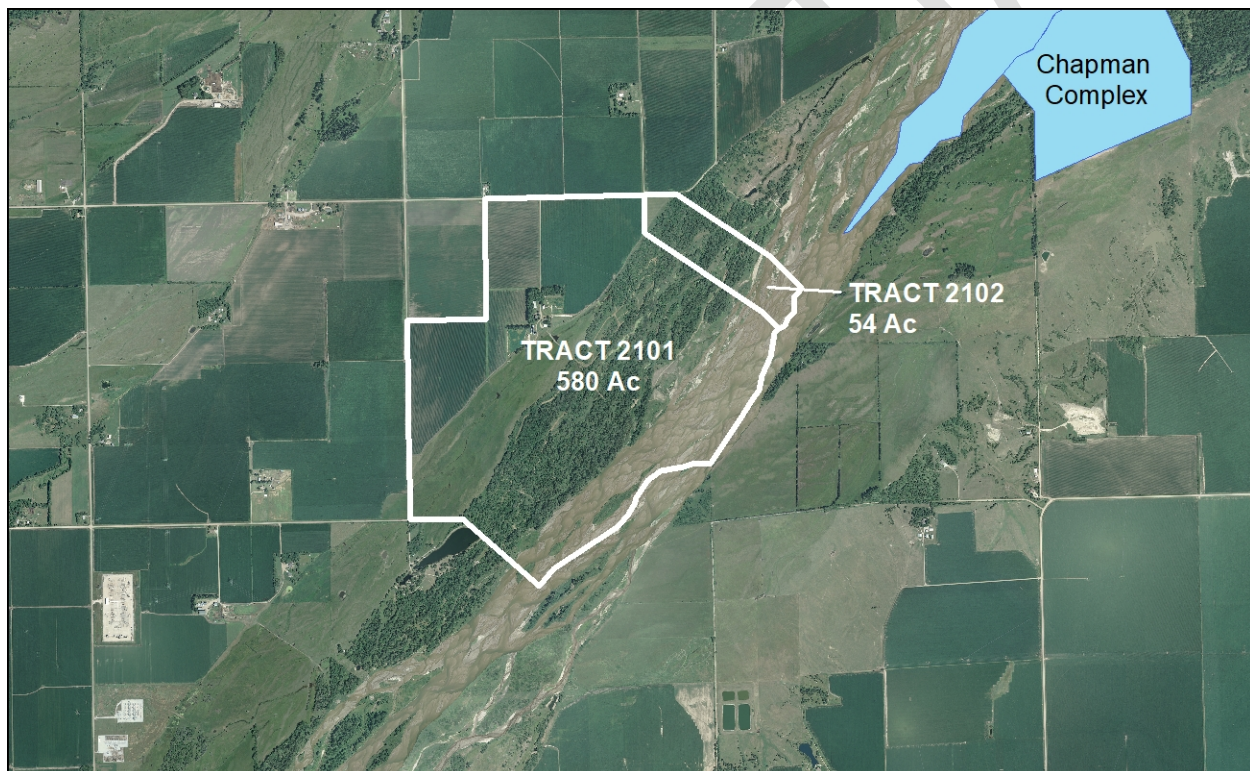




TO: PRRIP GOVERNANCE COMMITTEE (GC)
FROM: EXECUTIVE DIRECTOR'S OFFICE (EDO)
SUBJECT: TRACTS 2101 AND 2102 ACQUISITION INFORMATION
DATE: APRIL 6, 2021

On 4/5/2021 the Land Advisory Committee (LAC) recommended that the Governance Committee (GC) pursue acquisition of two complex habitat parcels (Tracts 2101 and 2102) adjacent to the Program's Chapman Complex. A joint Land Evaluation Report for the two tracts is enclosed as **Attachment A**. A figure of the tract locations in relation to the Chapman Complex is located below. Tract 2101 is the primary focus of this memorandum and associated requested GC action as it is currently listed with a real estate agent and is being heavily marketed to recreation buyers. Consequently, time is of the essence.



Tract 2101 Purchase Option

Program staff have been in communication with both the owners and listing agent for Tract 2101. We described the Program's process and timeline for acquiring property, including the need to obtain an appraisal and subsequent final approval by the GC. The agent indicated that the only way the family would be willing to accommodate Program's acquisition timeline would be under a purchase option agreement.



The seller's agent and Program staff discussed option terms and (working with legal counsel) drafted an option agreement for GC consideration (**Attachment B**). Option terms include:

- Option to purchase property at a price of \$3,200,000.00.
- Down payment of \$100,000. Of that total \$75,000 refundable if Program does not exercise option.
- Owner can accept back up offers.
- **65 days** for the Program to perform due diligence.
- Closing date of November 1st, 2021.
- Current owner is responsible for all 2021 real estate taxes.

Under this scenario, the property would be taken off the market but the owner would have the right to entertain back up offers that could be accepted should the Program not exercise its option. Once signed, the Program would have **65 days** to secure an appraisal and take final action on the property.

Tract 2101 Value and Associated Risk

The principal risk associated with a purchase option approach is an appraisal that is substantially below the purchase price contained in the option. We assessed this risk by splitting the property by land use type and estimating likely values for each category. The table below provides our best estimate of a likely tract value of approximately \$3,159,000. This is slightly below the option price but a good indicator that the price is not inflated.

Land Use	Acres	Likely Value Per Acre \$	Total Value \$
Irrigated Cropland	155.5	7,000.00	\$1,088,500.00
Wet Meadow	86.5	3,000.00	\$259,500.00
Forest and Channel	324.6	4,500.00	\$1,460,700.00
Farmstead	13.8	L/S	\$350,000.00
Total	580.4		\$3,158,700.00

Disposition of Cropland and Homestead

The wet meadow and forested areas of Tract 2101 adequately buffer the channel from disturbance. As such, we anticipate the GC may wish to excess the farmstead and cropland portions of the tract. These are the most valuable portions of the property in terms of value per acre. If they were to be excessed, we anticipate approximately \$1,439,000 of revenue could be generated to offset at least 40% of the acquisition cost. If the GC so desires, the excess acres could be sold with no-build easements which would have minimal impact on value and reduce the potential for additional disturbance issues in the future.

**Tract 2102**

One of the parties involved in the sale of Tract 2101 owns Tract 2102. They have expressed both a willingness to consider sale of Tract 2102 and a desire to purchase back the farmstead portion of Tract 2101. Such an arrangement would likely benefit the Program both in terms of additional habitat acres and disposal of excess portions of Tract 2101. No specific terms have been discussed with the owner of Tract 2102, pending action on Tract 2101.

Crediting of Acres

Approximately 619 acres remain of the 1,500-acre First Increment Extension land “plus up.” Acquisition and crediting of the entirety of Tract 2101 would bring the Program within 40 acres of that goal. Excessing the farmstead and cropland would reduce total tract size by 169 acres, increasing the remaining plus up to 209 acres. Tract 2102 is approximately 54 acres in size. If portions of Tract 2101 are excessed and Tract 2102 is acquired, approximately 155 acres would remain to achieve the plus up.



ATTACHMENT A

59

60

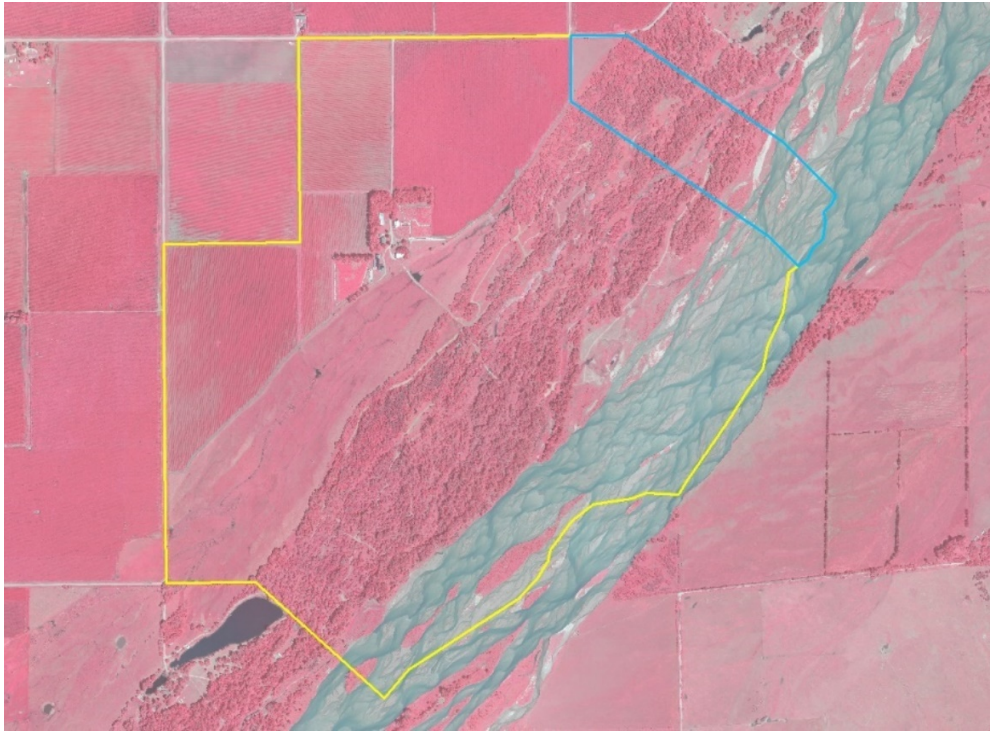
CONFIDENTIAL



LAND EVALUATION REPORT

For

TRACTS 2101 & 2102



Prepared for:
Platte River Recovery Implementation Program
Land Advisory Committee

Evaluation Team:
Dave Zorn
Matte Rabbe
Ted La Grange
Tim Tunnell
Bruce Sackett
Kaley Keldsen

Site Visit Date:
3/29/2020
Evaluation Report Completion Date:
3/31/2021



Table of Contents

I. EVALUATION TEAM AND SCHEDULE	1
A. Evaluation Team Members	1
B. Date of Evaluation	1
II. GEOGRAPHIC CONSIDERATIONS	1
A. Tract Location and Size.....	1
III. LAND USE CONSIDERATIONS	1
A. Land Cover/Use.....	1
B. Incompatible Uses and Environmental Concerns.....	3
C. Restoration and Maintenance Impacts on Neighboring Properties	3
D. Target Species Use	3
E. Certified Irrigated Acres	4
IV. TARGET SPECIES HABITAT CONSIDERATIONS.....	4
A. Existing Species Habitat.....	4
1. Non-Riverine Surface Water	4
2. River Frontage and Active Channel Widths.....	4
3. Contiguous Sand Substrates	5
4. Island and Channel Bank Height	5
5. Groundwater	5
6. Flooding in Non-Wetland Areas.....	5
7. Power/Transmission Lines	5
B. Complex and Non-Complex Habitat	5
1. Habitat Complex Acres	5
2. Non-Complex Habitat Acres	6
3. Excess Acres.....	6
4. Habitat Restoration and Maintenance Needs and Conceptual Costs.....	6
5. Buffer.....	7
V. PROPERTY MANAGEMENT CONSIDERATIONS.....	7
A. Encumbrances	7
1. Legal Encumbrances.....	7
2. Management Encumbrances.....	7
B. Environmental Audit	7
C. Property Interest Acquisition Options and Costs	7
D. Extraneous Costs	8
E. Operations and Maintenance	8
F. Other Considerations.....	8
VI. EVALUATION TEAM RECOMMENDATION.....	8
VII. LAC RECOMMENDATION.....	8
APPENDIX A – MAPS	0
APPENDIX B – LEGAL REVIEW	0



I. EVALUATION TEAM AND SCHEDULE

A. Evaluation Team Members

Tracts 2101 and 2102 Evaluation Team members are:

- Dave Zorn – Central Public Power and Irrigation District
- Matt Rabbe – U.S. Fish and Wildlife Service
- Ted LaGrange – Nebraska Game and Parks Commission
- Tim Tunnell – Platte River Recovery Implementation Program
- Bruce Sackett – Platte River Recovery Implementation Program
- Kaley Keldsen – Platte River Recovery Implementation Program – Drone Pilot

B. Date of Evaluation

The Evaluation Team performed a site visit on March 29, 2021. A summary of this Evaluation Report was presented to the Land Advisory Committee (LAC) and discussed at the April 5, 2021 virtual LAC meeting. The Report was finalized following that meeting.

II. GEOGRAPHIC CONSIDERATIONS

These tracts lie within the Grand Island to Chapman, NE reach of the Platte River and within 3.5 miles of the main channel or 2 miles of a side channel. As such, it is eligible for inclusion in the Program.

A. Tract Location and Size

Tract 2101 is approximately 581 acres in size and Tract 2102 is approximately 54 acres. Both tracts are in parts of Sections 15,16,21 T-11N, R-08W. Figure A-1 (located in Appendix A) delineates the property boundaries. These tracts are in the Grand Island to Chapman bridge segment also known as the Chapman Complex. Figure A-2 shows the parcel location within the Program land acquisition area, bridge segment and its proximity to existing leased and owned conservation lands and other tracts being evaluated by the Program.

III. LAND USE CONSIDERATIONS

Land cover/use information for this phase of the land evaluation process is compiled by Program Staff utilizing best available Geographic Information System (GIS) datasets developed by the Program and its partners. A more detailed field analysis of target species habitat considerations is conducted during the next phase of the tract evaluation process and is discussed further in the next section of this report.

A. Land Cover/Use

Existing land cover/use on and adjacent to this tract was evaluated utilizing the updated 2005 land cover overlay developed in cooperation with the Whooping Crane Maintenance Trust Inc. (Crane Trust) and the United States Fish and Wildlife Service (USFW). The land cover classifications from the overlay were compared to the most recent United States Department of Agriculture (USDA) Farm Service Agency (FSA) and Program aerial photography to identify



any land use changes that have occurred since the development of that dataset. The 2005 land cover/use for both tracts is summarized in Tables 1 and 2. Several additional land cover/use related maps are in Appendix A including:

- Figure A-3 – 2005 Land Cover/Use
- Figure A-4 – National Wetland Inventory
- Figure A-5 – 1938 Aerial Photography
- Figure A-6 – 1998 CIR Aerial Photography
- Figure A-7 – 2020 CIR Aerial Photography

Table 1 – Tract 2101 2005 Land Cover/Use Summary

Land Cover Classification	Acres	Percent of Total
Agriculture Field	153.15	26.39 %
Bare ground/Sparse Vegetation	6.13	1.06 %
Mesic Wet Meadow	34.92	6.02 %
Phragmites	41.49	7.15 %
Riparian Shrubland	46.74	8.05 %
Riparian Woodland	150.97	26.01 %
River Channel	6.71	1.16 %
River Early Successional	17.07	2.94 %
River Shrubland	19.15	3.30 %
Roads	2.51	0.43 %
Rural Developed	13.60	2.34 %
Sand Pit	0.10	0.02 %
Unvegetated Sandbar	32.51	5.60 %
Upland Woodland	0.42	0.07 %
Xeric Wet Meadow	54.92	9.46 %
	580.40	100.00%



Table 2 – Tract 2102 2005 Land Cover/Use Summary

Land Cover Classification	Acres	Percent of Total
Agriculture Field	2.95	5.46 %
Phragmites	7.92	14.69 %
Riparian Shrubland	9.41	17.45 %
Riparian Woodland	23.17	42.97 %
River Channel	0.04	0.07 %
River Early Successional	1.83	3.40 %
River Shrubland	1.99	3.69 %
Roads	0.31	0.57 %
Unvegetated Sandbar	5.66	10.49 %
Xeric Wet Meadow	0.65	1.21 %
	53.92	100.00%

B. Incompatible Uses and Environmental Concerns

Tracts 2101 or 2102 do not currently have land uses that are incompatible with target species habitat.

C. Restoration and Maintenance Impacts on Neighboring Properties

Restoration and maintenance on this tract are not expected to have negative impacts on neighboring properties. Program Staff would coordinate with neighboring landowners to inform them about restoration and maintenance activities and use this contact as a tool to develop positive relationships.

D. Target Species Use

Least Terns and Piping Plovers:

Since 2001, 27 observations of least tern adults, 1 least tern fledgling, 8 piping plover adults, and 1 piping plover fledgling have been recorded on the river segment from the Burlington RR bridge to the Chapman Bridge. The last least tern sighting for this river segment was in 2019, and the last piping plover was observed in 2020. No nests or nesting behavior has been observed for either species on this bridge segment.

Of these observations, 3 least tern adults were observed within a mile of tracts 2101 and 2102, and 2 additional adults were observed on the river of these properties. The last least tern observed on the properties was in 2014, though 2016 was the last time a least tern was seen within a mile of the properties. For piping plovers, 2 adults and 1 fledgling were observed within a mile of these properties, and 2 additional adults were observed on the river of these properties. The last observation of a piping plover on the properties was in 2011, and the last time one was observed within a mile of the properties was in 2016.



Whooping Cranes:

After consulting the United States Fish and Wildlife Service whooping crane sightings database, the Program whooping crane monitoring database, and telemetry tracking data, there have been five recorded instances of whooping crane roosting within 1.25 miles of tracts 2101 and 2102 from 2001 – 2020. The most recent sighting was 2 adults downstream of tracts 2101 and 2102 in 2017. In 2015, 2 adults and 1 juvenile were observed upstream. In 2014, a telemetry bird was located upstream. In 2010, 2 adults and 2 juveniles were sighted upstream. And in the fall of 2002, a single adult bird was observed in-channel on tract 2101.

E. Certified Irrigated Acres

Tract 2101 includes 150 NRD certified irrigated acres.

IV. TARGET SPECIES HABITAT CONSIDERATIONS

A. Existing Species Habitat

On March 29, 2021, the Evaluation Team completed the field investigation requirements of the land evaluation process. The information in this section of the report has been compiled from the site visit and follow-up analysis of Program GIS datasets.

1. *Non-Riverine Surface Water*

At the time of the review, natural sloughs throughout the riparian forest area and the wet meadow had significant water in them, likely from a combination of recent rains and groundwater. There is also a man-made duck/goose pit close to the river in the middle of Tract 2101 with a buried blind.

2. *River Frontage and Active Channel Widths*

Tract 2101 contains approximately 5,840 feet of Platte River frontage on the main channel. Tract 2102 contains approximately 784 feet of Platte River frontage on the main channel.

Channel width measurement protocols define active channel width as the width of the channel that is unvegetated. Channel widths were measured at ¼ mile intervals utilizing color infrared aerial photography flown in June of 2020. Measured main channel widths are presented in Tables 3 and 4.

Table 3 – Tract 2101 Main Channel Widths

Measurement	Width (ft)
Minimum Channel Width	589
Maximum Channel Width	1130
Median Channel Width	804.5
Mean Channel Width	842



Table 4 – Tract 2102 Main Channel Widths

Measurement	Width (ft)
Minimum Channel Width	698
Maximum Channel Width	840
Median Channel Width	775
Mean Channel Width	777

3. Contiguous Sand Substrates

At the time of the review, Tracts 2101 and 2102 contained no substantial areas of contiguous bare sand substrate.

4. Island and Channel Bank Height

From LiDAR, bank heights are estimated to be 1-4 ft above water.

5. Groundwater

Based on the river level and the wooded wetlands areas, groundwater is estimated to be zero to four feet below ground surface. The riparian wooded area and wet meadow has many areas of exposed groundwater/sloughs under current high-water conditions.

6. Flooding in Non-Wetland Areas

There was no evidence of temporary inundation of non-wetland areas at the time of the site evaluation. There was water standing in wet meadow swales.

7. Power/Transmission Lines

There are overhead transmission power lines crossing Tracts 2101 and 2102 within the meadow north of the riparian forest. There is a buried phone line running to the residence on Tract 2101.

B. Complex and Non-Complex Habitat

The Evaluation Team recommends that the entirety of these tracts be considered as complex habitat, the residence and surrounding cropland needs further evaluation after purchase to determine the need to retain the acres. Part of the selling family have an interest in purchasing the homesite and seeing that the upland is not developed into housing or commercial use.

1. Habitat Complex Acres

Tables 5 and 6 provide the total acres of land contributing to a habitat complex. The classifications are based on *Table 1. Target Habitat Complex Guidelines*, of the Program's Land Plan. The classification acres in Table 5 & 6 are based on existing tract land cover/use and are delineated in Figure A-8.



Table 5 – Tract 2101 Habitat Complex Acres

Land Classification*	Acres
Riverine	
Channel	114.44
Buffer	
Crop Field	153.43
Developed Homesite	15.31
Wet Meadow	85.53
Riparian Forest	211.76

* Habitat complex land classification categories are more general than the 2005 land cover/use classification and areas may vary due to changes in land use and vegetation since 2005.

Table 6 – Tract 2102 Habitat Complex Acres

Land Classification*	Acres
Riverine	
Channel	16.46
Buffer	
Riparian Forest	34.16
Hay Meadow	3.30

* Habitat complex land classification categories are more general than the 2005 land cover/use classification and areas may vary due to changes in land use and vegetation since 2005.

2. Non-Complex Habitat Acres

No portion of these tracts are being considered as non-complex habitat.

3. Excess Acres

Tract 2101 contains approximately 150 – 170 acres that could be considered excess. The home site and the irrigated cropland will require additional discussion about disposal once the land is obtained. Interest and urgency to acquire the valuable river and wetland is the greatest concern at the current time.

4. Habitat Restoration and Maintenance Needs and Conceptual Costs

These tracts have wide river channels already and would not require extensive restoration. The unobstructed channel width of the entire channel on these tracts is well over 1,000 feet. Tract 2101 contains a 30-acre riparian area that was previous cleared, and a goose/duck pit was dug and blind constructed. Phragmites and other woody shrubs will be eliminated in this area by treating with herbicide for initial control and follow-up, as necessary. This action is estimated to cost on the order of \$200/ acre, or about \$6,000 for initial control efforts.

Currently, the grassland appears to be in good condition in both native species diversity and grazing condition. It is expected that PRRIP could continue to work with the existing grazing tenants and manage grazing in a similar fashion.



There are approximately 10-12 islands on these tracts that have had tree clearing done in the past and are established with annual vegetation. These islands appear to be high enough to meet requirements and could be managed as MCA islands. Clearing vegetation off the higher islands could cost on the order of \$20,000. Disking of the remaining 130 acres of river channel would cost on the order of \$30,000.

5. Buffer

This tract is bounded on the south by Platte River channel and private land. The existing riparian forest between the active channel and the homestead/agricultural lands would serve to adequately buffer whooping cranes from off-channel disturbance.

V. PROPERTY MANAGEMENT CONSIDERATIONS

A. Encumbrances

1. Legal Encumbrances

At the time of review there were no known legal restrictions that would prevent intended management. The properties are owned by the Meyer and Meigs family. The owners did not detail any information about any restrictive easements; public records have not yet been reviewed. This evaluation is subject to a complete title search.

2. Management Encumbrances

There are no known management encumbrances on either tract.

B. Environmental Audit

An environmental audit has not been completed for Tracts 2101 and 2102. It will be provided when completed. No obvious dumps, chemical spills or waste piles were evident on the property the day of inspection.

C. Property Interest Acquisition Options and Costs

The properties are owned by the Meyer and Meigs families, respectively. The Program would pursue fee simple absolute title. Table 7 describes expected land acquisition costs.

Table 7 – Tracts 2101 & 2102 Acquisition Cost Estimate

Acquisition Item/Activity	Cost
Title Review	\$75
Appraisal	\$5,000
Appraisal Review	\$500
Total Estimated Cost	\$5,575



D. Extraneous Costs

Extraneous costs include current land use modification or cessation, third party impacts, and adjacent incompatible use mitigation costs. No extraneous costs have been identified at this time.

E. Operations and Maintenance

Operations and maintenance costs have been estimated based on O&M activities on existing conservation properties in the critical habitat area. Actual costs are highly variable and expected to change over the course of the first increment as the result of adaptive management activities.

Table 8 – Tracts 2101 & 2102 Operations & Maintenance Cost Estimate

Item/Activity	Annual Cost
Noxious Weed Control	\$5,000
Fence Maintenance	\$2,000
Annual Disking & Herbicide	\$40,000
Miscellaneous Expenditures	\$1,000
Oversight	\$2,000
Total Estimated Cost	\$50,000

F. Other Considerations

No significant considerations have been identified that were not discussed in this report.

VI. EVALUATION TEAM RECOMMENDATION

The evaluation team recommends that the LAC forward Tracts 2101 and 2102 to the GC with a recommendation to pursue both tracts. Both tracts are in the Grand Island to Chapman bridge segment, a priority bridge segment for the Program.

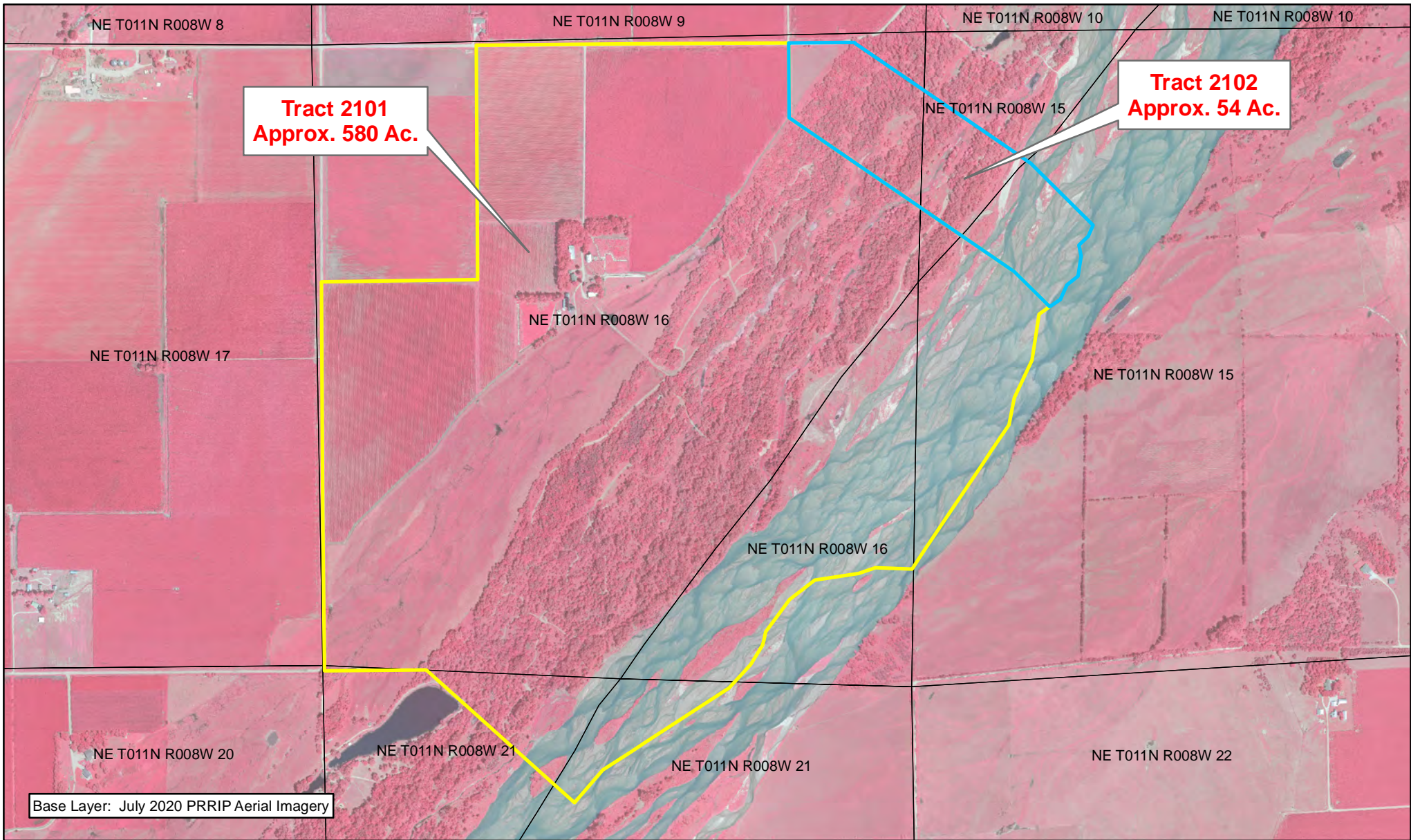
VII. LAC RECOMMENDATION

On April 5, 2021, the LAC voted to recommend that the GC continue to pursue Tracts 2101 and 2102 as complex habitat.






APPENDIX A – MAPS


CONFIDENTIAL



Legend

-  Tract 2101
-  Tract 2102
-  Sections



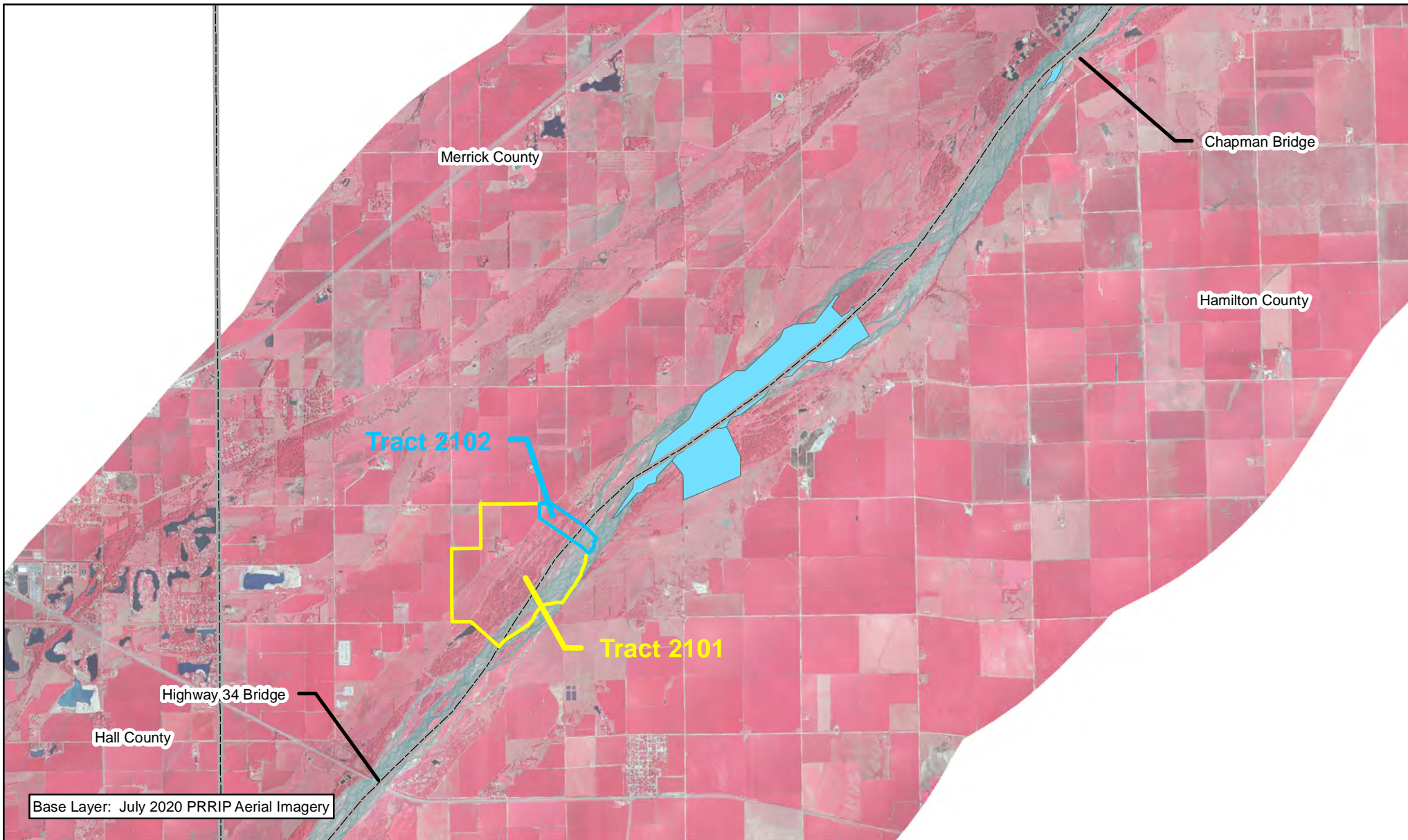
 Miles

1

**TRACTS 2101 & 2102
BOUNDARY MAP**

Date: 3/30/21
By: TRT

Figure A-1



Legend

Tract 2101	Audubon	PRRIP
Tract 2102	CNPPID	PRWCT
County	NGPC	TNC
	NPPD	Wyoming

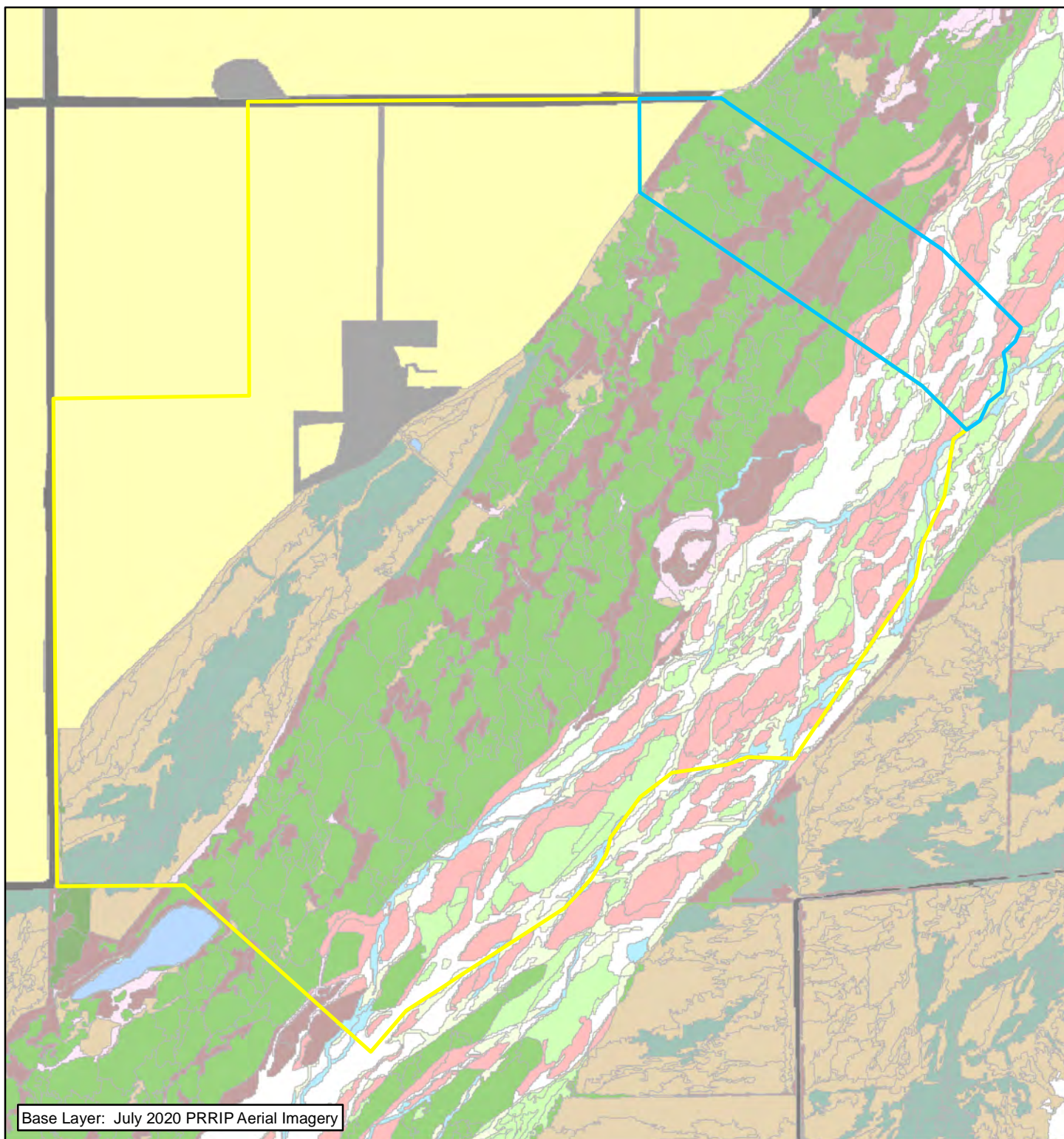


Miles
1

TRACTS 2101 & 2102 LOCATION MAP

Date: 3/30/21
By: TRT

Figure A-2



Base Layer: July 2020 PRRIP Aerial Imagery



Legend

- | | |
|--|---|
| Tract 2101 | River Early Successional |
| Tract 2102 | River Shrubland |
| Ag | Roads |
| Bareground/Sparse Veg | Rural Developed |
| Canal/Drainage | Sand Pit |
| Mesic Wet Meadow | Unvegetated Sandbar |
| Phragmites | Upland Woodland |
| Riparian Shrubland | Urban/Suburban |
| Riparian Woodland | Warmwater Slough |
| River Channel | Xeric Wet Meadow |



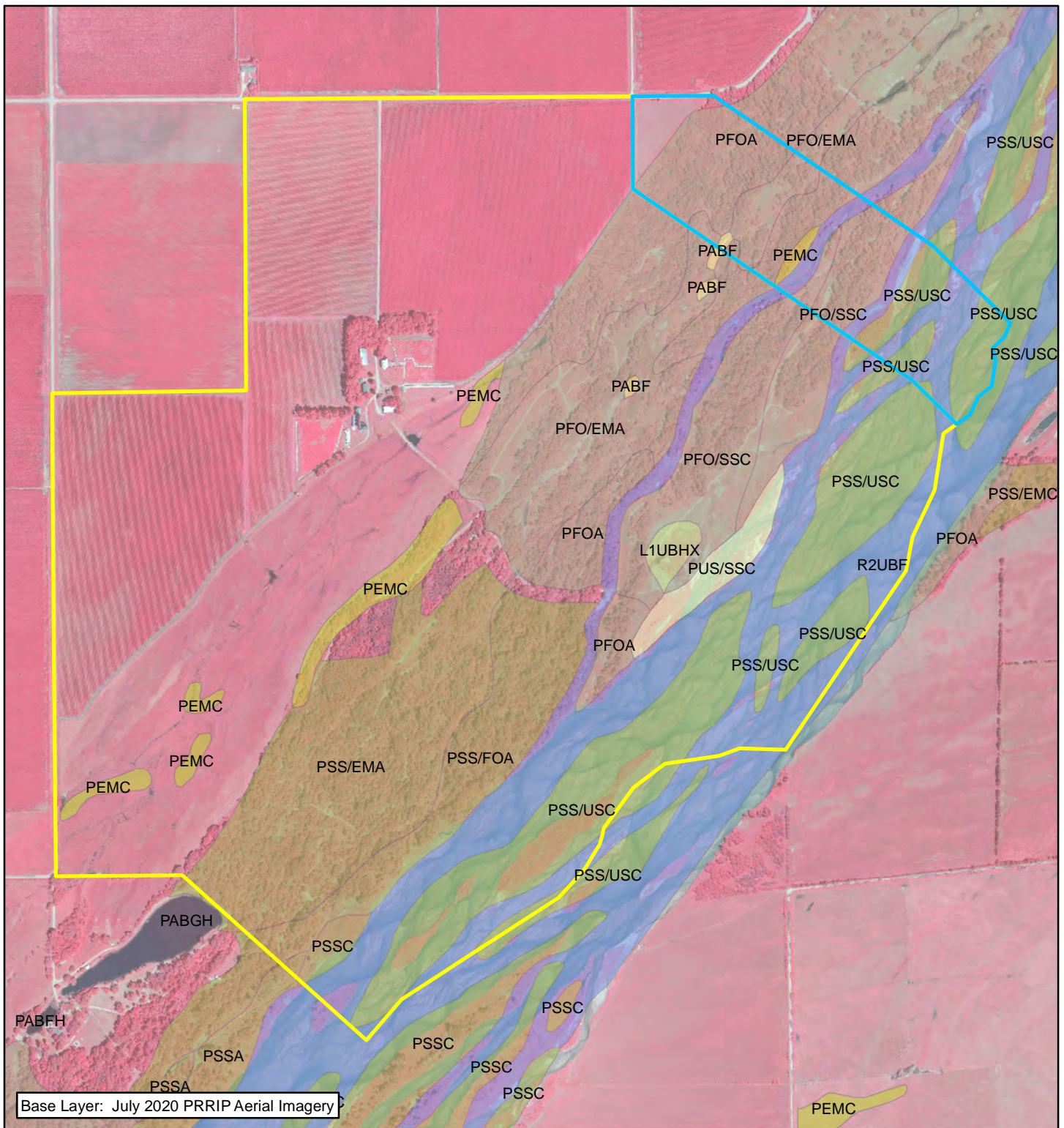
0.25 Miles

TRACTS 2101 & 2102 2005 LAND COVER/USE

Date: 3/30/21

By: TRT

Figure A-3



Legend

- Tract 2101
- Tract 2102
- Lacustrine Unconsolidated Bottom (LUB)
- Palustrine Aquatic Bed (PAB)
- Palustrine Emergent (PE)
- Palustrine Forested (PF)
- Palustrine Scrub-Shrub (PSS)
- Palustrine Unconsolidated Bottom Excavated (PUBx)
- Palustrine Unconsolidated Shore
- Riverine Unconsolidated Bottom (RUB)
- Riverine Unconsolidated Shore (RUS)
- Riverine Streambed (RS)



0.25 Miles

TRACTS 2101 & 2102 NWI MAP

Date: 3/30/21



By: TRT

Figure A-4


Not Available



Legend

-  Tract 2101
-  Tract 2102

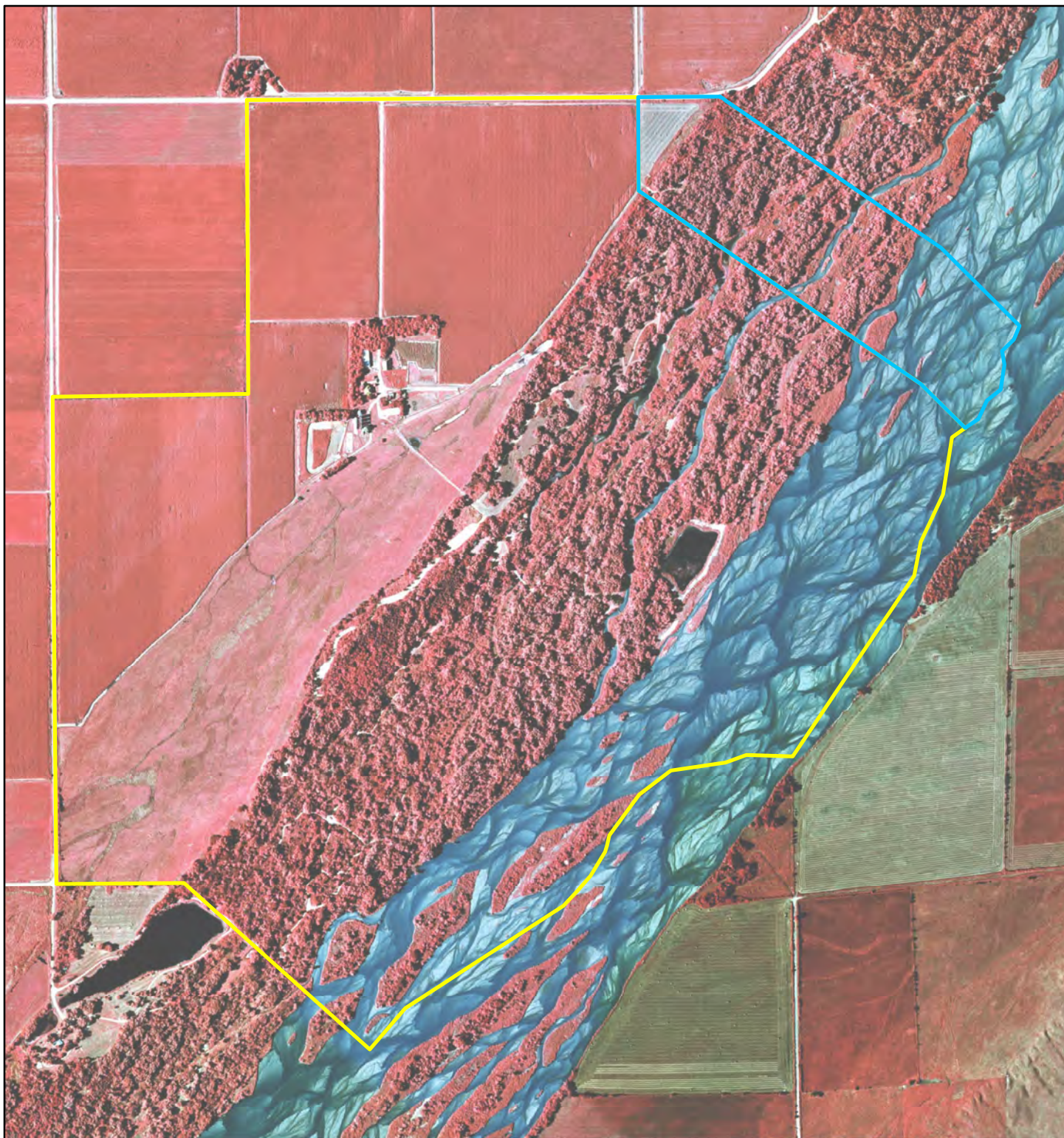


 Miles
0.25

TRACTS 2101 & 2102
1938 CIR IMAGERY

Date: 3/30/21
By: TRT

Figure A-5



Legend

- Tract 2101
- Tract 2102

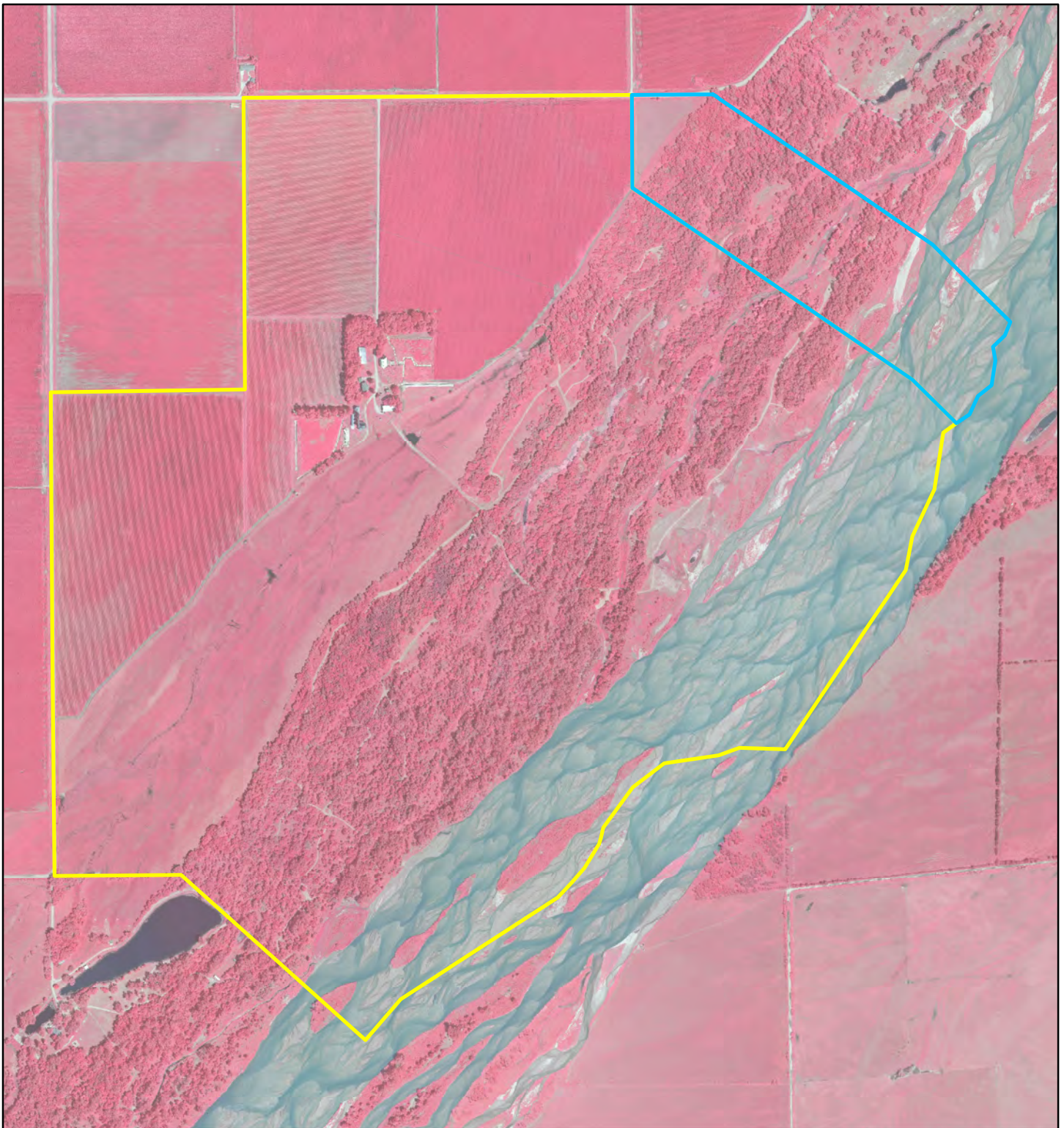


Miles
0.25

**TRACT 2101 & 2102
1998 CIR IMAGERY**

Date: 3/30/21
By: TRT

Figure A-6



Legend

- Tract 2101
- Tract 2102

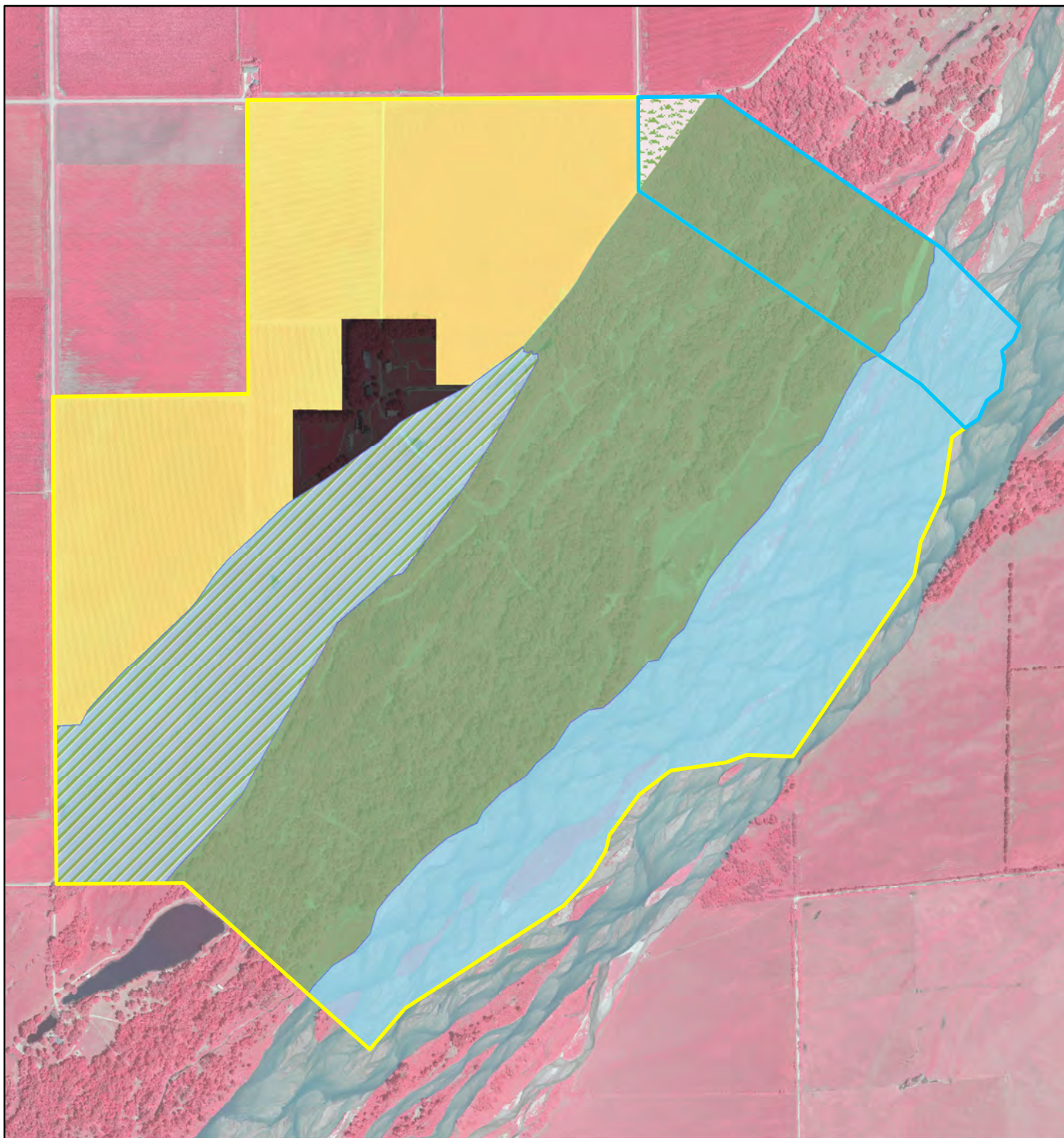


Miles
0.25

**TRACT 2101 & 2102
2020 CIR IMAGERY**

Date: 3/30/21
By: TRT

Figure A-7



Legend

- Tract 2101
- Tract 2102
- Crop Field
- Developed Homesite
- Hay Meadow
- Riparian Forest
- River Channel
- Wet Meadow



Miles
0.15

**TRACTS 2101 & 2102
COMPLEX HABITAT**

Date: 3/30/21

By: TRT

Figure A-8



APPENDIX B – LEGAL REVIEW

CONFIDENTIAL

ALTA Commitment for Title Insurance



Issued By Old Republic National Title Insurance Company
By Its Agent: Title Svs SC

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

Issued through the Office of

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Authorized Signatory

By

President

Attest

Secretary

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements;
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I—Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.



Schedule A

ALTA COMMITMENT

File No. C21-0128-

1. Commitment Date: **March 22, 2021, at 08:00 am**
2. Policy to be Issued:
 - (a) 2006 ALTA Owner's Policy
Proposed Insured: **TBD**
Proposed Policy Amount:
Premium:
 - (b) 2006 ALTA Loan Policy
Proposed Insured:
Proposed Policy Amount:
Premium:
 - (c) Endorsements to be issued:
3. The estate or interest in the Land described or referred to in this Commitment is:
Fee Simple
4. The Title is, at the Commitment Date, vested in: **Wilbur Meyer Farms, Inc.**
5. The Land is described as follows:
SEE ATTACHED EXHIBIT "A"

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions.

File No. C21-0128-

EXHIBIT "A"

Government Lots One (1), Two (2), and Three (3); The East Half of the Northwest Quarter (E1/2NW1/4); The South Half of the Southwest Quarter of the Northwest Quarter (S1/2SW1/4NW1/4); the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4); and Government Lot Four (4) EXCEPT that portion described in Deed recorded January 6, 1992 in Book A27, Page 217, All located in Section Sixteen (16), Township Eleven (11) North, Range Eight (8), West of the 6th P.M., Merrick County, Nebraska. Together with accretion lands thereto.

Schedule B-I

ALTA COMMITMENT

File No. C21-0128-

Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Corporation Deed from Wilbur Meyer Farms, Inc, to TBD, conveying the subject lands for the sum of \$TBD.
6. Corporation Requirements for Wilbur Meyer Farms, as follows:
 - The furnishing of a copy of the Articles of Incorporation.
 - The furnishing of a certificate evidencing good standing.
 - Resolution of the Board of Directors authorizing the transaction to be insured herein.
7. The attached Affidavit will need to be executed and returned to the title company by the Seller herein. Any matter disclosed therein, or otherwise brought to the attention of the title company, will appear as an exception in the policy and this commitment will be subject to further requirements as the company deems necessary.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions.

Schedule B-II

ALTA COMMITMENT

File No. C21-0128-

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.

Standard Exceptions

2. (a) Rights or claims of parties in possession not shown by the public records.
(b) Easements, or claims of easements, not shown by the public records.
(c) Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey.
(d) Any lien, or right to a lien, for services, labor or material heretofore, or hereafter furnished, imposed by law and not shown by the public records.

Special Exceptions

1. Taxes or special assessments which are not shown as existing liens by the public record.
2. General and special taxes and assessments as hereafter listed, if any (all amounts shown being exclusive of interest, penalties and costs):
3. 2019 Taxes Paid. 2020 Taxes due, but not delinquent. 2021 Taxes Accruing. Special Assessments not yet of record. (For information only: 2020 taxes \$13,433.32; Tax ID #00005014.00.)
4. Easement to Platte Valley Public Power & Irrigation District recorded June 15, 1936 in Book H, Page 434, over parts of Government Lot 1. Easement rights now held by Nebraska Public Power District recorded December 18, 1970 in Book A14, Page 173.
5. Easement to Platte Valley Public Power & Irrigation District recorded June 15, 1936 in Book H, Page 435 over SE of NW and Government Lots 2, 3 & 4. Easement rights now held by Nebraska Public Power District recorded December 18, 1970 in Book A14, Page 173.
6. Easement to American Telephone and Telegraph Company recorded March 12, 1941 in Book I, Page 309 and 310 over NW of SW; S1/2 of SWNW; E1/2NW and Government Lots 2 & 3. Assignment of said easement to Northwestern Bell Telephone Company recorded May 19, 1948 in Book J, Page 713.
7. The consequence of any change in the location of the Platte River which forms the boundary of subject land on the Southeast line.
8. Riparian Rights and rights of the upper and lower riparian owners in and to the free and unobstructed flow of water of the Platte River extending along and through subject land, without diminution.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions.

9. No title will be insured to any land lying below the present or former high water (meander line) of the Platte River that is now or formerly was lying in the bed of the Platte River, its arms, branches, or tributaries by whatever name called.
10. Navigation servitudes and all other statutory and regulatory rights and powers of the public, United States, and State of Nebraska over the Platte River and its shore lands extending to the ordinary high-water line thereof and which may be exercised without obligation for compensation to the riparian owners.
11. Subject to any adverse claim to any portion of said land which has been created by artificial means, or has accreted to any such portion so created riparian rights, if any.
12. The policy to be issued in furtherance of this commitment will contain the following exception: No coverage is provided under the terms of this policy for Financing Statements and/or Security Agreements filed with the Uniform Commercial Code Office of the Secretary of State.
13. The policy when issued will not insure the right to maintain any boundary wall or fence located beyond the subject property.
14. All reservations contained in patents issued by the United States of America; any mortgage and/or trust deeds wherein said mineral rights or oil and gas leases are used as security; and all rights arising under any instrument of the character set forth above.

TITLE TO MINERALS IS NOT INSURED.

15. Rights of the public, State of Nebraska, County of Merrick in and to that portion of subject lands taken or used for road purposes, whether by easement or fee title.

NOTE: COPIES OF ANY OR ALL OF THE ABOVE EXCEPTIONS MAY BE OBTAINED UPON REQUEST.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions.



ATTACHMENT B

CONFIDENTIAL

When recorded return to:

Trent R. Sidders
Cline Williams Wright Johnson
& Oldfather, LLP
233 S. 13th Street, Suite 1900
Lincoln, NE 68508

MEMORANDUM OF REAL ESTATE OPTION

This Memorandum of Real Estate Option ("Memorandum") is made this ____ day of April 2021, by Wilbur Meyer Farms, Inc., a Nebraska corporation (the "Optionor") and the Platte River Recovery Implementation Foundation, Trustee, a Nebraska nonprofit corporation (the "Optionee").

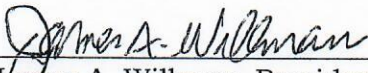
1. Legal Description. Optionor has granted Optionee an option to purchase the real property as described in the Real Estate Option dated as of the date hereof ("the Option Agreement"). The real property subject to the option to purchase is legally described on Exhibit "A" attached hereto and incorporated herein by this reference.

2. Term. The term of the Option Agreement shall start on the date hereof and shall continue for a term of two (2) months and five (5) days. The option shall expire on its own terms if not previously exercised by Optionee by 5 o'clock p.m. on June __, 2021.

3. Remaining Terms. The rest and remaining terms of the Option Agreement are hereby incorporated into this Memorandum by this reference as if they were set forth in full.

"OPTIONOR"
WILBUR MEYER FARMS, INC.

By:


James A. Willman, President

Real Estate Option

This Real Estate Option ("Option Agreement") is made and entered into this ____ day of April, 2021, by and between Wilbur Meyer Farms, Inc., a Nebraska corporation (the "Seller") and the Platte River Recovery Implementation Foundation, Trustee, a Nebraska nonprofit corporation (the "Buyer").

RECITALS

- A. Seller owns a parcel of real estate located in Merrick County, Nebraska and legally described on Exhibit "A" attached hereto and incorporated herein by this reference (referred to herein as the "Property").
- B. Buyer wants to acquire an option to purchase the Property and Seller is willing to provide Buyer with an option to purchase the Property.

NOW, THEREFORE, In consideration of the mutual covenants and agreements of the parties recited herein, it is mutually agreed as follows:

ARTICLE I

OPTION TO PURCHASE

1.1 **Option.** In consideration of the Option Price, as defined herein, and other valuable consideration, Seller hereby grants to Buyer an exclusive option ("Option") to purchase the Property as such real estate is defined in Neb. Rev. Stat. § 76-201 subject to the terms and conditions hereinafter specified.

1.2 **Term.** This Option shall extend for a period of two (2) months and five (5) days (the "Option Term") beginning on April ____, 2021, and shall expire, if not then exercised at 5:00 p.m. on June ____, 2021 (the "Expiration Date").

1.3 **Option Consideration.** Buyer shall pay to Seller the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) (the "Option Price") for the Option provided herein. The Option Price shall be paid to the Title Company, as defined below, as of the date that this Option Agreement is fully executed by the parties. The Option Price is refundable if Buyer does not exercise the Option pursuant to Section 1.4. The refund of the Option Price will be less the sum of ~~\$17,000.00~~ \$25,000.00 which Seller shall be entitled to retain regardless of whether the Option is exercised or not. The Option Price will be applied as a credit against the Purchase Price for the Property if Buyer exercises the Option.

1.4 **Exercise.** In order to exercise this Option, Buyer shall deliver to Seller written notice of its exercise hereof in accordance with Section 5.15 below. Failure to exercise this Option prior to 5:00 p.m. on the Expiration Date, shall act as an expiration and termination of Buyer's rights hereunder.

1.5 **Renewal.** Buyer shall have no right to renew its Option to purchase the Property.

1.6 **Offer to Buy Real Estate and Acceptance.** If Buyer exercises the Option, then the parties shall be bound to the terms and conditions of this Option Agreement which shall also operate as a Real Estate Purchase Agreement. The parties acknowledge and agree that the sale of the Property does not include the center irrigation pivot and well motor that is owned by Jeff Johnson
and Fuel Tank.

1.7 **Purchase Price.** At Closing, as defined herein, Buyer agrees to pay to Seller the sum of Three Million Two Hundred Thousand and No/100 Dollars (\$3,000,000.00 3,200,000.00) for the Property (the "Purchase Price"). On the Closing Date, Buyer shall pay to Seller, the Purchase Price in cash, by cashier's check, or by wire transfer of immediately available funds. The Purchase Price shall be adjusted based on applicable prorating or adjustments set forth herein.

1.8 **Right to Market.** The parties acknowledge and agree that following the execution hereof and prior to the time that Buyer exercises the Option, Seller has the right to continue to market the Property to solicit "back-up offers" in case the Buyer does not exercise the Option or the Closing does not take place. However, any such "back-up offer" shall be conditional and this Option Agreement shall have priority.

ARTICLE II

CLOSING PROVISIONS

2.1 **Closing Date.** The parties agree to close this transaction ~~within fifty five (55) days after the exercise of this Option on November 1, 2021,~~ or as soon as possible thereafter (the "Closing"). The parties agree to utilize Nebraska Title Company for the Closing or such other title company that is acceptable to the parties (the "Title Company").

2.2 **Title.** Seller agrees to convey to Buyer good and marketable fee simple title to the Property by warranty deed approved by Buyer, free and clear of all taxes, liens, encumbrances, special assessments, restrictions, covenants, encroachments or leasehold interests, except as follows:

- A. Permitted Exceptions as defined in Section 2.3 below.
- B. The Lease ~~Agreement~~ Agreements with _____
dated as of _____ Jeff Johnson (crop) and Jeff Miller (cattle)
for the 2021 (crop season (collectively the "Ag Lease").

2.3. **Title Insurance and Title Examination.** Seller agrees to furnish Buyer with a title insurance commitment in favor of Buyer for an owner's title insurance policy and a lender's title insurance policy insuring marketability in the Property in the amount of the Purchase Price within twenty (20) days after the date this Option Agreement is executed or as soon as the Title Company can reasonably

prepare the title insurance commitment. Such title insurance commitment shall be issued by the Title Company. If any defects in the title commitment are discovered, Buyer agrees to furnish a copy of a written notice from Buyer's attorney showing such defects. Within fifteen (15) days after Buyer's notice to Seller of said objections, Seller shall deliver to Buyer a statement of any objections which Seller could not, upon the exercise of due diligence in good faith, cure prior to or concurrent with Buyer's acquisition of the Property. If Seller gives notice to Buyer of any objections which cannot be cured, then Buyer shall have the option of: (i) waiving such objections and proceeding with the Closing, with an appropriate credit towards or reduction of the Purchase Price on account thereof if such objections are to liens or encumbrances securing monetary claims; or (ii) subject to any rights or remedies which Buyer may have against Seller as a result of the incorrectness of any warranties or representations set forth herein, terminating this Option, whereupon the Option Price shall be promptly returned to Buyer and thereupon this Option shall be null and void and Buyer shall have the rights available hereunder for a default by Seller. The parties agree that the Title Company shall have the authority to correct any defects in the legal description of the Property included above. The parties acknowledge and agree that the Property is known as parcel number 0005014.00 according to the Merrick County Assessor records. Any exceptions reflected in the title commitment to which Buyer does not object shall be deemed to be "Permitted Exceptions".

2.4 **Closing Costs.** The following costs shall be paid as follows:

A. **Seller Shall Pay:**

- i. The documentary stamp tax;
- ii. One-half ($\frac{1}{2}$) of the cost of the policy of title insurance to be issued to Buyer at Closing, as required by Section 2.3 above;
- iii. One-half ($\frac{1}{2}$) of the costs of the Title Company in closing this transaction;
- iv. All installments of special assessments which are a lien on the Property and if not paid would become delinquent during the calendar year in which the Closing occurs, and all prior installments thereof;
- v. All real estate and personal property taxes levied or assessed on or against the Property and personal property with respect to the year ~~prior to~~of Closing and all prior years; and
- vi. All utility charges, insurance premiums and other costs or expenses relating to the Property up to the date of Closing.

B. **Buyer Shall Pay:**

- i. The cost of preparation of the warranty deed and the other documents of conveyance;
- ii. One-half (1/2) of the costs of the Title Company in closing this transaction;
- iii. The cost of the filing fees required to record the warranty deed; and
- iv. One-half (1/2) of the cost of the policy of title insurance to be issued to Buyer at Closing, as required by Section 2.3 above; and
- v. ~~All real estate taxes levied or assessed on or against the Property and any applicable personal property taxes levied or assessed on or against the personal property, if any, included in the sale with respect to the calendar year of the Closing. Such taxes will be assumed and paid by Buyer in the ordinary course in the year following Closing.~~

2.5 **Possession.** Buyer shall receive possession of the Property at Closing subject to the terms of the Ag Lease. Provided, the Ag Lease shall not extend beyond the 2021 crop year and ~~may be terminated by~~ Seller shall provide a termination letter to the owner-tenants under the Property at least through December 31 Ag Lease prior to September 1, 2021. The Ag Lease shall be assigned to Buyer at Closing and ~~Buyer~~ Seller shall be entitled to receive all rent thereunder for the 2021 crop year. ~~If any portion of such rent has been previously paid to Seller, Buyer shall be entitled to a credit against the Purchase Price at Closing for such amount or to receive such payment directly from Seller.~~

2.6 **Tests and Examinations.** Seller will permit Buyer, its agents, employees, or representatives to enter upon the Property at reasonable hours and for reasonable duration for the purposes of conducting a survey, environmental inspection and/or assessment, and any other tests, inspections, or examinations that Buyer desires in regard to the Property. Buyer shall hold Seller harmless from any damages to the Property resulting from the actions of Buyer, its agents, employees, or representatives in the conduct of such tests, inspections or examinations.

2.7 **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that:

- A. **Organization and Standing.** Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of Nebraska.
- B. **Authorization.** All actions and consents which are necessary for Seller to duly execute, deliver and perform this Option Agreement and to consummate the transactions contemplated herein have been taken or obtained by Seller, and this Option Agreement, when executed and

delivered, will constitute a valid and binding agreement of Seller and be enforceable against Seller in accordance with its terms.

C. Absence of Restrictions. The execution, delivery, and performance of this Option Agreement and the consummation of the transactions contemplated herein by Seller do not conflict with or result in the termination or breach of any term, condition, or provision of or constitute a default under the bylaws or Articles of Incorporation of Seller, or of any contract, lease, agreement, or other instrument or condition by which Seller is bound.

D. Litigation. No judgments are issued or outstanding against the Property or Seller which would prevent or hinder Seller's conveyance of the Property in conformity with this Agreement. No litigation, action, special assessment, charge, lien, suit, judgment, proceeding, or investigation is pending or outstanding for any forum, court or governmental body, department, or agency of any kind or, to the knowledge of Seller, is threatened to which Seller or the Property is a party, which might reasonably result in any material adverse change in the condition of the Property, and Seller does not know of any basis for such claim, litigation, action, special assessment, charge, lien, suit, judgment, proceeding, or investigation.

E. Third Party Claims. With the exception of the Ag Lease, no person or entity other than Seller is entitled to or has claimed ownership, use, or possession of the Property by way of any easement, agreement, or otherwise.

F. Compliance with Applicable Laws. To the best of Seller's knowledge, the Property is now and on the Closing Date will be in material compliance with all applicable laws, ordinances, regulations, rules, and orders.

G. Violations. Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are any violations of zoning, building, fire, health, environmental, or other statutes, ordinances, or regulations affecting the Property, and Seller has no knowledge of any such violations. In the event Seller receives notice of any such violations prior to closing affecting the Property, Seller shall promptly notify Buyer thereof.

2.8 **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that:

A. Authorization. All actions and consents which are necessary for Buyer to duly execute, deliver and perform this Option Agreement and to consummate the transactions contemplated herein have been taken

or obtained by Buyer, and this Option Agreement, when executed and delivered, will constitute a valid and binding agreement of Buyer and be enforceable against Buyer in accordance with its terms.

B. Absence of Restrictions. The execution, delivery, and performance of this Option Agreement and the consummation of the transactions contemplated herein by Buyer do not conflict with or result in the termination or breach of any term, condition, or provision of or constitute a default under any contract, lease, agreement, or other instrument or condition by which Buyer is bound.

2.9 **Lien Affidavit.** Seller shall execute on the Closing Date an affidavit on the Title Company's standard form which will remove all standard exceptions to Buyer's title insurance policy that may be removed by means of such an affidavit, whereby Seller represents that, including without limitation: (i) there are no unpaid special assessments levied against the Property as of the Closing Date; (ii) there are no outstanding unpaid bills for labor, material, or utilities furnished to the Property as of the Closing Date (if any bills are outstanding, Seller shall pay such bills); (iii) there has been no off-site work in the immediate vicinity such as grading or paving of streets, installation of sewer lines, in the past six (6) months which will be specially assessed against the Property; (iv) Seller has not received any notice of future improvements which might result in special assessments; and (v) agreeing to indemnify and hold harmless the Buyer and the title company against all payments and expenses, including court costs and attorney's fees, if the above representations prove inaccurate in whole or in part.

ARTICLE III

CONTINGENCIES

3.1 **Conditions Precedent to Buyer's Obligation to Close.** The obligation of Buyer to close the transaction contemplated by this Option Agreement is subject to the fulfillment of each of the following conditions precedent on or prior to the Closing Date. In the event any one or more of the following conditions are not satisfied, then, in that event, Buyer may (i) suspend further performance under this Option Agreement and pursue any and all remedies Buyer may have against Seller under this Option Agreement or otherwise at law or in equity; (ii) terminate this Option Agreement, in which event this Option Agreement shall terminate and be of no further force or effect whatsoever as between the parties; or (iii) waive such failure and proceed to Closing:

A. Documents. The documents required to be delivered to Buyer pursuant to the terms of this Option Agreement shall have been delivered, including, but not limited to, the warranty deed, Ag Lease Assignment, and all documents reasonably required by the Title Company.

B. Seller's Obligations. Seller shall have performed all agreements, obligations, covenants, and acts required by this Option Agreement to be performed by Seller at or prior to the Closing.

C. Seller's Representations and Warranties. Each of the representations and warranties given by Seller hereunder shall be true, correct and complete.

D. Change in Condition. There shall have not occurred any material adverse change in the nature, condition or extent of the Property whether by reason of damage by fire, the elements or other casualty, condemnation, other governmental action or otherwise.

3.2 Conditions to Seller's Obligations to Close. The obligation of Seller to close the transaction contemplated by this Option Agreement is subject to the fulfillment of each of the following conditions precedent on or prior to the Closing Date. In the event any one or more of the following conditions are not satisfied, then, in that event, Seller may (i) suspend further performance under this Option Agreement and pursue any and all remedies Seller may have against Buyer under this Option Agreement or otherwise at law or in equity; (ii) terminate this Option Agreement, in which event this Option Agreement shall terminate and be of no further force or effect whatsoever as between the parties; or (iii) waive such failure and proceed to Closing:

A. Tender of Purchase Price. Buyer shall have tendered the Purchase Price to Seller in conformity with the requirements hereof.

B. Documents. The documents required to be delivered to Seller pursuant to the terms of this Option Agreement shall have been delivered, including, but not limited to, the Ag Lease Assignment, and all documents reasonably required by the Title Company.

C. Buyer's Obligations. Buyer shall have performed all agreements, obligations, covenants, and acts required by this Option Agreement to be performed by Buyer at or prior to the Closing.

D. Buyer's Representations and Warranties. Each of the representations and warranties given by Buyer hereunder shall be true, correct and complete.

ARTICLE IV

DEFAULT PROVISIONS

4.1 **Default by Buyer.** If Buyer exercises the Option but the sale and purchase of the Property is not consummated because of Buyer's default, then Seller shall have all rights, powers, privileges, and remedies conferred hereunder and in law or by equity, all of which shall be cumulative and not exclusive.

4.2 **Default by Seller.** If, (i) because of Seller's default, Buyer does not exercise the Option, or the sale, purchase, and exchange of the properties is not consummated, or (ii) Seller defaults in the performance of its obligations hereunder, then Buyer shall have all rights, powers, privileges, and remedies conferred hereunder and in law or by equity, all of which shall be cumulative and not exclusive.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 **Risk of Loss.** Any risk of loss of the Property shall be borne by Seller until title has been conveyed to Buyer at Closing. In the event, prior to the Closing Date, that the improvements, if any, on the real property are materially damaged by fire, exposure, or any other casualty, Buyer shall have the right to rescind the exercise of the Option, or to proceed with the Closing if the Option has been (or is) exercised and receive an assignment of the applicable insurance proceeds as a result of such casualty.

5.2 **Real Estate Commissions.** Buyer and Seller represent that with the exception of Justin J. Hertz and Hayden Outdoors Real Estate, Seller's agent, neither have executed any listing agreement or other document with a real estate broker, agent, or salesperson. In the event that any real estate broker, agent, or sales person claims a commission, finder's fee, or other compensation as a result of this transaction, the party alleged to have entered into an agreement with such broker, agent, or sales person shall indemnify and hold the other party harmless from and against any such commission, finder's fee, or other compensation and all costs or expenses, including court costs and reasonable attorneys' fees which may be associated therewith.

5.3 **Time is of the Essence.** Time is of the essence of this Option Agreement and the entirety hereof.

5.4 **Parties in Interest.** This Option Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

5.5 **Entire Agreement.** This Option Agreement (and any schedules, exhibits, or documents referred to herein) constitutes the entire agreement of Buyer and Seller relating to the subject hereof. It supersedes any prior agreements or understandings among them and shall not be modified or amended in any manner except in writing by the parties.

5.6 **Governing Law.** All aspects of this Option Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

5.7 **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Option Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

5.8 **Assignment.** This Option Agreement may not be transferred or assigned by either party without the prior written consent of the other party. Such written consent shall not be unreasonably withheld.

5.9 **Cooperation.** Each party hereby agrees to sign, execute, acknowledge, and deliver any and all certificates of title, deeds, or other documents or papers necessary or appropriate and to do all other acts necessary or expedient to fully carry out and fulfill the terms, provisions, and intentions of this Option Agreement, including the execution and filing of a memorandum of the Option Agreement.

5.10 **Waiver.** One or more waivers of any covenants, conditions, rules or regulations by Buyer or Seller shall not be construed as a waiver of a further breach of the same or different kind at any other time.

5.11 **Section Headings.** The section headings of this Option Agreement are for reference purposes only and shall not be considered as indicating the parties' intentions regarding the respective sections nor in any way affect their construction.

5.12 **Alterations.** No alterations or modifications of any part of this Option Agreement or waivers of any of its provisions shall be effective or enforceable against any parties unless the same shall be made in writing and signed by the party to be charged.

5.13 **Counterparts.** This Option Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.14 **Memorandum.** The parties agree that Buyer has the right to record a memorandum of this Option Agreement with the Register of Deeds Office of Merrick County, Nebraska to provide notice of the rights Buyer has herein. Seller agrees to cooperate with Buyer and to execute such documents as are required to record the memorandum, including the Memorandum of Real Estate Option attached hereto as Exhibit "B".

5.15 **Notices.** All notices given pursuant to this Option Agreement by either party to the other shall be in writing and either personally delivered, or sent by electronic mail, or mailed by Certified or Registered Mail, postage prepaid, or sent by nationally recognized overnight courier, and addressed as provided below or at such other address or addresses as either party may designate by notice given to the other party. With respect to all notices so delivered, the same shall be deemed effective on the day sent. All notices shall be addressed to the parties as follows:

To Buyer: Platte River Recovery Implementation
Foundation, Trustee
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Attn: Jason Farnsworth
Email: farnsworthj@headwaterscorp.com

With a Copy to: Cline Williams Law Firm
233 South 13th Street, Suite 1900
Lincoln, Nebraska 68508
Attn: Trent Sidders
Email: tsidders@clnewilliams.com

To Seller: Wilbur Meyer Farms, Inc.
724 South Harrison Street
Grand Island, Nebraska 68803
Attn: James A. Willman
Email: JAWillman@aol.com

With a Copy to: Justin J. Hertel
Hayden Outdoors Real Estate
Email: justin@haydenoutdoors.com

5.16 **Severability**. If any term, covenant, or condition of this Option Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Option Agreement or the application of such terms, covenants, and conditions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Option Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.17 **Tax-Free Exchange**. Notwithstanding anything herein to the contrary, and in the event the Option is exercised by Buyer, each of the parties hereto shall have the right to require the other party to take all steps reasonably necessary in order to comply with the terms, conditions, and provisions of a tax-deferred exchange utilizing the qualified intermediary and qualified escrow account and qualified pledge agreement safe harbors under the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended and in effect, and the regulations promulgated thereunder. Any additional expenses in the nature of legal fees, filing fees or otherwise which may be incurred by either party as a result of such cooperation shall be, to the extent adequately segregated, documented, and reasonable in amount, reimbursed by the other party at closing and each party shall hold the other party harmless from any additional liability or expense as a result of such cooperation and indemnify such other party for the same.

5.18 **Survival**. The provisions of this Option Agreement shall survive the Closing and shall survive the delivery of the deed and the payment of all monies pursuant hereto.

WILBUR MEYER FARMS, INC.,

James A. Wilman

President

**Platte River Recovery Implementation
Foundation, Trustee**

Executive Director

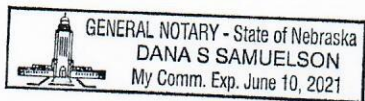
)

) ss.

)



Notary Public



)

1 ss.

)

The foregoing instrument was acknowledged before me this ____ day of April 2021, by Diane M. Wilson, Executive Director of the Platte River Recovery Implementation Foundation, Trustee, a Nebraska nonprofit corporation.

Notary Public

Exhibit "A"

Legal Description

Government Lots One (1), Two (2), and Three (3); The East Half of the Northwest Quarter (E1/2NW1/4); The South Half of the Southwest Quarter of the Northwest Quarter (S1/2SW1/4NW1/4); the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4); and Government Lot Four (4) EXCEPT that portion described in Deed recorded January 6, 1992 in Book A27, Page 217, All located in Section Sixteen (16), Township Eleven (11) North, Range Eight (8), West of the 6th P.M., Merrick County, Nebraska. Together with accretion lands thereto.