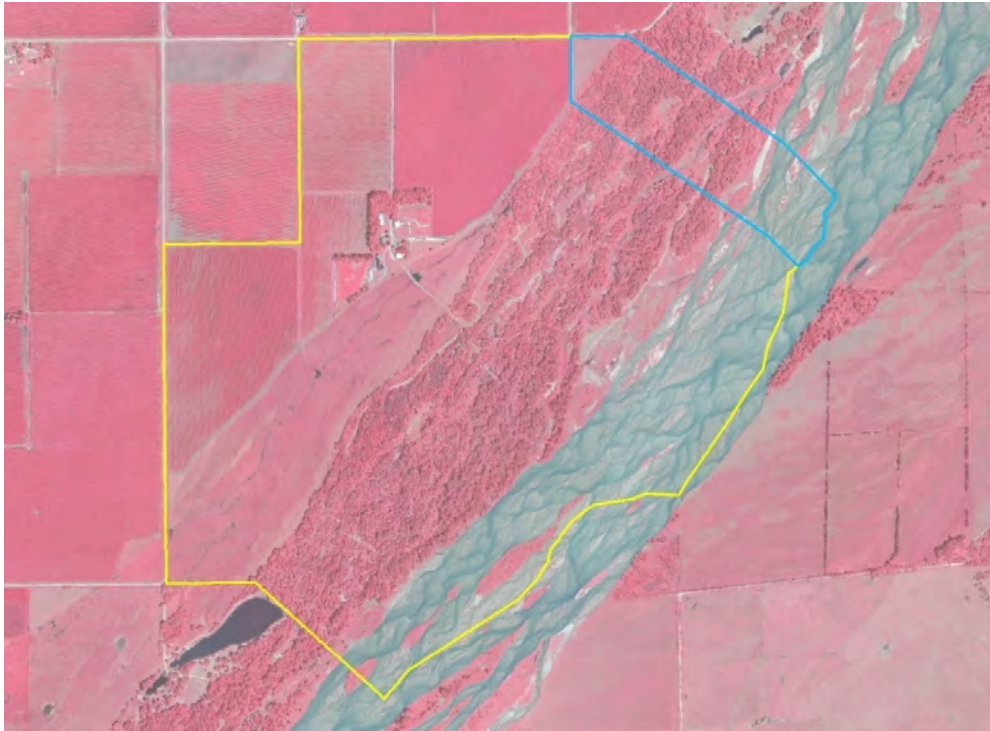




## LAND EVALUATION REPORT

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**



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## **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 , 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**

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



**Table 2 – Tract 2102 2005 Land Cover/Use Summary**

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

#### **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
<b>Riverine</b>	
Channel	114.44
<b>Buffer</b>	
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
<b>Riverine</b>	
Channel	16.46
<b>Buffer</b>	
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**

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



#### **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**

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

#### **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.

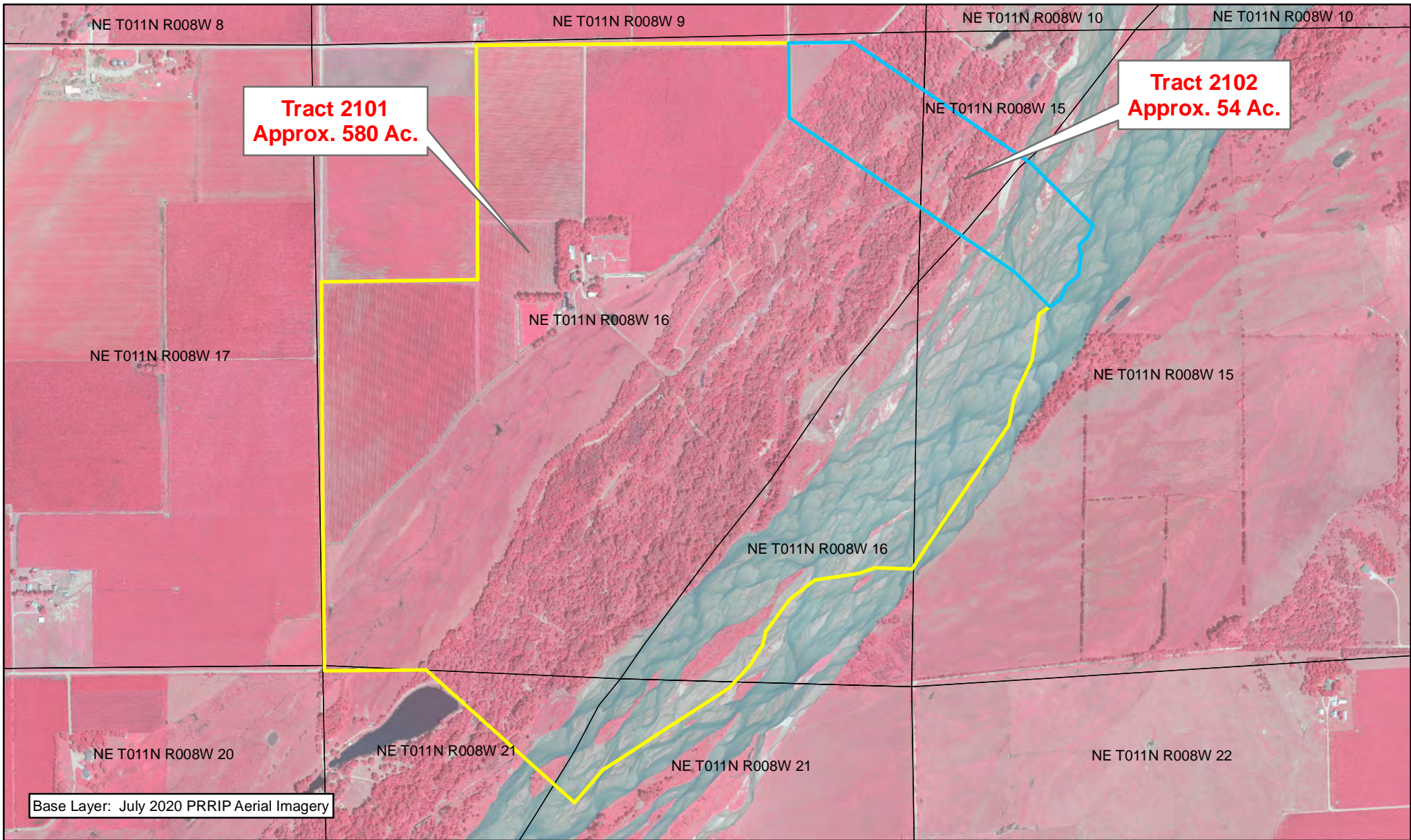
### **VII. LAC RECOMMENDATION**

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






**APPENDIX A – MAPS**


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**Legend**

-  Tract 2101
-  Tract 2102
-  Sections



 Miles

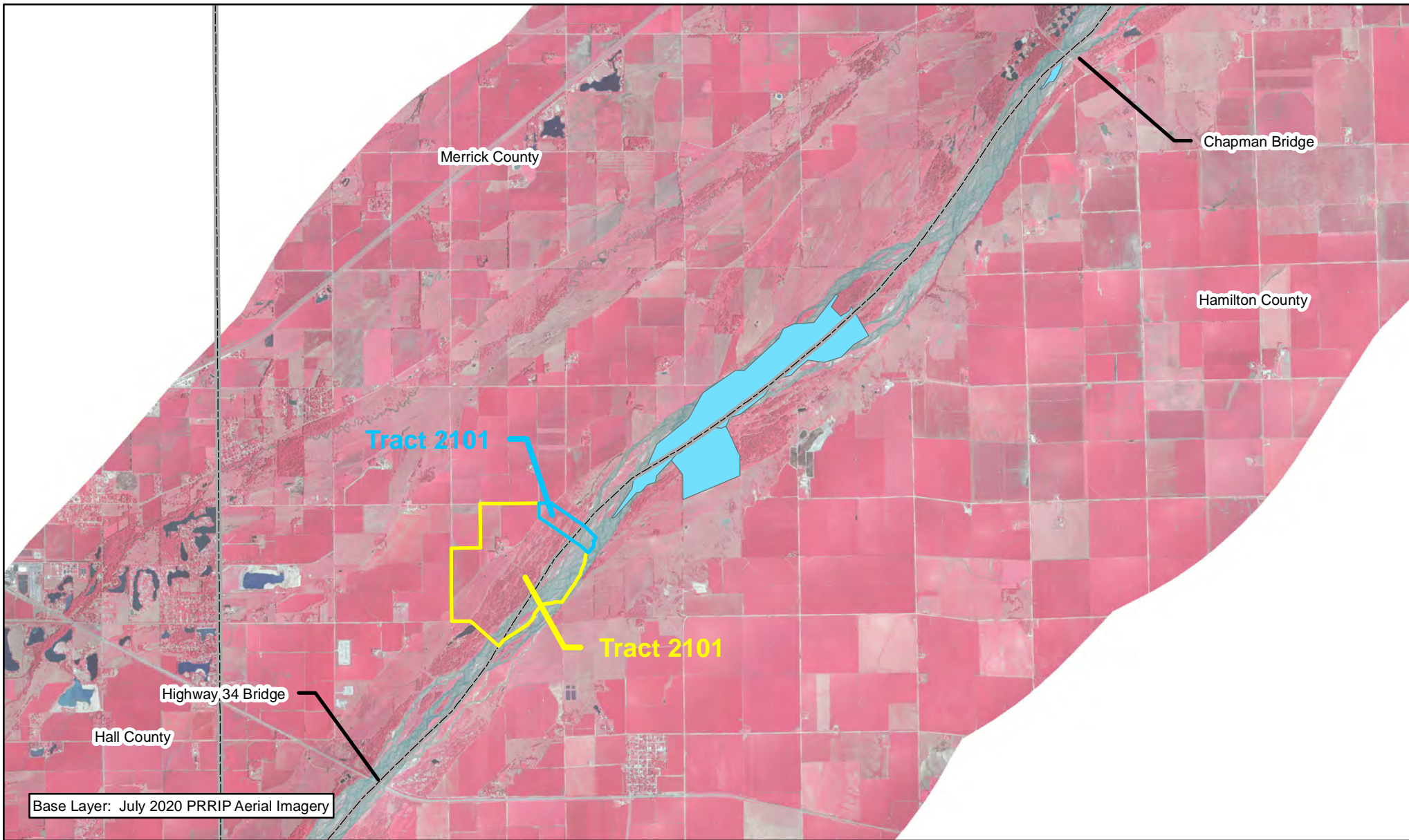
1

**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



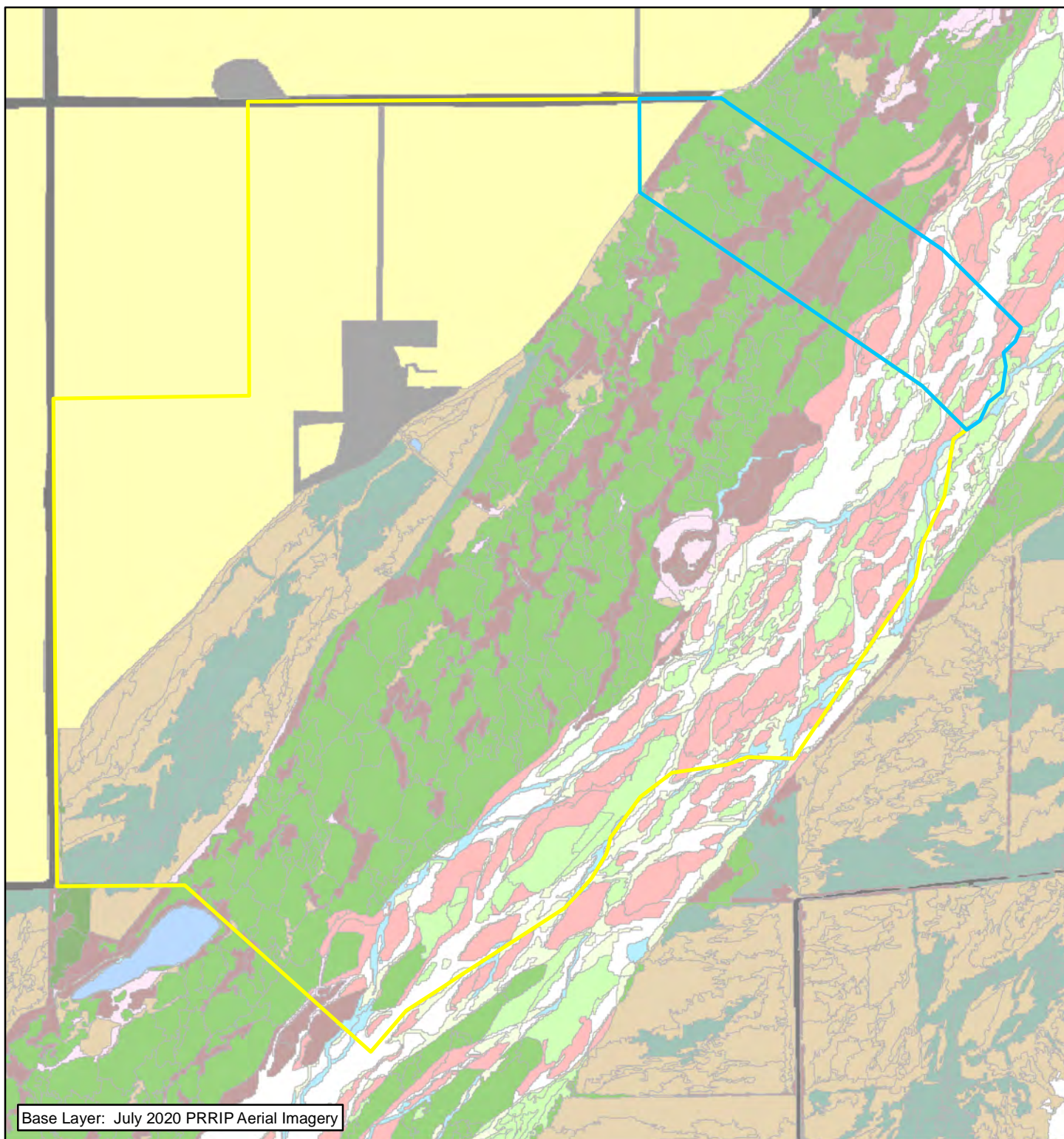
1 Miles

### TRACTS 2101 & 2102 LOCATION MAP

Date: 3/30/21  
By: TRT

Figure A-2





Base Layer: July 2020 PRRIP Aerial Imagery



Legend

- |  |   |
|--|---|
| <span style="border: 2px solid yellow; padding: 2px;"> </span> Tract 2101                                      | <span style="background-color: #d9ead3; border: 1px solid black; padding: 2px;"> </span> River Early Successional |
| <span style="border: 2px solid blue; padding: 2px;"> </span> Tract 2102  | <span style="background-color: #c6e0b4; border: 1px solid black; padding: 2px;"> </span> River Shrubland          |
| <span style="background-color: #ffffcc; border: 1px solid black; padding: 2px;"> </span> Ag                    | <span style="background-color: black; border: 1px solid black; padding: 2px;"> </span> Roads                      |
| <span style="background-color: #f4cccc; border: 1px solid black; padding: 2px;"> </span> Bareground/Sparse Veg | <span style="background-color: #cccccc; border: 1px solid black; padding: 2px;"> </span> Rural Developed          |
| <span style="background-color: #ccccff; border: 1px solid black; padding: 2px;"> </span> Canal/Drainage        | <span style="background-color: #ccccff; border: 1px solid black; padding: 2px;"> </span> Sand Pit                 |
| <span style="background-color: #cfe2f3; border: 1px solid black; padding: 2px;"> </span> Mesic Wet Meadow      | <span style="background-color: #ffffff; border: 1px solid black; padding: 2px;"> </span> Unvegetated Sandbar      |
| <span style="background-color: #f4cccc; border: 1px solid black; padding: 2px;"> </span> Phragmites            | <span style="background-color: #d9ead3; border: 1px solid black; padding: 2px;"> </span> Upland Woodland          |
| <span style="background-color: #f4cccc; border: 1px solid black; padding: 2px;"> </span> Riparian Shrubland    | <span style="background-color: #cccccc; border: 1px solid black; padding: 2px;"> </span> Urban/Suburban           |
| <span style="background-color: #cfe2f3; border: 1px solid black; padding: 2px;"> </span> Riparian Woodland     | <span style="background-color: #0000ff; border: 1px solid black; padding: 2px;"> </span> Warmwater Slough         |
| <span style="background-color: #a6c9ec; border: 1px solid black; padding: 2px;"> </span> River Channel         | <span style="background-color: #d9ead3; border: 1px solid black; padding: 2px;"> </span> Xeric Wet Meadow         |



0.25 Miles

## TRACTS 2101 & 2102 2005 LAND COVER/USE

Date: 3/30/21

By: TRT

Figure A-3








# Not Available



**Legend**

-  Tract 2101
-  Tract 2102



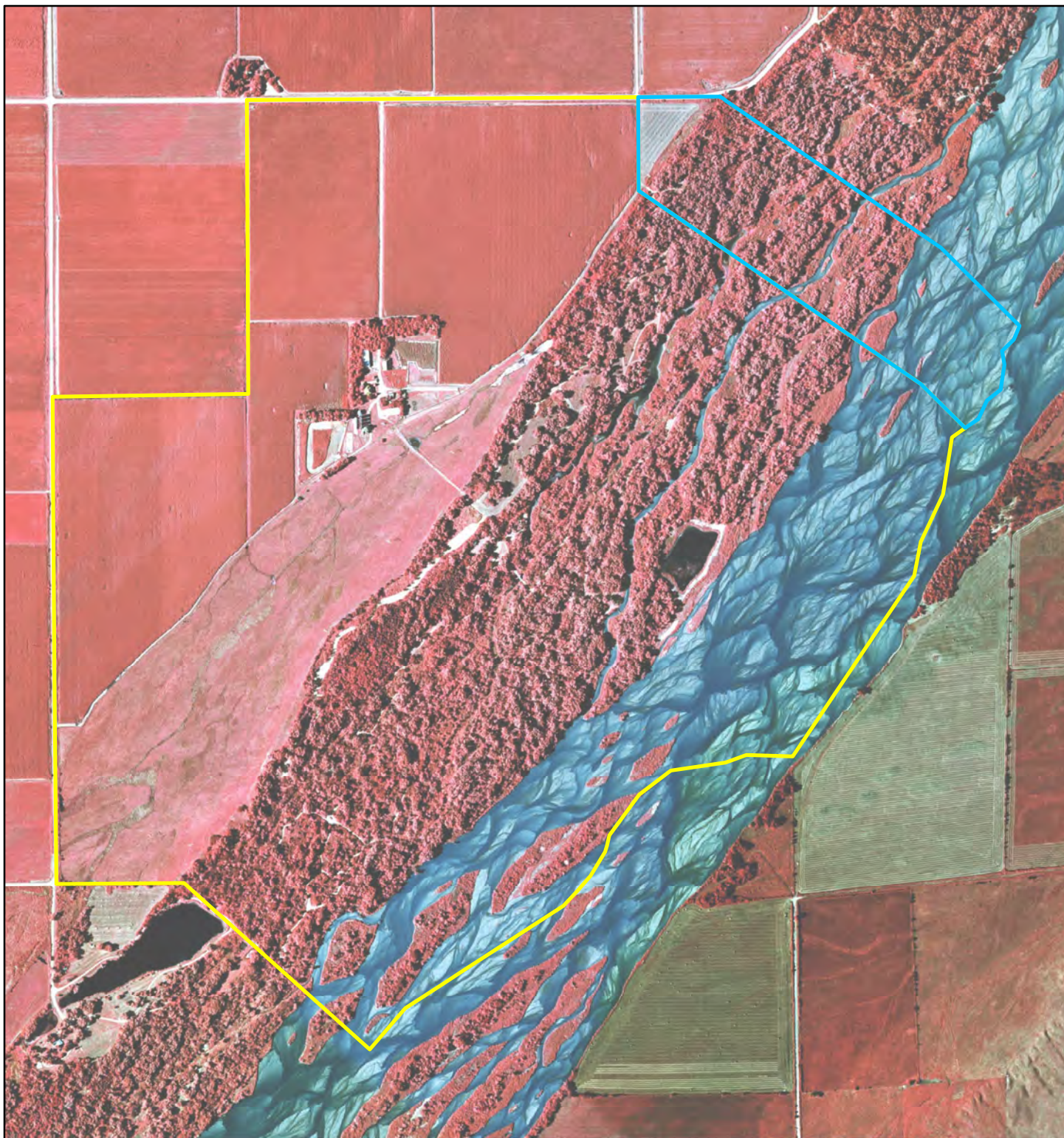
 Miles  
0.25

TRACTS 2101 & 2102  
1938 CIR IMAGERY

Date: 3/30/21  
By: TRT

Figure A-5





**Legend**

- Tract 2101
- Tract 2102



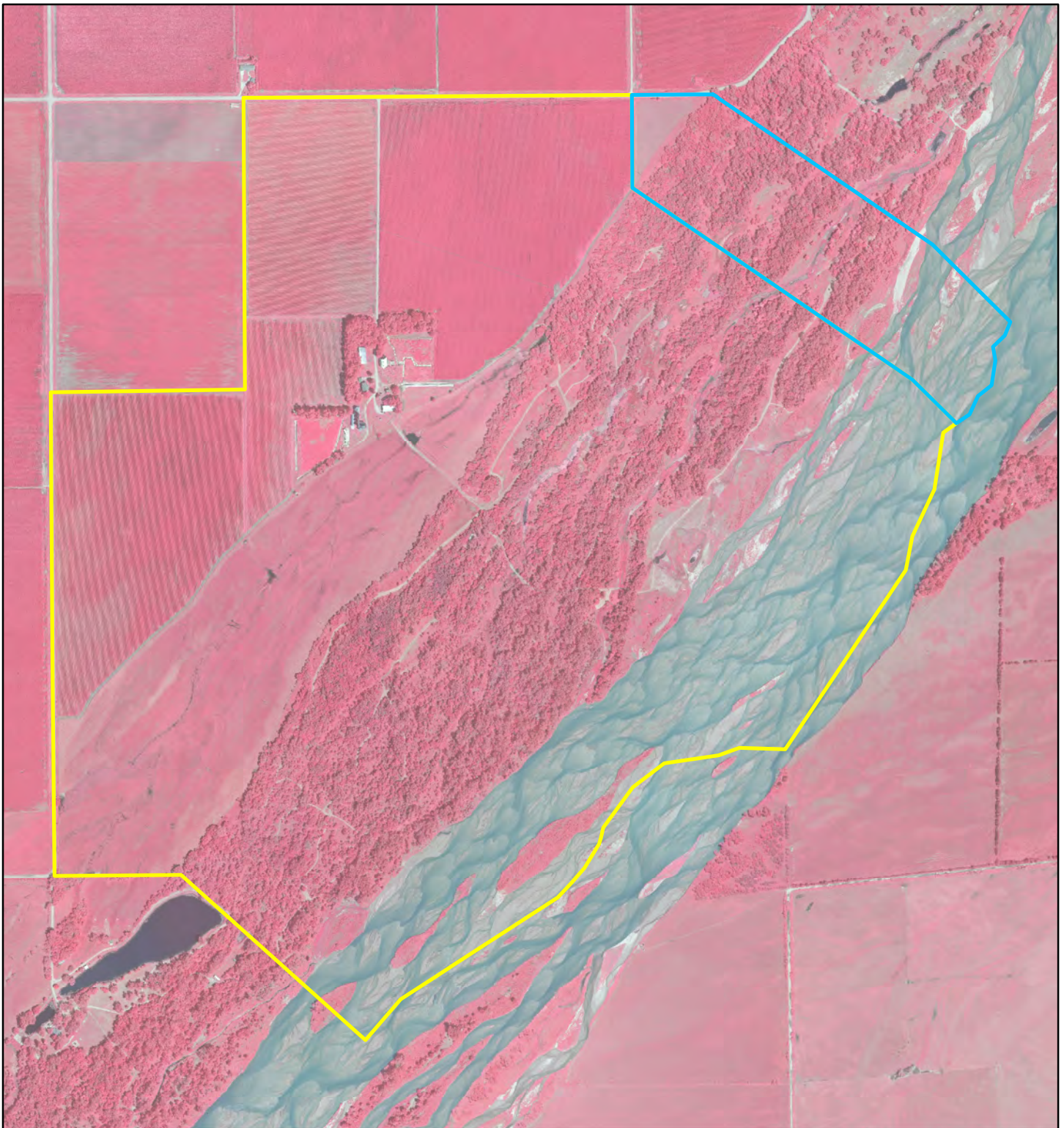
Miles  
0.25

**TRACT 2101 & 2102  
1998 CIR IMAGERY**

Date: 3/30/21  
By: TRT

**Figure A-6**






**Legend**

-  Tract 2101
-  Tract 2102



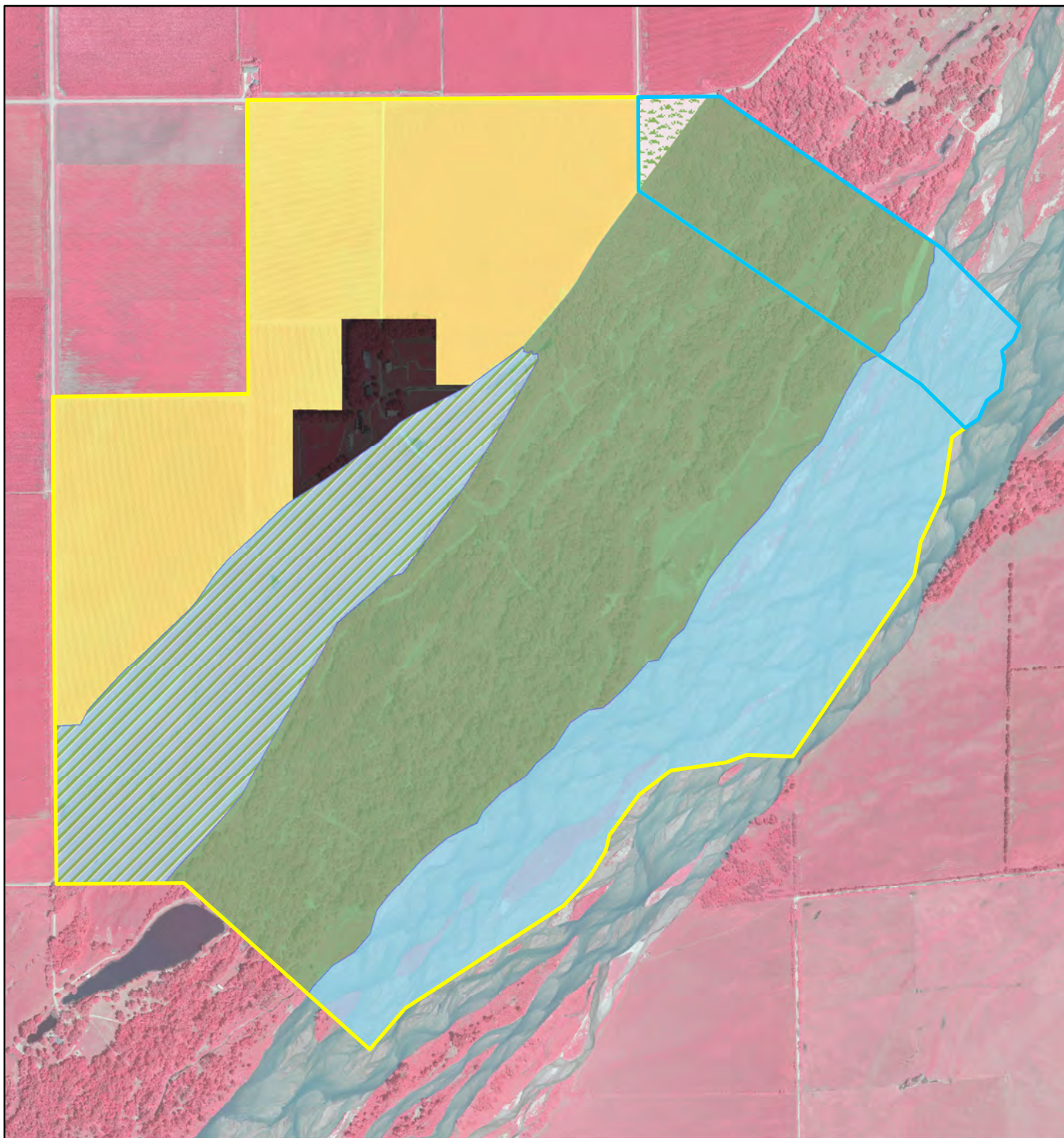
 Miles  
0.25

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 *C. Monroe* President  
Attest *David Wald* 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.

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**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>.

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## 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"**

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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.

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## 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.

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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.

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