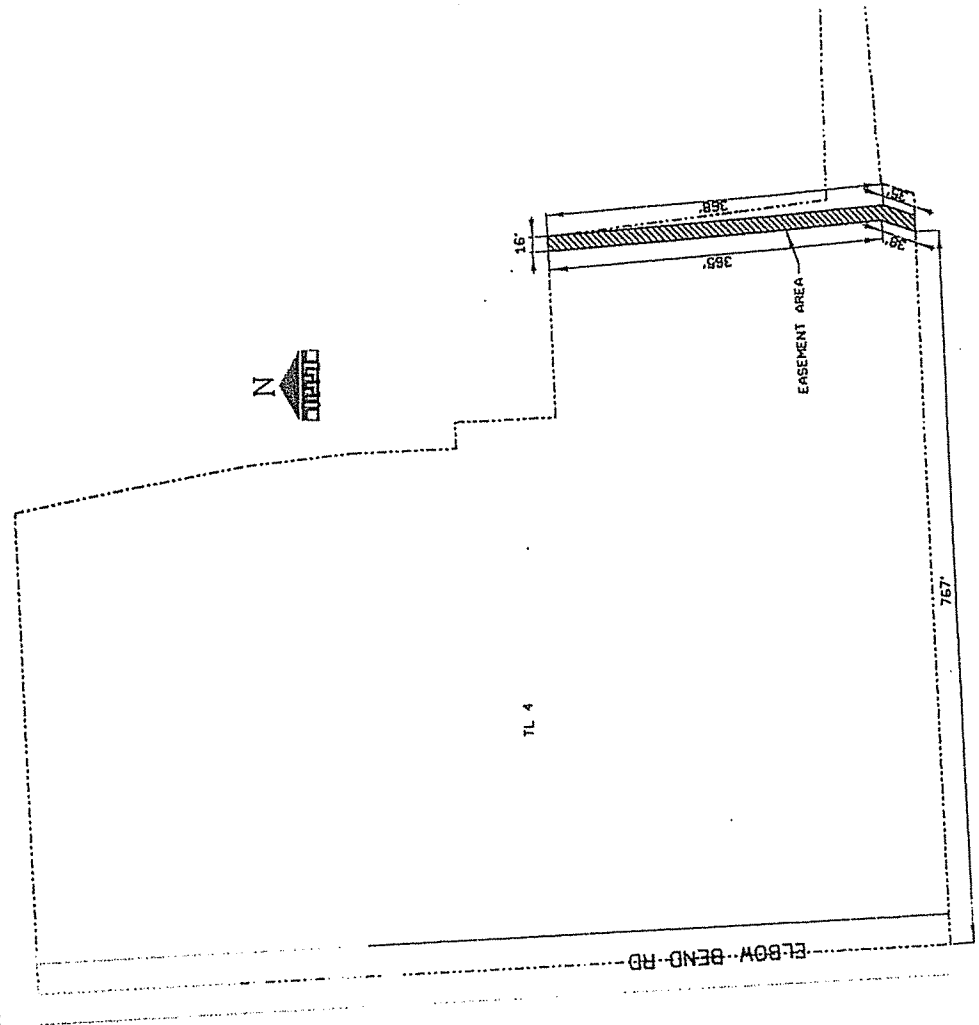
Omaha Public Power District

EXHIBIT "B"

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Page 3 of 9

Easement Legal Description: Parcel C



OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT

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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | | Work Order No. | | 465676 | | |
| Tract No: | | | | | Date Prepared: | | 11-4-13 | | |
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| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | | | |

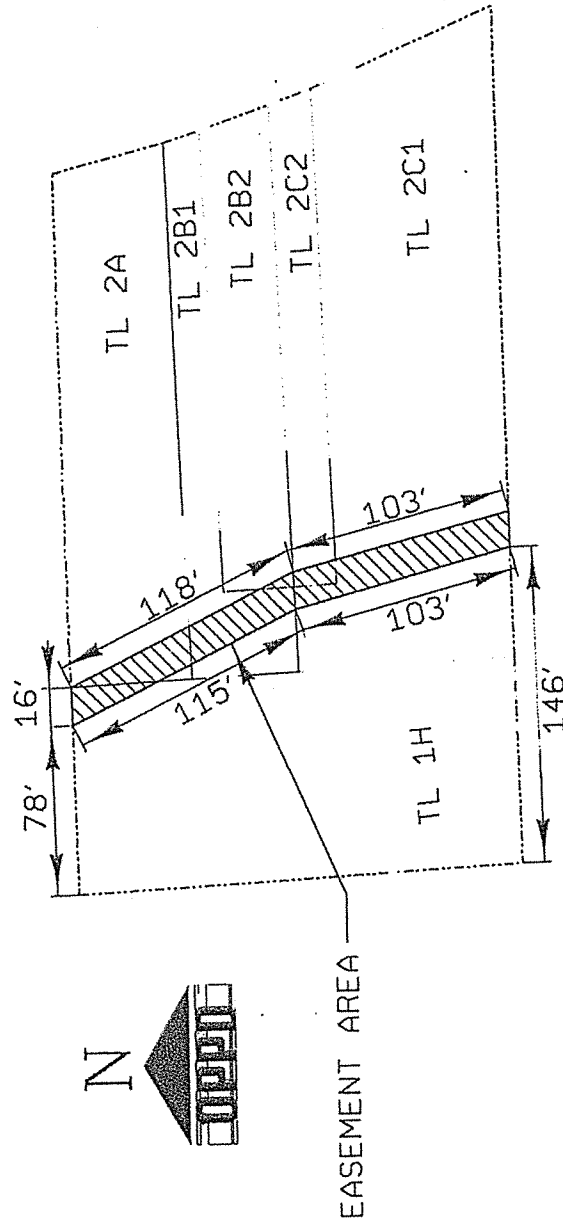
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platings*

Omaha Public Power District

EXHIBIT "B"
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Page 4 of 9

Easement Legal Description: Parcel D



OMAHA PUBLIC POWER DISTRICT
LAND RIGHTS DEPARTMENT

| LAND RIGHTS DEPARTMENT | | | | | | | | | |
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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | | Work Order No. | | 465676 | | |
| Tract No: | | | | | Date Prepared: | | 11-4-13 | | |
| NW | ¼ | Section | 17 | Township | 13 | Range | 14 | East | |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | | | |

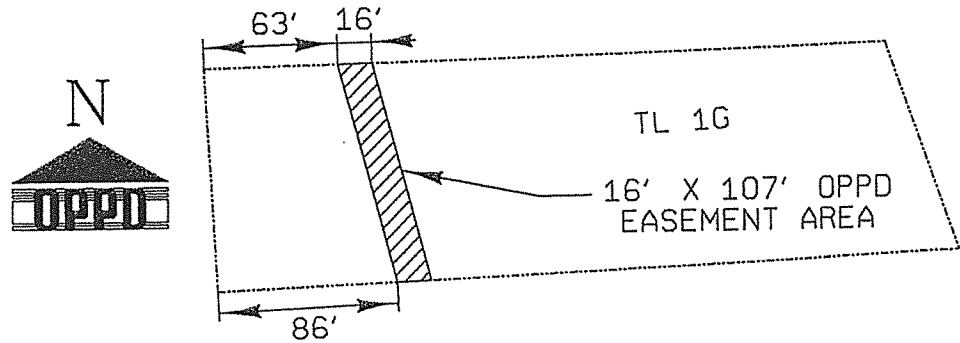
your energy partner

Omaha Public Power District

EXHIBIT "B"
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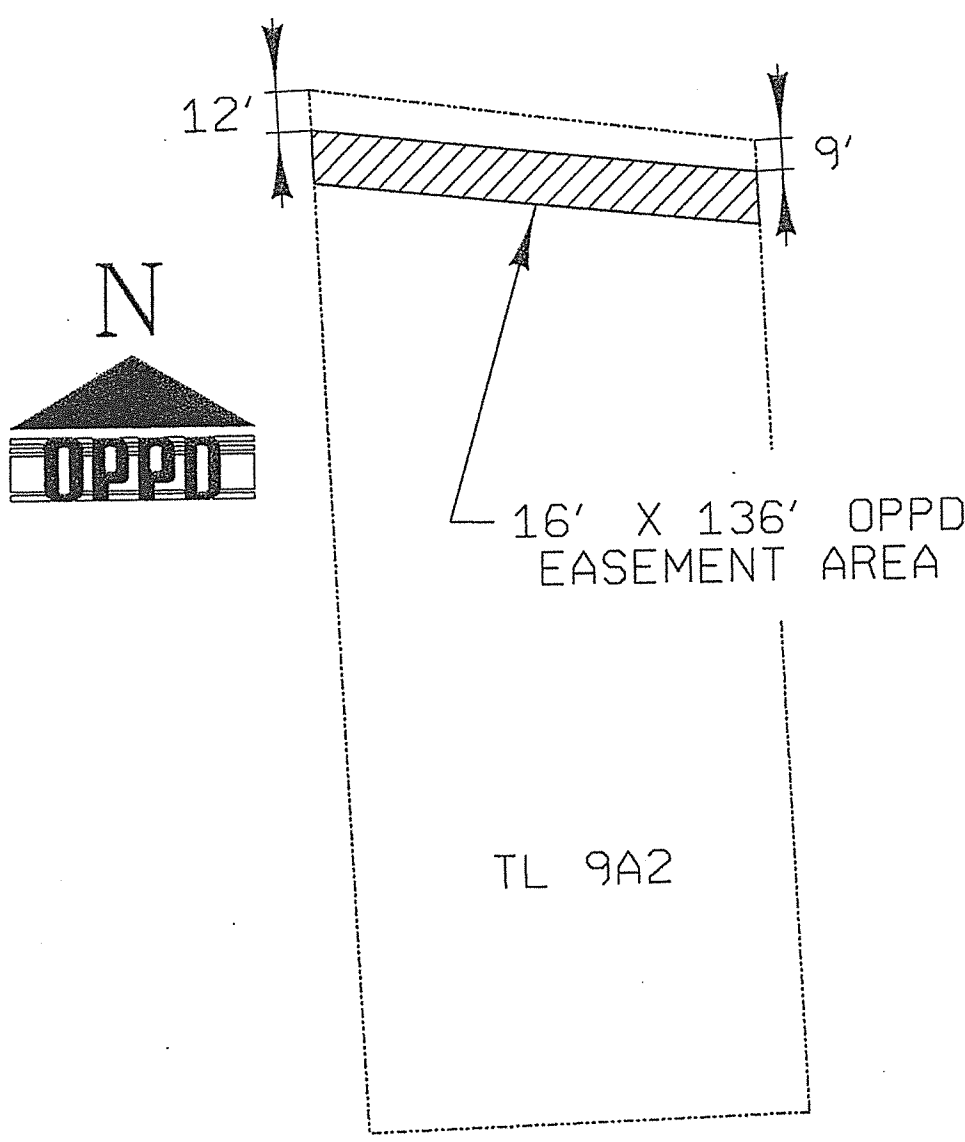
Page 5 of 9

Easement Legal Description: Parcel G



OMAHA PUBLIC POWER DISTRICT
LAND RIGHTS DEPARTMENT

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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | Work Order No. | | 465676 | | | |
| Tract No: | | | | Date Prepared: | | | | 11-4-13 | |
| NW | ¼ | Section | 17 | Township | 13 | Range | 14 | East | |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | | | |

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| <i>your energy partner</i> Omaha Public Power District | EXHIBIT "B" Sketch is not drawn to scale | Page 6 of 9 |
| Easement Legal Description: Parcel F | | |
|  <p style="font-size: 1.2em; margin-top: 10px;">16' X 136' OPPD EASEMENT AREA</p> <p style="font-size: 1.5em; margin-top: 20px;">TL 9A2</p> | | |
| OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT | | |
| Project Name: | | Cunningham RD & Elbow Bend Rd. |
| Work Order No. | | 465676 |
| Tract No: | | Date Prepared: 11-4-13 |
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| Township | 13 | Range 14 |
| East | | |
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| Engineer | DG | Cust. Rep. |

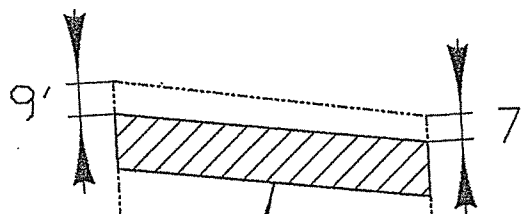
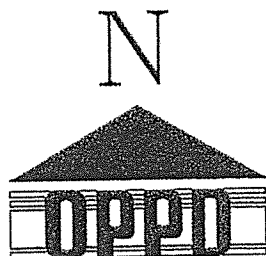
Handwritten:
Vicki
Cunningham
Partner

Omaha Public Power District

EXHIBIT "B"
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Page 7 of 9

Easement Legal Description: Parcel G



16' X 91' OPPD
EASEMENT AREA

TL 9A3B

OMAHA PUBLIC POWER DISTRICT
LAND RIGHTS DEPARTMENT

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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | | Work Order No. | | 465676 | |
| Tract No: | | | | | Date Prepared: | | 11-4-13 | |
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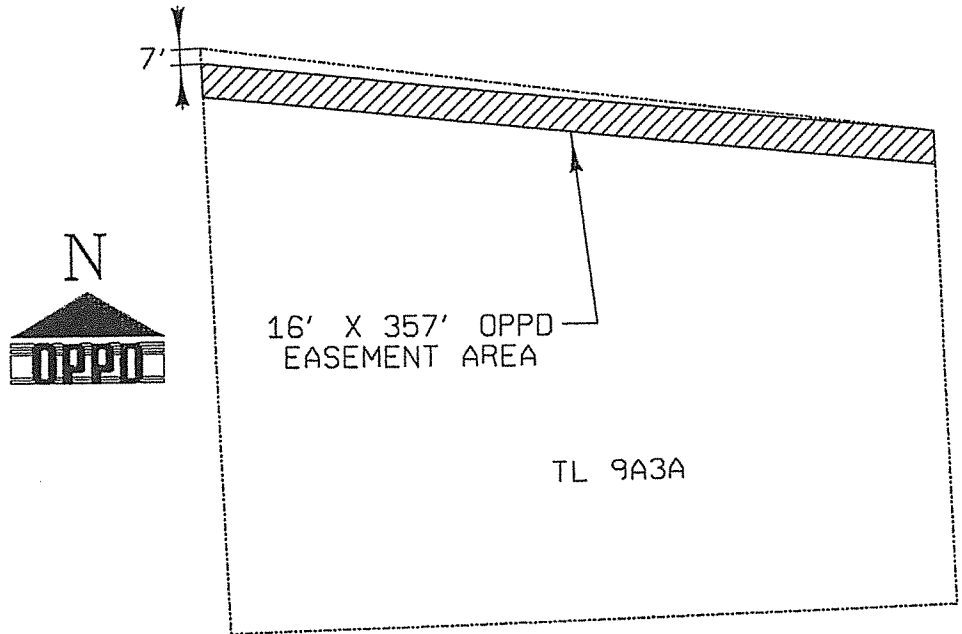
Omaha Public Power District

EXHIBIT "B"

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Page 8 of 9

Easement Legal Description: Parcel H



OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT

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| Project Name: | | Cunningham RD & Elbow Bend Rd. | | Work Order No. | | 465676 | | | |
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| NW | ¼ | Section | 17 | Township | 13 | Range | 14 | East | |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | | | |

your energy partner

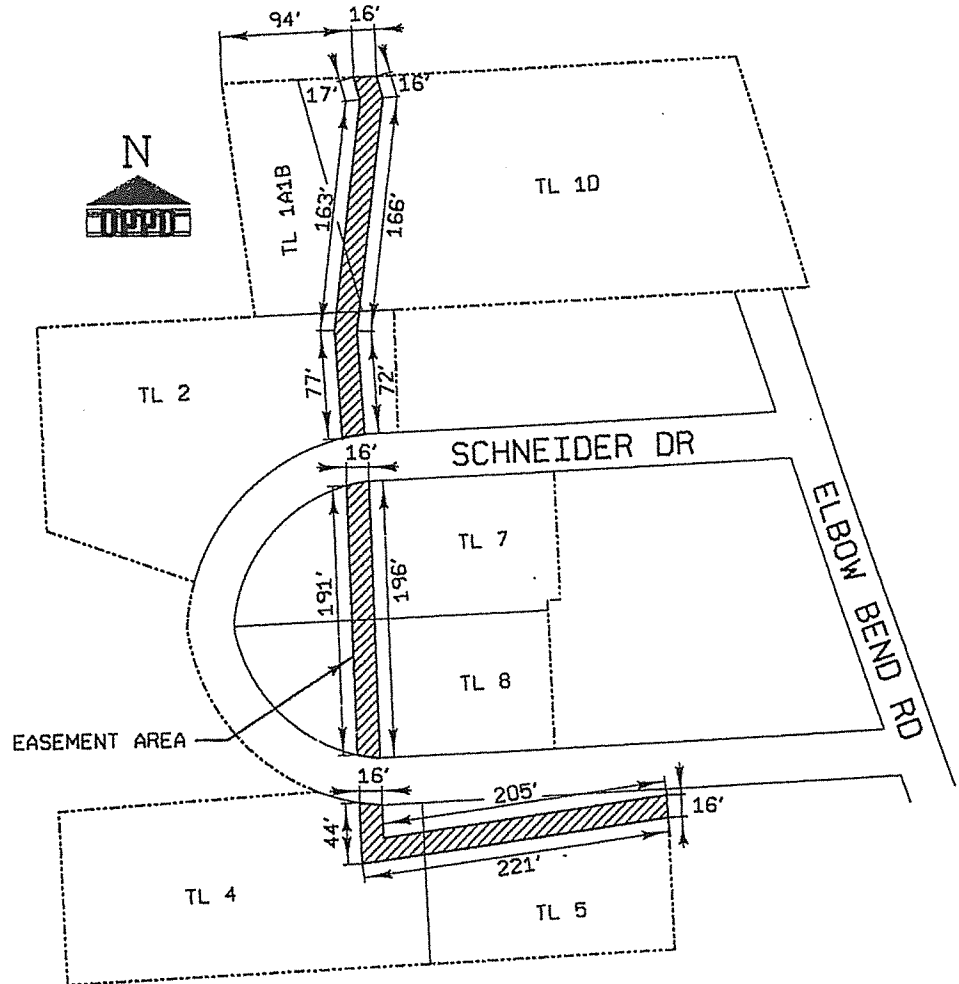
Omaha Public Power District

EXHIBIT "B"

Sketch is not drawn to scale

Page 9 of 9

Easement Legal Description: Parcels I, J, K L, and M.



OMAHA PUBLIC POWER DISTRICT LAND RIGHTS DEPARTMENT

| LAND RIGHTS DEPARTMENT | | | | | | | | | |
|------------------------|--------|--------------------------------|----|----------|----------------|------------|---------|------|--|
| Project Name: | | Cunningham RD & Elbow Bend Rd. | | | Work Order No. | | 465676 | | |
| Tract No: | | | | | Date Prepared: | | 11-4-13 | | |
| W | ½ | Section | 17 | Township | 13 | Range | 14 | East | |
| Sarpy | County | ROW | AE | Engineer | DG | Cust. Rep. | | | |