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# **Section 1**

## **Governance**

## **POLICY INTRODUCTION/AMENDMENT/PASSAGE**

The Commissioner may propose new policies or policy amendments to existing policies to the Board. Upon request of the Commissioner, a proposal for a new policy or policy amendment shall be placed on the Board's agenda for action as follows:

1. Introduction and first reading. A brief explanation or summary of the proposed new policy or amendment (Measure) shall be presented to the Board. If the Measure is approved by the Board following the introduction and first reading, the Measure shall be placed on the agenda of the next scheduled meeting of the Board for second reading and adoption. When appropriate, the Measure shall be made available to the public.
2. Second reading and adoption. Prior to the second reading, the public shall be allowed an opportunity to comment on the Measure. The opportunity to comment will consist of written comments to the Commissioner which will be submitted to the Board during the second reading. The second reading will consist of a brief explanation or summary of the Measure. If the Board adopts the Measure following the second reading, the Measure shall take effect immediately, unless a different effective date is stated.
3. Amendments. Amendments to the Measure may be proposed at any time before final adoption of the Measure. Upon determination by the Board that adoption of an amendment constitutes a substantive change that significantly changes the meaning or effect of the Measure, the Board shall continue consideration of the second reading and adoption to the next meeting to permit further review and comment.

Emergency measures. The Board may, upon determination that an emergency or other circumstance requiring expeditious action exists, waive the requirement of a second reading and immediately approve the Measure following the introduction and first reading.

Board of University and School Lands  
Effective Date: September 27, 2018

# **Section 2**

## **General**

## DEFINITIONS

**Definitions.** The following definitions apply to this manual:

1. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
2. "Bank" means the Bank of North Dakota established under North Dakota Century Code chapter 6-09.
3. "Board" means the Board of University and School Lands.
4. "Commissioner" means the Commissioner of University and School Lands.
5. "Department" means the office of the Commissioner and the Department of Trust Lands.
6. "Fair market value" means the price set by the Commissioner after an analysis of prices paid for similar products or services in the area of the leased premises.
7. "Funds" means monies under control of the Board.
8. "Lease" means a contract entered into between the Board and a third party for agricultural use of trust lands.
9. "Leased premises" means the land area subject to a given lease for agricultural use.
10. "Loans" means loans secured by a first mortgage on farm or ranch lands in the state. The collateral for these loans must not be encumbered by any prior mortgage, lien, tax lien, judgment, or other prior encumbrances, and all real property taxes must be current.
11. "Mortgagor" means a person who is a resident of the state of North Dakota or a legal entity registered in the state of North Dakota and conducting business in the state.
12. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
13. "President" means the President of the Bank of North Dakota as provided for in North Dakota Century Code chapter 6-09.
14. "Trust" means permanent trusts and other funds managed or controlled by the Board.
15. "Trust lands" means any property owned by the state of North Dakota and managed by the Board.

Effective Date:       October 25, 2018; December 17, 2018; March 28, 2019  
Revised:               January 1, 2020

North Dakota Board of University and School Lands: General

**FEES**

The following fees are non-refundable, unless otherwise noted or unless it is determined by the Commissioner of University and School Lands that circumstances require the fees be waived:

**General Fees:**

Certified copies	\$ 25.00 per document
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**Minerals Fees:**

**1. Coal leasing**

Application fee	\$650.00 per lease
Lease assignment fee	\$ 25.00 per assignment per lease

**2. Oil and gas leasing**

Lease assignment fee	\$ 25.00 per assignment per lease
Oil & Gas lease extension or amendment application fee	\$250.00 per lease

**3. Subsurface mineral leasing – potash and other subsurface minerals mining solution**

Application filing fee	\$ 50.00 per tract
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**Surface Fees:**

**1. Construction Aggregate Leasing**

Application fee for Lease, Amendment, assignment, extension, renewal	\$250.00
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**2. Encumbrances**

Application fee for Encumbrances, Amendment, assignment, extension, renewal	\$250.00
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**3. Land sale/exchange application fee**

\$500.00 per tract
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**4. Appraisal fee**

based on actual cost
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**5. Recording fee**

based on actual cost
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**6. Surface Lease assignment**

\$ 25.00 per lease
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General Authority: N.D.C.C. § 15-01-02.1; N.D. Admin. Code §§ 85-04-02-01, 85-04-04-01, 85-06-01-06, 85-06-02-03, 85-06-02-12, 85-06-07-02

Effective Date: June 26, 2014

Revised: July 1, 2020

## **CONTINUING APPROPRIATION AUTHORITY POLICY**

Continuing appropriation authority is provided in state law for certain operating expenditures. In addition to that specific statutory authority, the Board provides guidance as to approved expenditures outlined below.

### **Unclaimed Property.**

Unclaimed property expenses as outlined in N.D.C.C. § 47-30.1-23 may be paid under continuing appropriation authority. Those expenses include payment of claims, service charges for address verification and updates, advertising costs, audit services, legal costs, computer software, and outreach efforts.

### **Grant Land, Non-Grant Land, Mineral Leases, and Investments.**

N.D.C.C. §§ 15-03-16, 15-04-24, 15-05-19, 15-06-22, 15-07-22, and 15-08-04 permit certain expenditures under continuing appropriation and appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Those expenditures specifically authorized by the Board under continuing appropriation authority include:

1. Equipment and travel expenses for Surface Division staff and temporary field inspectors, and temporary field inspectors' salaries.
2. Advertising surface and mineral lease auctions. N.D.C.C. § 15-04-09 requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts' value.
3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.
4. Costs of hiring independent contract firms to perform accounting, audit, compliance review, or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.
5. Equipment and travel expenses for Minerals Division staff.
6. Software acquisition, development, maintenance costs, service fees, and licenses fees necessary to effectively manage, protect, and secure the assets managed by the Board.

Effective date: May 26, 2011 (effective July 1, 2011)

Revised: February 25, 2016; July 29, 2020 (effective July 1, 2020)

### **MEDIA RELATIONS POLICY**

The Board seeks to work cooperatively with the media to disseminate information of public interest and concern in an accurate, complete, and timely manner consistent with the official position of the Board. The Commissioner will receive directive from the Board.

1. To achieve the Board's goal, the Commissioner is designated as the Board's Public Information Officer (PIO) and is responsible for implementing this policy. When the Commissioner is unavailable, the Commissioner may designate a Department spokesperson as the Acting Board PIO.
2. The Commissioner should engage with the media in a courteous, polite, and professional manner. Any media inquiries received by Department staff should be referred immediately to the Commissioner for response.
3. Inquiries from the media have a high priority and the Department should respond as quickly and accurately as possible. Every effort should be made to meet media deadlines and to ensure that all information released is accurate and complete.
4. When contacted by the Commissioner for information needed to respond to a media inquiry, all Department Division Directors shall immediately provide the Commissioner the most accurate and complete information available for the response.
5. If the Commissioner determines that a response to the media can best be achieved by having someone with more background or expertise speak for the Board on a particular topic, the Commissioner may designate one of the authorized spokespersons to assist with or give the Board's response.
6. To assure that the members of the Board have accurate, complete, and timely information to fulfill their responsibilities, Board members shall be informed by email of the substance of significant media inquiries and of the Commissioner's official response. They shall be notified of all official Board press releases.
7. The Commissioner may not make policy statements to the media on behalf of the Board about any issue before the Board until the Board has taken an official position on the issue.



### **Authorized Board Spokespersons**

The Commissioner, in his or her judgment, may designate the following Authorized Board Spokespersons for a particular response:

1. Department Division Directors
2. Department Public Relations Specialist; and
3. Board Members

### **Records Requests**

1. Media requests for records will be handled in accordance with this policy, and consistent with the North Dakota Open Records law, N.D.C.C. ch. 44-04.
2. The Commissioner must be notified of all media records requests.
3. The Commissioner shall forward the request to the person responsible for responding to open records requests.
4. The Commissioner is responsible for assuring that all records requests are handled in an accurate, complete, and timely manner.

### **Privileged and Private Information**

1. Most of the records and matters of the Board and Department are public information which citizens, including the media, have the right to access.
2. If a media request for an interview or for records appears to involve a subject matter that may be privileged or confidential, the Commissioner shall consult with the Attorney General's Office for review.

### **Personal Points of View**

Board members answering media inquiries regarding Board issues should state that their views may not necessarily represent the views of the Board.

### **Board And Department-Initiated Information**

1. Media contact, including news releases, media advisories, and personal contacts with reporters and editors, on behalf of the entire Board must be processed through the Commissioner.
2. Employees seeking to publicize Department events or activities or needing to collaborate with the media regarding information important to the public, shall coordinate with the Commissioner, and Board members should consider doing so as well.

General Authority:

Effective Date: August 26, 2021

Revised:

# **Section 3**

# **Surface Land**

# **Management**

## **FAIR MARKET VALUE MINIMUM RENT POLICY**

In order to provide a uniform and equitable leasing system for trust lands, the Fair Market Value Minimum Rent (FMV) policy uses a market value approach to establish a minimum opening bid at public auction. The Department contracts with a vendor to conduct a survey to assess land cash rents and land prices from agricultural owners and producers at a county level throughout North Dakota (County Rents and Prices Survey (Survey)) on an annual basis. The Survey provides statistically reliable land use data to help the Department gain insight into current rental rates.

The Commissioner may adjust the grassland Resource Area Productivity Index, Region Cropland Productivity Index, and fencing and water adjustments, as needed. The Board shall review any substantive adjustments that would impact the entire method.

Technical adjustments may be necessary when errors are discovered in the tract data. The Commissioner is authorized to make these and other technical adjustments that impact the minimum bid for individual tracts before the public auction or during the term of a lease, provided the lease has not been bid up.

### **Grassland FMV**

$$\begin{aligned} & (((((RR - F) \times SE) \times (GPI \div RAPI)) - BW^*) \times \text{Grass Acres}) - W^* + (BF^* \times \text{Grass Acres}) + \\ & LF = \text{Grassland Minimum Bid} \end{aligned}$$

1. Regional Rent (RR): The RR is calculated based on a three-year moving average rental rate for pastureland (grassland), as annually reported in the Survey. Individual counties will typically be a region. Counties may be combined to create a region based on land resource similarity, adjacent land ownership, presence of trust lands, and low survey report numbers. (Addendum A - Grassland Leasing Regions map).
  - a. If one county is designated as a region the RR is based on that county's average rental rate.
  - b. If a region includes more than one county the RR is based on the lowest county average rental rate of the counties in the region.
2. Fence (F): To recognize that in most cases the Board does not provide or maintain fences, while most private landlords do, a deduction will be applied to regional rent. (Addendum B - Fence Adjustment Determination for Fair Market Value Minimum Rent Policy).
3. Potential Survey Error (SE): Because of the potential for error in the Survey, a downward adjustment of 10% (0.90) will be applied to each regional rent. This adjustment compensates for differences reported by those who leased land, versus those who did not lease land, to keep trust lands competitively priced.

## North Dakota Board of University and School Lands: Surface Land Management

4. Grassland Productivity Index (GPI): The Department prepares a Grassland Productivity Worksheet to rate a tract's potential rangeland forage productivity. (Addendum C - Grassland Productivity Worksheet). Tracts that potentially produce more forage in a land resource area may be priced proportionately higher, and tracts with lower potential forage production may be priced proportionately lower, than an average tract.

For tracts not surrounded by Forest Service National Grasslands, the tracts' GPI are calculated at the "high good" productivity rate, while tracts surrounded by or adjacent to Forest Service National Grasslands or Tribal or reservation land are calculated at the "mid good" productivity rate. These ratings are based on the Natural Resources Conservation Service method of determining forage productivity. The lower GPI for tracts surrounded by or adjacent to Forest Service National Grasslands or Tribal or reservation land more closely reflects long term average use on trust land in those areas.

5. Resource Area Productivity Index (RAPI): The RAPI is the average potential grassland productivity for trust lands in a land resource area. (Addendum D – Grassland Resource Areas map and Addendum E – Land Resource Area Productivity Chart). The average is calculated by adding the carrying capacity, at the high good rating, of each individual tract within the land resource area and dividing that sum by the number of grass acres for those tracts within the land resource area.
6. Badlands Water Adjustment (BW\*): In the Badlands, where there is lower grassland productivity, it is not always cost effective to develop water. Therefore, to recognize that livestock water sources serve multiple Badlands' tracts shared by multiple land owners, a deduction on a per grass acre basis may be applied in-lieu of providing rent credit or cost share for developing water on trust lands. (Addendum F - Badlands Water Adjustment Determination for Fair Market Value Minimum Rent Policy and Addendum G – Badlands Water Adjustment Tracts map).
7. Water Adjustment (outside Badlands) (W\*): If it is determined that there is no potential development for permanent livestock water sources on the tract or on adjacent tracts, the GPI will be reduced by 40% (0.60).
8. Board Owned Fencing (BF\*): For tracts where the Board owns a boundary fence, a positive adjustment is made to negate any Fencing (F) deduction. (Addendum B - Fence Adjustment Determination for Fair Market Value Minimum Rent Policy).
9. Surface Lease Fee (LF): A lease fee of five cents per total tract acre will be charged annually to partially offset the expenses of conducting lease auctions, issuing leases, and maintaining surface lease records.

*\* These are tract specific adjustments that take into account a tract's unique characteristics.*

10. Grassland Opening Bid Limits.

- a. Minimum: The minimum opening bid for grassland will not be less than 25% of the three-year moving average of the regional rent adjusted for potential survey error and fencing.
- b. Maximum: The maximum opening bid for grassland will not be greater than 125% of the three-year moving average of the regional rent adjusted for potential survey error and fencing.

**Cropland FMV**

$$(((\text{CPI} \div \text{RCPI}) \times (\text{RR} \times \text{SE})) \times \text{Cropland Acres}) + \text{LF} = \text{Cropland Minimum Bid}$$

1. Cropland Productivity Index (CPI): The Department prepares a Cropland Productivity Worksheet to rate a tract's potential cropland productivity. (Addendum H - Cropland Productivity Worksheet). Tracts that have a higher than average potential cropland productivity may be priced proportionately higher, and tracts with lower potential cropland productivity may be priced proportionately lower, than an average tract.
2. Region Cropland Productivity Index (RCPI): The RCPI is the average potential cropland productivity for all cropland in a region. (Addendum I - Region Cropland Productivity Index map). The acreage of each cropped soil in a region is multiplied by the soil's crop productivity index. The totals for each cropped soil are added and divided by the total cropland acres in a region.
3. Regional Rent (RR): The RR will be calculated based on a three year moving average of the most frequently reported non-irrigated cropland rental rate, as annually reported in the Survey. Individual counties will be a region.
4. Potential Survey Error (SE): Because of the potential for error in the Survey, a downward adjustment of 5% (0.95) will be applied to each regional rent. This adjustment compensates for differences reported by those who leased land, versus those who did not lease land, to keep trust lands competitively priced.
5. Surface Lease Fee (LF): A lease fee of five cents per total tract acre will be charged annually to partially offset the expenses of conducting lease auctions, issuing leases, and maintaining surface lease records.
6. Cropland Opening Bid Limits.
  - a. Minimum: The minimum opening bid for cropland will not be less than the three-year moving average of the regional rent as reported by the Survey.
  - b. Maximum: The maximum opening bid for cropland will not be greater than 105% of the three-year moving average of the regional rent for cropland reported by the Survey.

**Hayland FMV**

$(RR \times \text{Hayland Acres}) + LF$  (If  $HPI < 0.50$ )

**OR**

$((RR \times 1.10) \times \text{Hayland Acres}) + LF$  (If  $HPI > \text{or} = 0.50$ )  
= Hayland Minimum Bid

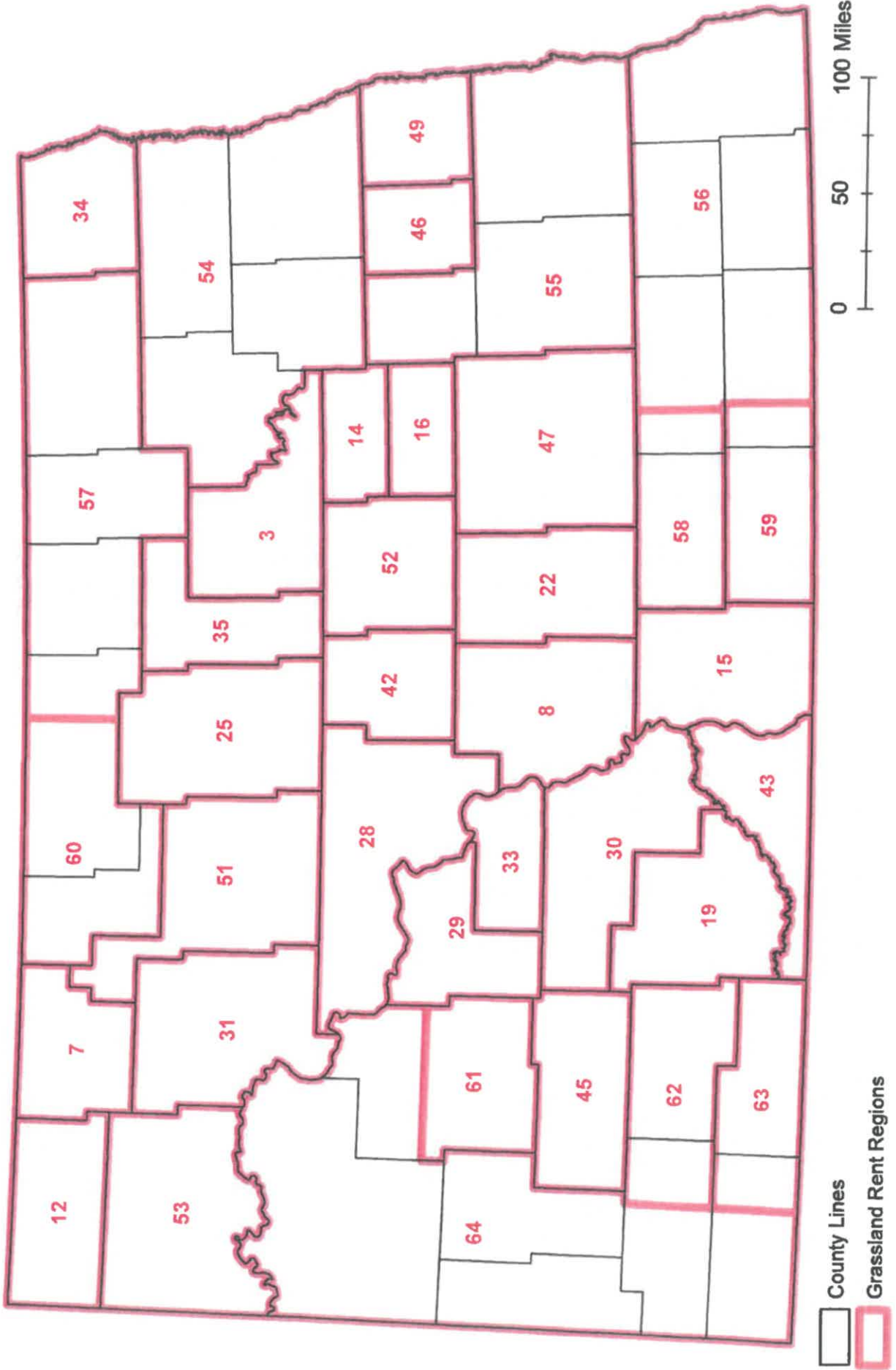
1. Regional Rent (RR): The RR will be based on a three-year moving average rental rate for pastureland (grassland), as annually reported in the Survey. Individual counties will be a region. (Addendum J – Region Hayland Productivity Index map).
2. Hayland Productivity Index (HPI): The HPI is calculated by taking the individual tract's hayland tons per acre divided by the region's highest hayland tons per acre. (Addendum K - Hayland Productivity Worksheet).
3. Surface Lease Fee (LF): A lease fee of five cents per total tract acre will be charged annually to partially offset the expenses of conducting lease auctions, issuing leases, and maintaining surface lease records.

**Opening bid for terminated leases**

1. If a lease is terminated, the tract may be offered at public auction for the remainder of the lease term, not to exceed the expiration date of the original lease.
2. When a lease terminates, the opening bid for that tract at the next auction will be set as follows:
  - a. For a tract that leased for the minimum opening bid, the opening bid will be calculated using the tract's current FMV.
  - b. For a tract that leased for higher than the minimum opening bid, the opening bid will be calculated at the midpoint between the current FMV and the terminated lease amount.
  - c. For a tract that leased for higher than the minimum opening bid and terminated twice within the five year lease term, the opening bid will be the previous lease amount.
  - d. For a tract that remains unleased for a calendar year, the opening bid will be calculated using the tract's current FMV.

Effective Date: December 17, 2018  
Revised: January 1, 2020

# Grassland Leasing Regions





1707 North 9th Street  
PO Box 5523  
Bismarck, ND 58506-5523  
Phone: (701) 328 – 2800  
Fax: (701) 328 – 3650

<https://land.nd.gov>



Jodi A. Smith, Commissioner

## MEMORANDUM

Date: October 8, 2018

To: Jodi Smith  
Commissioner of University and School Lands

Michael Humann  
Surface Division Manager

From: Joseph Stegmiller *JMS*  
Natural Resource Professional

RE: Fence Adjustment Determination for Fair Market Value Minimum Rent Policy

The fence adjustment was established in 1989 to provide a rent reduction to compensate for the lack of fence on school trust lands. The initial adjustment was set at \$1.50 per grass acre based on the material labor cost of the fence and the interest rate on a 5 year loan. The fence adjustment was reviewed in 2013 with the adjustment remaining at \$1.50 per acre reduction. The 2013 review found the cost of materials had increased but the interest rates had substantially decreased which kept the fence adjustment the same.

The following parameters were established for the fence adjustment in 2013:

- Average tract size of 320 acres which requires 2.5 miles of fence
- Three strands of 12.5 gauge barbed wire
- 5 ½ foot steel posts with twenty foot post spacing
- 5 year loan at interest rate of 4.75% of material cost
- Labor equals material costs, while maintenance after 5 years will equal interest amount
- 30 year life (material and labor)
- 25% materials salvage value

### Review of Fence Adjustment

A review of the fence adjustment was conducted to determine any changes in material costs and interest rates. Material costs were obtained from Farm and Home Supply (Bismarck Store) and Tractor Supply Company (website). Interest rates for a farm operating loan was obtained from Farm Credit Services of Mandan. The average tract size, life span of fence, and salvage value was determined to be valid and were not changed.

### Material Description and Costs

Description	Amount	Cost/Unit	Subtotal
12.5 gauge barbed wire	30	\$64.99	\$1,949.70
5 ½ foot steel fence posts (plus) clips	645	\$3.99	\$2,573.55
Wood Posts (5-6"x8', treated)	27	\$18.98	\$512.46
Wood brace timbers (4"-8', treated)	15	\$9.49	\$142.35
Smooth brace wire (9 gauge)	4	\$13.98 per 10 lb. (171 ft.)	\$55.92
Total cost of Fencing Materials			\$5,233.98

The cost of fence materials for 2.5 miles of fence was comparable to the 2013 cost with a slight reduction. The cost of materials in 2013 was \$5,480.00 which is \$246.02 more than the 2018 total.



**Average Interest Payment of a \$5,233.98 loan at 6.2% Interest:**

Year	Payment	Principal	Interest	Balance
Yr1	\$1,270.54	\$940.51	\$324.51	\$4,382.47
Yr2	\$1,270.54	\$998.83	\$271.71	\$3,383.64
Yr3	\$1,270.54	\$1,060.75	\$209.79	\$2,322.89
Yr4	\$1,270.54	\$1,126.52	\$144.02	\$1,196.37
Yr5	\$1,270.54	\$1,196.37	\$74.17	\$0.00
Average Interest Payment			\$204.84	

The average interest rate of a farm operating loan increased from 4.75% in 2013 to 6.2%.

**The following parameters were established for the Fence Adjustment in 2018:**

- Average tract size of 320 acres which requires 2.5 miles of fence.
- Three strands of 12.5 gauge barbed wire (2-barbed)
- 5 ½ foot steel posts (heavy duty) with twenty foot post spacing
- 5 year loan at interest rate of 6.2% of material cost
- Labor equals material costs, while maintenance after 5 years will equal interest amount
- 30 year life (material and labor)
- 25% materials salvage value

$$\text{Fence Adjustment (per acre)} = (((MC \times (1 - S)) + LC) + LS) + AI) + TS$$

MC = Material Cost

S = Salvage Value

LC = Labor Cost

LS = Life Span of Fence

AI = Average Interest of 5 year loan

TS = Tract Size

$$\text{\$1.59 per acre} = (((\$5,233.98 \times (1 - 0.25)) + \$5,233.98) + 30 \text{ years}) + \$204.84) + 320 \text{ acres}$$

**Recommendation**

Based on the information gathered in the review, it is recommended that the Fence Adjustment be increased from \$1.50 to \$1.60 (\$1.59 rounded to the nearest tenth cent).

*Michael Humann*

Michael Humann  
Manager, Surface Management Division

*10-08-2018*

Date

*Jodi Smith*

Jodi Smith  
Commissioner of University and School Lands

*10-09-18*

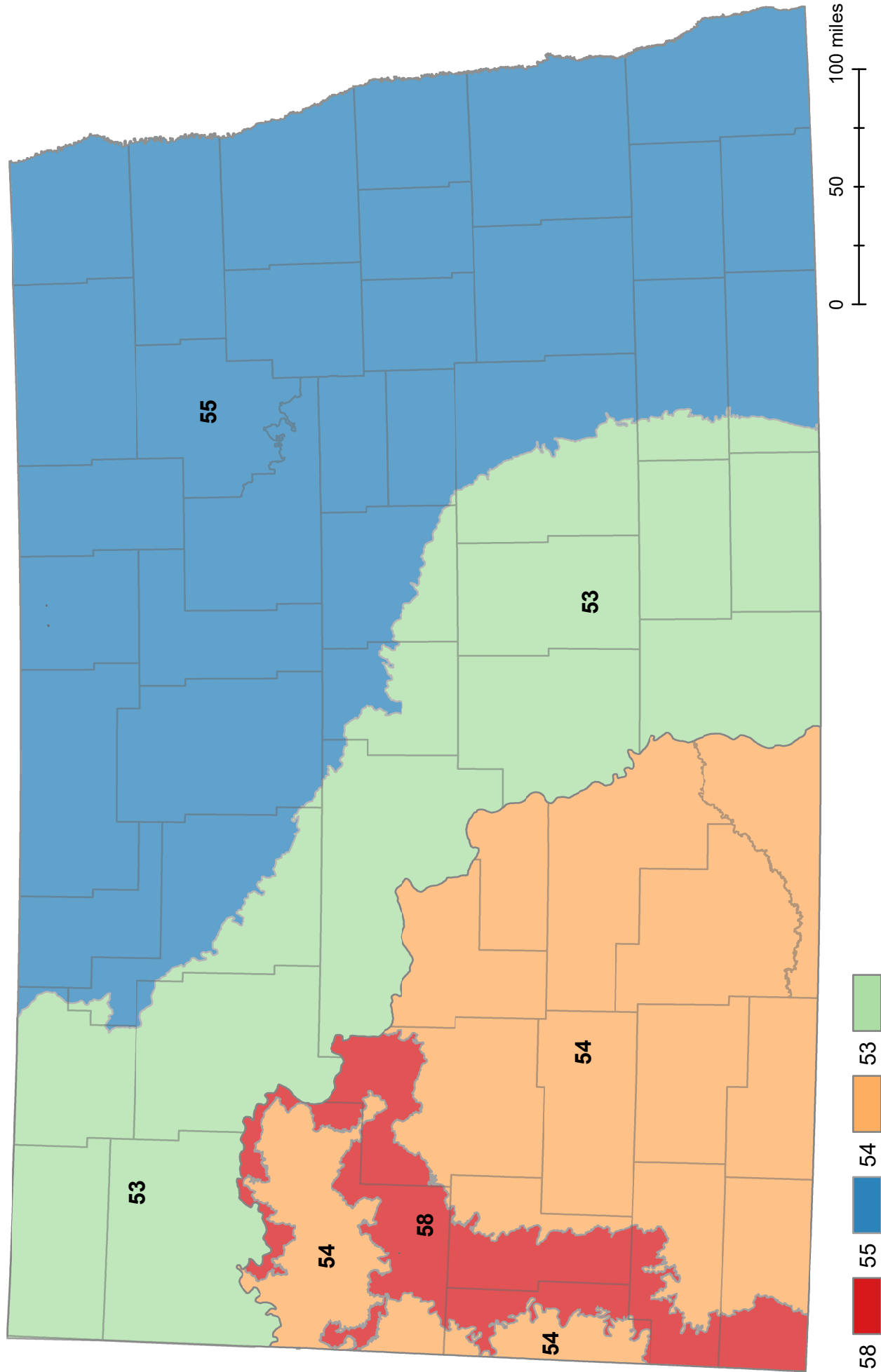
Date

## GRASSLAND PRODUCTIVITY WORKSHEET

Subdivision	Section	Township	Range	County

Soil Symbol	Range Site	% Range Site	Acres	Adjusted Acres	AUMs/AC	AUMs	Acres
							<b>Total</b> _____  <b>Grass</b> _____ <b>Hay</b> _____ <b>Crop</b> _____  <b>Water</b> _____   <b>Trees</b> _____   <b>Barren</b> _____   <b>Other</b> _____
<b>Date</b> _____  <b>Reclass</b> yes ____ no ____  <b>Prepared By:</b> _____			<b>Mid Good</b> <b>Total AUMs</b> _____  <b>High Good</b> <b>Total AUMs</b> _____				<b>PI =</b> _____ <b>(AUMs/grass acre)</b>  <b>PI =</b> _____ <b>(AUMs/grass acre)</b>

# Grassland Resource Areas



LAND RESOURCE AREA PRODUCTIVITY CHART

Ecological Site (abbreviation)	Original Range Site (abbreviation)	High Good (HG) and Mid Good (MD) Stocking rates in Animal Unit Months per acre by Ecological Site											
		Land Resource Area											
		53			54			55			58		
		HG	MG		HG	MG		HG	MG		HG	MG	
Badlands (BL)	Barren	0.00	0.00		0.00	0.00		0.00	0.00		0.00	0.00	
Badlands Fan (BaF)	Thin Upland (TU)	0.53	0.44		0.45	0.38		0.60	0.50		0.30	0.25	
Choppy Sands (CS)	Thin Sands (Tsa)	0.45	0.38		0.38	0.32		0.53	0.44		0.30	0.25	
Clayey (Cy)	Clayey (Cy)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Clayey Overflow (CyOv)	Overflow (Ov)	0.83	0.69		0.75	0.63		0.90	0.75		0.60	0.50	
Clayey Steep (Cys)	Clayey (Cy)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Clayey Terrace (CyT)	Clayey (Cy)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Claypan (Cp)	Claypan (Cp)	0.45	0.38		0.38	0.32		0.53	0.44		0.30	0.25	
Closed Depression (CD)	Closed Depression (CD)	0.75	0.63		0.68	0.57		0.89	0.74		0.50	0.42	
Deep Marsh (DM)	Wet Meadow (WM)	1.20	1.00		1.20	1.00		1.20	1.00		1.00	0.83	
Dense Clay (DC)	None	0.34	0.28		0.30	0.25		0.40	0.33		0.20	0.17	
Discharge Closed Depression (DCD)	Clayey (Cy)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Flat Bottom Wooded Draw (FBWD)	Wooded (trees)	0.12	0.10		0.12	0.10		0.12	0.10		0.12	0.10	
Limy (L)	None	0.45	0.38		0.38	0.32		0.53	0.44		0.30	0.25	
Limy Residual (LR)	None	0.45	0.38		0.38	0.32		0.53	0.44		0.30	0.25	
Limy Sands (Lsa)	Thin Sands (Tsa)	0.45	0.38		0.38	0.32		0.53	0.44		0.30	0.25	
Limy Steep (Lst)	None	0.45	0.38		0.38	0.32		0.53	0.44		0.30	0.25	
Limy Subirrigated (LSB)	Limy Subirrigated (LSb)	1.05	0.88		0.88	0.73		1.13	0.94		0.72	0.60	
Linear Meadow (LnM)	Wet Meadow (WM)	1.20	1.00		1.20	1.00		1.20	1.00		0.80	0.70	
Loamy (Ly)	Silty (Si)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Loamy Alfic (LyA)	Wooded (trees)	0.12	0.10		0.12	0.10		0.12	0.10		0.12	0.10	
Loamy Overflow (LyOv)	Overflow (Ov)	0.83	0.69		0.75	0.63		0.90	0.75		0.60	0.50	
Loamy Steep (LySt)	Silty (Si) or Loamy (Ly)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Loamy Terrace (LyT)	Overflow (Ov)	0.83	0.69		0.75	0.63		0.90	0.75		0.60	0.50	
Overflow (Ov)	Overflow (Ov)	0.83	0.69		0.75	0.63		0.90	0.75		0.60	0.50	
Recharge Closed Depression	Clayey (Cy)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Saline Overflow (SOv)	Overflow (Ov)	0.38	0.32		0.27	0.23		0.45	0.38		0.23	0.19	
Saline Lowland (SL)	Saline Lowland (SL)	0.38	0.32		0.27	0.23		0.45	0.38		0.23	0.19	
Saline Upland (SU)	None	0.27	0.23		0.19	0.16		0.32	0.27		0.15	0.13	
Sands (Sa)	Sands (Sa)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	
Sandy (Sy)	Sandy (Sy)	0.60	0.50		0.53	0.44		0.68	0.57		0.45	0.38	

# LAND RESOURCE AREA PRODUCTIVITY CHART

Ecological Site (abbreviation)	Original Range Site (abbreviation)	High Good (HG) and Mid Good (MD) Stocking rates in Animal Unit Months per acre by Land Resource Area									
		53		54		55		58			
		HG	MG	HG	MG	HG	MG	HG	MG	HG	MG
		0.60	0.50	0.53	0.44	0.68	0.57	0.45	0.38		
Sandy Claypan (SyCp)	Sandy Claypan (SyCp)	0.23	0.19	0.19	0.16	0.23	0.19	0.15	0.13		
Sandy Gravel (SyG)	Very Shallow (VS)	0.60	0.50	0.53	0.44	0.68	0.57	0.45	0.38		
Sandy Terrace (SyT)	Sandy (Sy)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Shallow Clayey (SwCy)	Shallow (Sw)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Shallow Clay (SwC)	Shallow (Sw)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Shallow Loamy (SwLy)	Shallow (Sw)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Shallow Sandy (SwSy)	Shallow (Sw)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Shallow Gravel (SwG)	Shallow to Gravel (SwG)	0.45	0.38	0.38	0.32	0.45	0.38	0.25	0.20		
Shallow Marsh (SwM)	Wetland (WL)	1.20	1.00	1.20	1.00	1.20	1.00	1.00	0.83		
Steep Sided Wooded Draw (SSWD)	Wetland (WL)	0.12	0.10	0.12	0.10	0.12	0.10	0.12	0.10		
Stoney Hills (SH)	Wooded (trees)	0.12	0.10	0.12	0.10	0.12	0.10	0.12	0.10		
Subirrigated (Sb)	None	1.13	0.94	0.94	0.78	1.20	1.00	0.80	0.70		
Subirrigated (Sb)	Subirrigated (Sb)	0.83	0.69	0.69	0.58	0.94	0.78	0.60	0.50		
Subirrigated Sands (SbSa)	Subirrigated Savannah (SbSv)	0.60	0.50	0.53	0.44	0.68	0.57	0.45	0.38		
Swale (Swl)	Silty (Si) or Loamy (Ly)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Thin Breaks (TB)	Thin Upland (TU)	0.23	0.19	0.19	0.16	0.23	0.19	0.15	0.13		
Thin Claypan (TCp)	Thin Claypan (TCp)	0.45	0.38	0.45	0.38	0.53	0.44	0.30	0.25		
Thin Sands (Tsa)	Thin Sands (Tsa)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Thin Sandy (Tsy)	Thin Upland (TU)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Thin Loamy (Tly)	Thin Upland (TU)	0.53	0.44	0.45	0.38	0.60	0.50	0.30	0.25		
Upland Hardwood Forest (UF)	Wooded (trees)	0.12	0.10	0.12	0.10	0.12	0.10	0.12	0.10		
Very Shallow (VS)	Very Shallow (VS)	0.23	0.19	0.19	0.16	0.23	0.19	0.15	0.13		
Wetland (WL)	Wetland (WL)	1.58	1.34	1.50	1.25	1.65	1.38	1.00	0.83		
Wet Meadow (WM)	Wet Meadow (WM)	1.20	1.00	1.20	1.00	1.20	1.00	1.00	0.83		
Wooded Draw (WD)	Silty (Si) or Loamy (Ly)	0.24	0.20	0.24	0.20	0.24	0.20	0.24	0.20		

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<https://land.nd.gov>



Jodi A. Smith, Commissioner

## MEMORANDUM

Date: October 8, 2018

To: Jodi Smith  
Commissioner of University and School Lands

Michael Humann  
Surface Division Manager

From: Joseph Stegmiller   
Natural Resource Professional

RE: Badlands Water Adjustment Determination for Fair Market Value Minimum Rent Policy:

The water adjustment for the Badlands has been reviewed due to the transition from utilizing dugouts to utilize water pipelines for livestock water. Livestock water pipelines have become more popular in recent years due to access to rural water and funding preference from government agencies (NRCS, Forest Service). Based on information gathered from NRCS Field Offices and the US Forest Service, livestock water pipelines buried at 6-7 foot with water tanks are the most common water developments currently being implemented in the Badlands. Dugouts are noted to be the last option for livestock water when it is not cost effective to dig a well or access to rural water is not available. Since livestock water tanks are considered a non-permanent improvement, they are not eligible for cost-share and will not be included in the water adjustment.

A review of the Badlands Water Adjustment revealed the following:

### Average Cost of Installation:

Cost data was obtained from the 2018 Regional Conservation Partnership Program EQIP Payment Schedule located in Section 1 under State Payment Rates on the NRCS Field Office Technical Guide. The price quoted for a Livestock Pipeline (Code: 516) is \$2.73/ foot for a 2 inch diameter or less pipeline. This is comparable to cost data received from the following sources:

Contact	Location	\$/ft.
2 Guys Digging, LLP	Dickinson, ND	4
Private Landowner	Billings Co.	2.20
Medora Grazing Association	Billings Co.	2 to 4

Based on the information provided above, an average of \$3.00/foot is recommended.

### Average Tract Size per Water Source

It is recommended the average tract size per water source in the Badlands area stay at 640 acres (one section). Originally the average tract size was set at 320 acres based on the average lease unit. However, the tract size was increased to 640 acres to better represent the size of pastures in the Badlands.

### Average Distance to Center of Grazing Unit

To provide the most effective grazing utilization, the livestock water tank should be located near the center of the tract. For a section of land (640 acres) the shortest distance for a straight line pipeline route to travel to the center would be 2,640 feet. The longest distance a straight line pipeline route would travel is 3,733.5 feet. Since the terrain within the Badlands is rough and broken, the pipeline would be routed to avoid certain terrain which would increase the footage. Therefore, it is proposed the distance a pipeline should travel to reach the center of the tract is 3,733.5 feet.

### Average Life Span of Water Source

Based on the NRCS specifications, the life span of a livestock water pipeline (Code: 516) is 20 years if installed and maintained correctly. It is recommended the average life span of a pipeline be set at 20 years for the Badlands Water Adjustment.

**The following cost per acre deduction was computed based on the proposed review criteria:**

$$\text{Cost Reduction (per acre)} = ((C \times L) \div LS) \div TS$$

C = average cost per foot of installation

L = average length to reach center of tract

LS = average life span of pipeline

TS = average tract size

$$\text{\$0.88 per acre} = ((\$3.00/\text{ft.} \times 3,733.5 \text{ ft.}) \div 20 \text{ year life span}) \div 640 \text{ acre tract}$$

### Recommendation

It is recommended the criteria for determining the Badlands Water Adjustment be adjusted to reflect the most prevalent livestock water development in the area and the water adjustment be increased from \$0.65 to \$0.85 per grass acre for tracts within the Badlands Water Adjustment.



Michael Humann  
Manager, Surface Management Division



Date



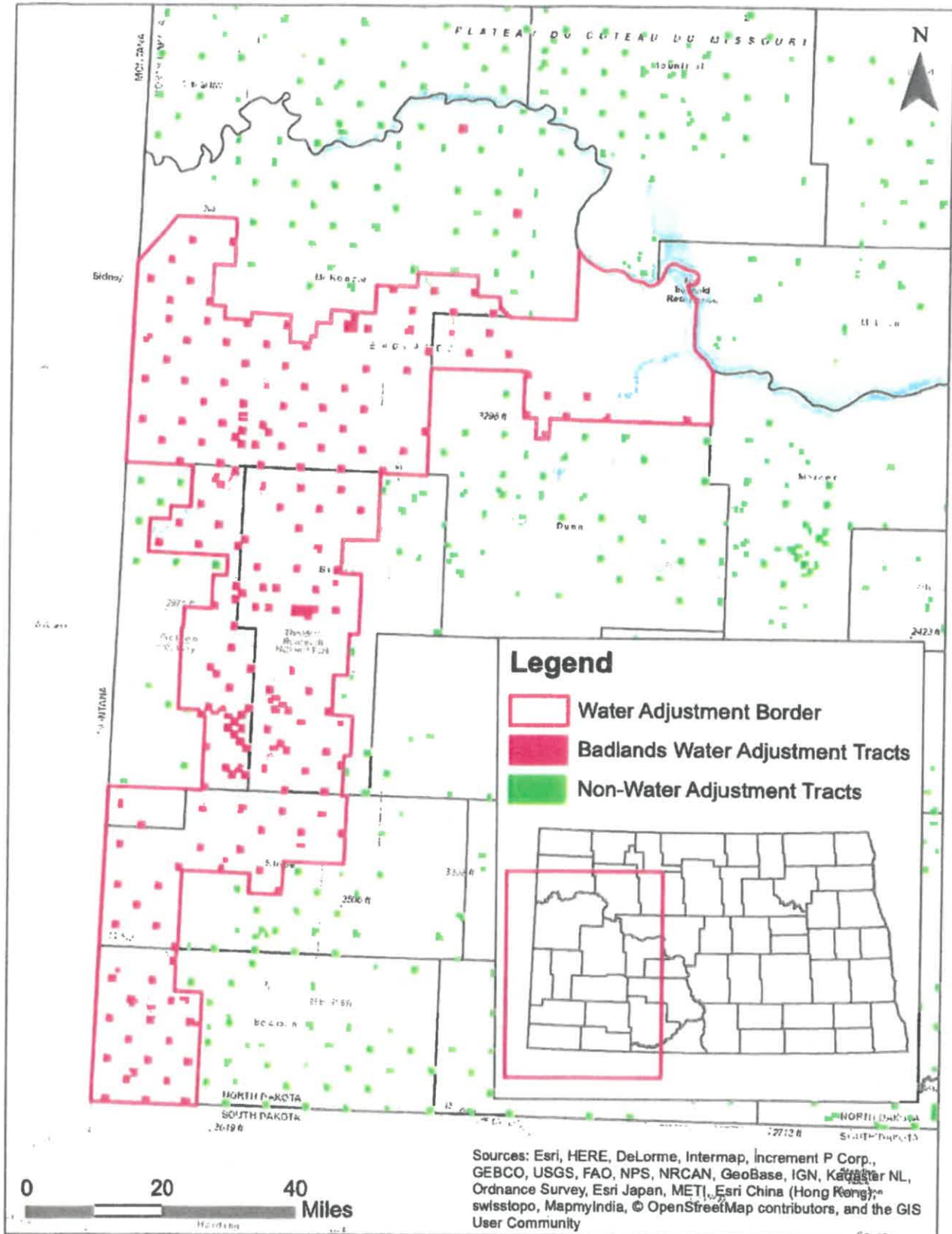
Jodi Smith  
Commissioner of University and School Lands



Date



# Badlands Water Adjustment Tracts



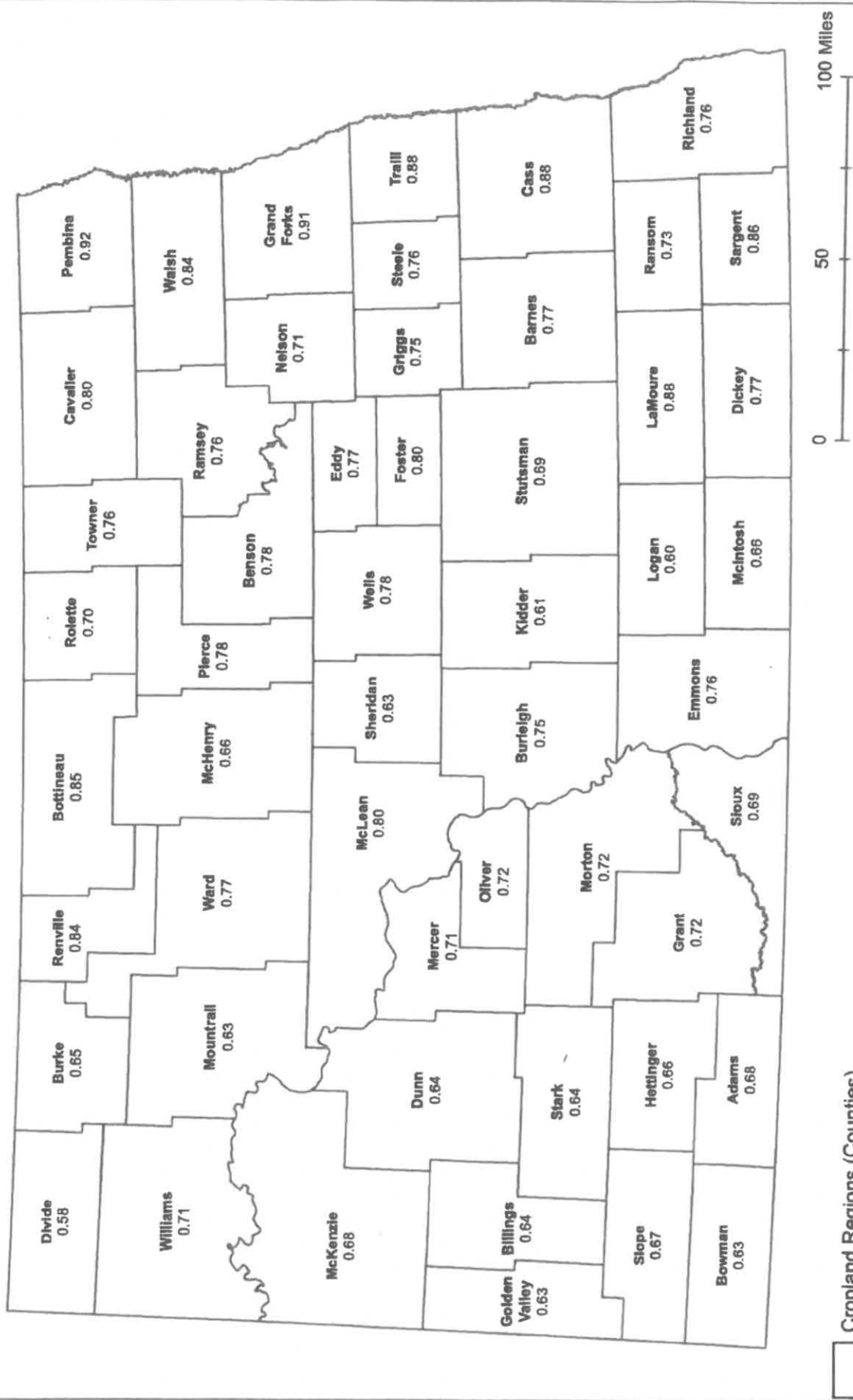


## CROPLAND PRODUCTIVITY WORKSHEET

Subdivision	Section	Township	Range	County

Soil Symbol	Soil Type	% Soil Complex	Acres	Adjusted Acres	Production Index (PI)	PI/Total Crop Acs	Acres
							<b>Total</b> _____  <b>Grass</b> _____ <b>Hay</b> _____ <b>Crop</b> _____  <b>Water</b> _____   <b>Trees</b> _____    <b>Barren</b> _____   <b>Other</b> _____
<b>Date</b> _____  <b>Reclass</b> yes no  <b>Prepared By:</b> _____		<b>Total Prorated Index</b> _____					

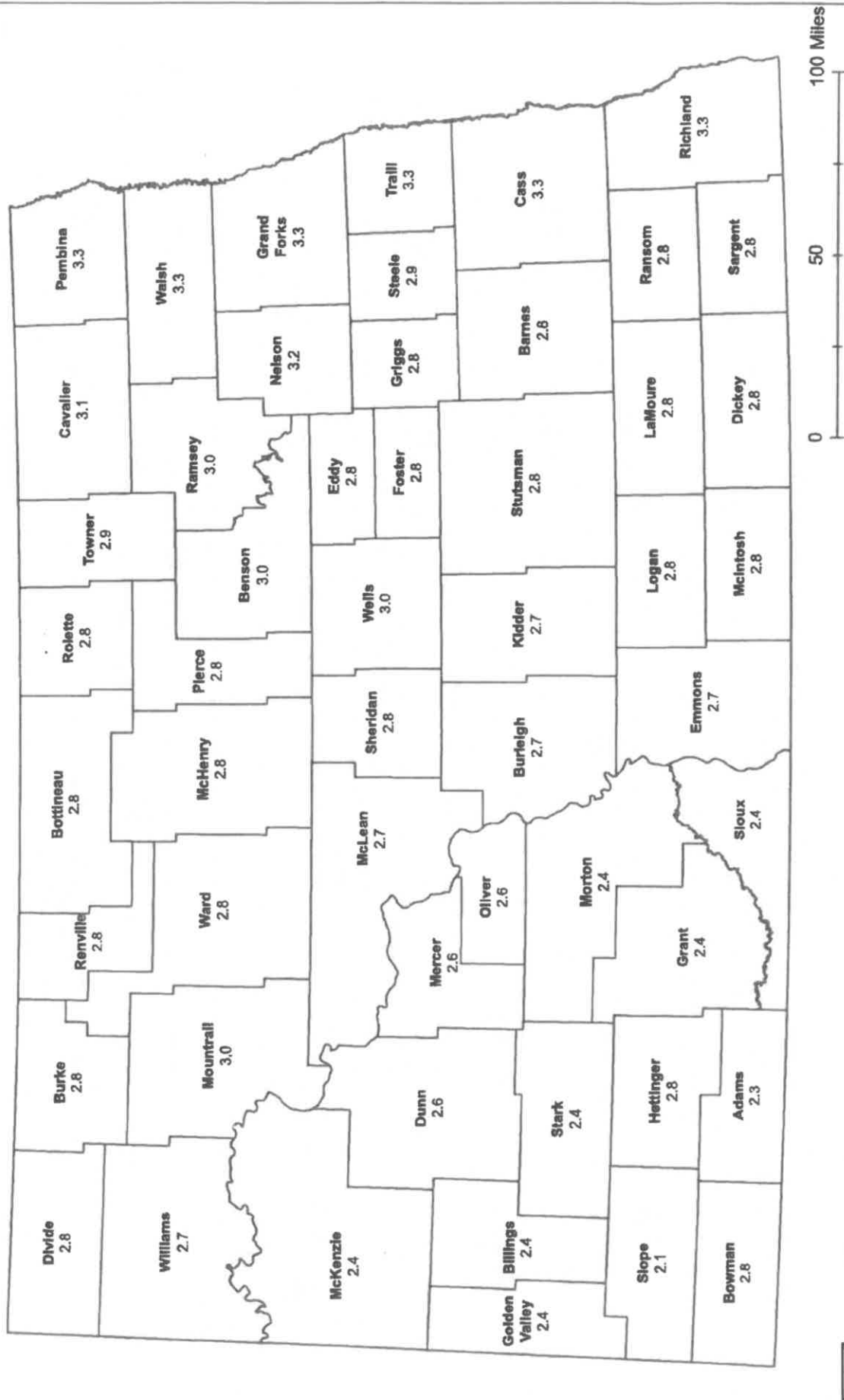
# Region Cropland Productivity Index



Legend: Cropland Regions (Counties)

County Name  
Cropland Regional Productivity Index (CRPI)

# Region Hayland Productivity Index



Hayland Regions (Counties)



**ABANDONED RAILROAD RIGHT OF WAY OWNERSHIP**

A railroad right-of-way is only an easement; therefore, if the Board sold property on which a railroad right-of-way existed, the Board's sale removed the Board's interest in the surface estate and any reversionary interest belongs to the tract's current owner, without regard to the various reservation language statements in the conveyance documents. If a request is made concerning ownership of an abandoned railroad right-of-way, the Department will issue a letter to the current surface owner addressing the Board's reversionary property interest and file an affidavit disclaiming title to the surface estate.

General Authority:

Effective Date: January 1, 2021

Revised:

North Dakota Board of University and School Lands: Surface

**LIMITED LAND SALES**

The board shall retain and manage trust lands for economic productivity of all lands held in public trust which is dependent on sound stewardship, including the protection and enhancement of land integrity for use by this and future generations.

General Authority: N.D. Admin. Code chs. 85-04-06, 85-04-07, 85-04-08, 85-04-09

Effective Date: May 28, 1981

Revised: January 1, 2021

**NON-GRANT LAND ACQUIRED AFTER JANUARY 1, 2020 THROUGH FORECLOSURE  
OR DEED IN LIEU OF FORECLOSURE**

**Lease to a former owner**

The former owner of the acquired property means the original mortgagor or, with the original mortgagor's consent, members of the original mortgagor's immediate family including father, mother, son, daughter, brother, sister, or spouse. Acquired property may be leased to the former owner as follows:

1. If the former owner wants to continue operating, living, or both on the acquired property, the acquired property may be leased to the former owner for up to a five-year term if the former owner has made a good faith effort to settle the previous mortgage. In determining whether a good faith effort has been made, the Department may consider the following:
  - a. If taxes are paid in full through the date of transfer of the deed;
  - b. If a deedback was negotiated and either completed or, if not completed, it was through no fault of the former owner;
  - c. If the former owner has made an attempt to pay the mortgage as shown by past payment history; and
  - d. Other reasonable considerations as determined by the Board.
2. After the initial lease to the former owner expires, the property may be leased or sold at public auction.
3. Notwithstanding subsections 1 and 2 above, property subject to a Conservation Reserve Program (CRP) contract which has not been accepted by the Commissioner, or Commissioner's agent as successor in interest, may be sold at public auction.

**Leases to other than the former owner**

If the former owner does not want to lease or purchase the acquired property, or if a mutually acceptable rental agreement cannot be reached, the acquired property will be leased in accordance with N.D. Admin. Code ch. 85-04-01.

**Division of tracts for lease**

Acquired property may be leased in as many separate tracts as determined by the Commissioner.

**Improvements and fixtures**

Permanent improvements (buildings, wells, dams, water holes, water lines, trees, grass seedings, etc.) are subject to the provisions of N.D.C.C. § 15-08-26 and N.D. Admin. Code ch. 85-04-03.

1. All improvements, fixtures, and other materials on acquired property at the time of acquisition are the property of the State and may be sold at public auction, by sealed bid, or by private sale.

2. In the event an improvement is damaged or destroyed by an event covered by the Department's insurance, the improvement may either be repaired or abandoned at the discretion of the Commissioner.

### **CRP**

Acquired lands may be entered into CRP or existing CRP contracts may be accepted at the sole discretion of the Commissioner pursuant to N.D.C.C. § 15-07-20 provided:

1. The sale value of the acquired lands shall not be reduced.
2. The State shall appear as the sole owner on the CRP contract.
3. If it is in the best interests of the State, the Commissioner may negotiate a maintenance contract for seeding, weed control, stand maintenance, or other activities which may be required to comply with the CRP contract without public auction.

### **Insurance**

Houses, barns, bins, or other improvements may be insured for property loss by the lessor, but the lessor is not required to insure such improvements when it is not in the best interests of the trusts.

### **Utilities**

Lessee shall be liable for payment of any utility costs incurred by the lessee.

General Authority: N.D.C.C. ch. 15-07; N.D. Admin. Code 85-04-03

Effective Date: January 1, 2021

Revised:



# **Section 4**

# **Investments**

## FARM LOAN POLICY

**Board Purchase of Loans Made by Bank.** The Board shall maintain a loan pool account at the Bank, in accordance with North Dakota Century Code § 15-03-04.1. The Board shall purchase, with funds on deposit with the Bank in the loan pool account, loans made by the Bank so long as the Bank certifies to the Board that the loans conform to North Dakota Century Code chapter 15-03 and this policy. The Bank shall process all loans made through the investment of trust funds under control of the Board. The Bank shall administer, collect, satisfy, or foreclose such loans and do all things necessary and consistent with the standard banking and lending practices in administering such loans on behalf of the Board.

**Dedication of Funds to the Loan Pool Account.** The Board shall periodically dedicate such funds as it deems advisable to the loan pool account.

**Withdrawal of Funds from Loan Pool Account.** The Commissioner may withdraw from the loan pool account any funds not invested in loans provided, however, the Commissioner shall not withdraw funds needed to meet accepted loan applications in process.

**Terms and Conditions.** The terms and conditions for loans will be set periodically by the Board. The President and the Commissioner shall advise the Board as to favorable interest rates, terms and conditions so that income will be maximized. The Commissioner can order an immediate suspension in the acceptance of any new loan applications upon notice in writing to the President. (Addendum A).

**Authority of Bank.** The Bank may invest monies in the loan pool account, as well as any monies that constitute payments of principal on outstanding loans, in new loans as long as such funds are on deposit in the loan pool account. Any loan payable to the Bank made in accordance with this policy may be endorsed to the loan pool account without recourse against the Bank. The Bank shall conduct proper appraisals using Farm Service Agency, Federal Home Loan Bank, Bank appraisers, or other competent appraisers.

**Duty of Bank and President.** The Bank and the President will make a diligent effort to process loans with due speed and efficiency so that all funds dedicated to the loan pool account by the Board will be kept fully invested. Any funds in the loan pool account that are not invested in farm loans must draw the same interest rate to be accorded to all BND Accounts (MMDA, Loan Pool Accounts, etc.) owned by the Board. The interest rate shall be the higher of the four week average of the ninety day Treasury Bill rate or the monthly interest rate earned by the Board with The Northern Trust.

**Reporting Procedure.** Each month the President shall fully account to the Board for all funds under the Bank's control.

**Crediting of Principal Payments Received.** The Bank shall credit all receipts, payments, and collections of principal made on such loans to the loan pool account established in North Dakota Century Code section 15-03-04.1. The Commissioner shall credit all proper trust income accounts in the proper proportion.

**Crediting of Interest Payments Received.** Upon receipt of interest payments on loans, the Bank may deduct Bank service fee, foreclosure, and deeds in lieu of foreclosure charges and costs and shall credit the balance to the loan pool account. The Commissioner shall credit all proper trust income accounts in the proper proportion.

**Bank Service Fee.** In consideration for servicing the loan pool account, the Bank may charge a fee equivalent to one half of one percent of the unpaid principal balance of each loan. Such fee may only be deducted from interest payments actually received.

**Mortgagor.** Mortgagor shall be actively engaged in the business of farming or ranching and the loan proceeds must be used for a farm-related purpose.

**Costs and Fees.** All costs associated with the application, including appraisal fees, actual expenses, abstractor's fees, filing fees and other costs, must be borne by the loan applicant. The Bank may charge borrowers origination fees, rate reduction fees or other such fees only if the Commissioner, the President, and a member of the Bank's executive committee, acting unanimously, agree to such fees.

**Penalties.** No prepayment penalties will be assessed on loans originating in the Bank.

**Renegotiation.** The Bank is authorized to renegotiate the terms of mortgages in the loan pool account as follows:

1. Only prospective restructuring is allowed;
2. No principal or accrued interest may be forgiven; and
3. The Bank shall follow sound banking practices in all debt restructuring and renegotiations.

The Bank is also authorized to renegotiate loans which are current when the borrower has asked for an interest rate concession due to competition in the marketplace. Any such renegotiation must be consistent with sound banking practices and the renegotiated rate must be within the guidelines for new borrowers.

**Foreclosure.** All foreclosures must be handled in accordance with standard banking and lending practices and the Bank's procedure for processing delinquent farm loan mortgages. Reasonable costs incurred in connection with a foreclosure that is not redeemed must be deducted from interest due the Board in accordance with this policy.

**Deeds in Lieu of Foreclosure.** The Bank may accept a deed in lieu of foreclosure, so long as the action is in accordance with standard banking and lending practices, N.D.C.C. § 15-03-14, and the Bank's procedure in processing deeds in lieu of foreclosure. If it is in the best interests of the loan pool account, costs associated with accepting a deed in lieu of foreclosure may be deducted from interest due the Board in accordance with this policy.

**Partial Releases.** Partial releases may be made in accordance with standard banking and lending practices provided, however, that the unpaid principal after the release may not constitute a greater percentage of the value of the collateral remaining than the total principal bore to the total value of the collateral at the time of the loan. For purposes of this policy the term "value" means the appraised value as established at the time of the loan or the current market value of the remaining collateral, if less than the appraised value at the time of the loan. All releases must be requested in writing and must be approved by the President.

## **Subordination.**

### **Documentation**

1. Before subordinating its mortgage to an oil and gas lease, the Bank shall review all documentation concerning the transaction, including, but not limited to:
  - a. The mortgage covering the real property which is the subject of the oil and gas lease;
  - b. The proposed oil and gas lease;
  - c. The sight draft(s) or other means of payment; and
  - d. Any drilling title opinion, or division order title opinion which might have been prepared on the subject property insofar as the opinion relates to the interests of the Mortgagors.
2. The Bank shall prepare a subordination agreement and an assignment of income.

### **Terms**

1. A subordination agreement must be executed by the Bank in consideration of the payment to the Bank of all income received by a Mortgagor (lessor) under an oil and gas lease. The Mortgagor and the lessee shall execute an assignment to the Bank of all income payable to the Mortgagor under the oil and gas lease. The subordination agreement must not be executed by the Bank of North Dakota before the oil and gas lease is executed or before the assignment of income is executed.
2. Subordination for leases which are executed simultaneously with the assignment of income and subordination agreement:

When an oil and gas lease is being contracted for at the same time as the subordination, the Bank shall subordinate to the oil and gas lease provided an assignment of income is also executed. All bonus money must be paid directly to the Bank for application as provided below.

3. Subordination for previously executed leases:
  - a. When an oil and gas lease has been previously executed (and later a subordination is requested), and the Mortgagor is current on the note, the Bank shall subordinate, if an assignment of income is also executed.
  - b. When an oil and gas lease has been previously executed (and later a subordination is requested), and the note is in default, the decision of whether or not to

subordinate to the previously executed lease will be at the discretion of the Commissioner and the Bank. In exercising this discretion, the Commissioner and the Bank shall consider the following factors:

- 1) Whether or not drilling is imminent on the tract;
  - 2) Whether foreclosure proceedings are in process or likely to be commenced in the near future;
  - 3) The prior repayment history of the Mortgagor (lessor);
  - 4) Other outstanding debt of the Mortgagor (lessor); and
  - 5) Any additional consideration to be paid by the lessee for the execution of the subordination (which must be applied by the Bank to the balance due on the loan).
4. The proceeds of the lease must be forwarded by the lessee to the Bank. The Bank shall retain that portion of the proceeds of the lease which is required to bring the loan current. Once the loan is current, any excess in proceeds must be returned to the Mortgagor (lessor).

Effective Date: October 25, 2018  
Revised: January 1, 2020

**ADDENDUM A**

**Terms & Conditions.**

**General Terms**

1. \$3 million limit on total outstanding loans per borrower.
2. Adjustable rate with either 20 or 25 year loan terms and amortized payment schedules, with adjustments to the interest rate and payment schedule on every tenth anniversary date as appropriate; or fixed rate 20 or 25 year loan terms and amortized payment schedules.
3. Total amount of loan may not exceed 75% of the appraised value of the collateral.

**Interest Rates**

1. The interest rate at inception and at each adjustment date will be based on the following schedule, subject to the provisions of 2 and 3 below.

**Premium over Federal Home Loan Bank of Des Moines Advance Rates**

	<u>Credit Level I</u>	<u>Credit Level II</u>	<u>Credit Level III</u>
10 year adjustable	+2.0%	+2.5%	+3.5%
25 year fixed	+2.5%	+3.0%	+4.0%

The minimum interest rate for the 10 year adjustable and 25 year fixed loans will be as follows, subject to the provisions of paragraph 2 below.

	<u>Credit Level I</u>	<u>Credit Level II</u>	<u>Credit Level III</u>
10 year adjustable	6.50%	7.00%	8.00%
25 year fixed	6.75%	7.25%	8.25%

2. The Commissioner, the President, and a member of the Bank's executive committee, acting unanimously, are authorized to adjust the rate premiums by up to 50% from the amounts set out in paragraph 1 if conditions in the investment or farm real estate loan markets warrant such a change. The Commissioner, the President, and a member of the Bank's executive committee, acting unanimously, are authorized to adjust interest rate floors by up to 50 basis points from the amounts set out in paragraph 1 if conditions in the farm real estate loan markets warrant such a change. Any such adjustments need not be uniform across all term or credit quality categories.
3. Credit quality determinations, for purposes of establishing the appropriate rate premium for each loan, will be made by the Bank in the same manner as such determinations are made for the farm real estate loans made or participated in by the Bank.

# ND Board of University and School Lands Investment Policy Statement

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An Investment Management Framework for North Dakota’s Permanent Trust Funds, the Capitol Building Fund, the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment Fund

*Revised 08/25/2022*

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## Mission Statement

The mission of the Board of University and School Lands is to manage the assets of the permanent trusts in a manner that preserves the purchasing power of the funds and maintains stable distributions to fund beneficiaries and to manage all other assets and programs entrusted to the Board in a prudent, professional manner, in accordance with the Constitution of North Dakota and applicable state law.

## General Authority

On February 22, 1889 Congress passed the Enabling Act, dividing Dakota Territory into two states and authorizing the people to form the constitution and government of the state of North Dakota. This act granted a significant amount of land to support common schools, colleges, universities, the state capitol, and other public institutions. North Dakota Constitution article IX, which became effective at statehood on November 2, 1889, entrusted the management of these lands to the "board of university and school lands" (the Board). The Board is made up of the governor as chairman, the secretary of state as vice-chair, the attorney general, superintendent of public instruction, and the state treasurer.

## Investment Authority

The North Dakota Constitution states that the Board "has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law."<sup>1</sup> State law further requires that the Board "shall apply the prudent investor rule in investing the permanent funds under its control."<sup>2</sup>

## Purpose of This Policy

This Investment Policy Statement (Policy) governs the investment of assets for the thirteen Permanent Trust Funds, the Strategic Investment and Improvements Fund (SIIF), the Capitol Building Fund, the Coal Development Trust Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment Fund (collectively, Funds). It is established to provide a framework for the management of those assets and sets forth the Board's investment objectives, philosophy, guidelines, and practices. The Policy is not intended to be a static, one-time document but is designed to capture investment opportunities while providing parameters that ensure prudence and care in the execution of the investment program. No investment or action pursuant to an investment may be taken unless permitted by this Policy or by action of the Board; any exceptions must be approved by the Board.

The Policy provides guidance for fiduciaries which include the Board, the Commissioner of University and School Lands (Commissioner), investment managers, investment consultants, and custodians. It is the intent of the Policy to provide the foundation for management of the Funds' assets in a prudent manner including

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<sup>1</sup> N.D. Const. art. IX, § 3

<sup>2</sup> N.D.C.C. § 15-03-04



the standards by which the Board can evaluate the Commissioner, investment managers, investment consultants, custodians and other service providers.

This Policy is supplemented by the Commissioner's operating procedures and policies, as well as detailed information within contractual agreements with investment managers.

## **Investment Philosophy**

In order to meet the above investment objectives, the Board has adopted the following principles:

- Strategic asset allocation is a fiduciary duty and allocation across asset classes is the most important determinant of return variability and long-term total return.
- Risk is an unavoidable component of investing and is a major factor that must be taken into account in assessing investment policy and strategy.
- Diversification by asset class and within asset classes is a primary risk control element.
- Each trust or fund invested by the Board shall have a strategic asset allocation and investment strategy that is appropriate given its specific requirements for return, risk, time horizon, and liquidity.

## **Capital Markets Theory**

### **Return**

In order to meet the objective of the Funds, the Board strives to achieve the highest level of investment performance that is compatible with its risk tolerance and prudent investment practices. The Board's mechanism for setting return goals will be accomplished by selecting specific benchmarks that match the objective and time horizon of each fund. The Funds will have a goal for long-term returns to meet or exceed its formal benchmark over a full market cycle, while minimizing the costs associated with implementation of the asset allocation through efficient use of internal and/or external resources.

### **Risk**

The investment risk philosophy for the Funds is based on the principles of capital market theory that are generally accepted and followed by institutional investors, who by definition are long-term oriented investors. This philosophy holds that:

- Increasing risk is rewarded with compensating returns over time; therefore prudent risk taking is a necessary element of long-term investing.
- Risk can be mitigated through diversification of asset classes and investment approaches, as well as diversification of individual securities.
- The primary determinant of long-term investment performance is the strategic or long-term allocation of assets among various asset classes.
- Relative performance of various asset classes is unpredictable in the short-term and attempts to shift tactically between asset classes or implementation strategies shall not be undertaken by the Board.

Given these principles, the Board has established a long-term asset allocation policy for each fund that balances the returns needed to meet the fund’s objectives and the risk level that is appropriate for that fund under existing and anticipated circumstances. In determining its risk posture, the Board has considered each fund’s purpose and characteristics, current and projected financial condition, liquidity needs, sources of contribution, income, and general economic conditions.

**Diversification**

The Board will choose an investment strategy for each Fund utilizing an appropriate long-term, diversified asset allocation approach. Diversification distributes a portfolio across many investments to avoid excessive exposure to any one source of risk. Other considerations in asset allocation modeling should take into account the purpose of the fund, the size and financial condition of the fund, and general economic conditions. These factors are not intended to be limiting; rather, they are outlined as a general indication of the importance of diversification to proper asset allocation. Under such an allocation, each Fund’s assets may be invested by active and/or passive managers, and by diverse investment strategies and styles within each asset class. The Board will determine the proper allocation among asset classes and investment managers, based on advice and analysis provided by the Commissioner and/or Consultants.

**Formal Review Schedule**

The Board recognizes that though the investments are subject to short-term volatility, the Board shall maintain a long-term investment focus. This prevents ad-hoc revisions to the philosophy and policies in reaction to either speculation or short-term market fluctuations. In order to preserve this long-term view, the Board has adopted the following formal review schedule:

Formal Review Agenda Item	Formal Review Schedule
Asset Allocation Policy	At least every four years
Manager Structure Policy	At least every four years
Investment Policy	At least every four years
Total Fund Performance	At least quarterly
Asset Class Composite Performance	At least quarterly
Investment Manager Performance	At least quarterly

**Roles and Responsibilities**

**The Board**

The Board of University and School Lands is the primary body charged with overseeing investment activities relating to the Funds. Members of the Board are fiduciaries subject to the statutory and common law duties of a fiduciary.

The Board’s mandate, in turn, is to manage each fund entrusted to it ethically and optimally, working to achieve the highest level of investment performance within acceptable levels of risk. The Board is responsible for prudent investment of the Funds. The Board will operate the investment program in compliance with all applicable federal and State laws and regulations. The Board is responsible for

establishing and maintaining all policies and guidelines by which the Funds are managed, and by which the Commissioner operates.

The Board relies on the Commissioner and any external contractors to properly administer the Funds and implement the Funds' investment strategies. The roles of each party as fiduciaries must be clearly identified; such identification increases operational efficiency, ensures clear lines of responsibility, and reduces or eliminates duplication of effort.

## **The Commissioner**

The Board of University and School Lands is required to appoint a commissioner to act on its behalf.<sup>3</sup> The office of the Commissioner of University and School Lands (the Commissioner)<sup>4</sup> has a primary responsibility to manage the permanent educational trust funds and assets under the Board's control as outlined in law. When used in this Policy, the term Commissioner is inclusive of the Department of Trust Lands' Chief Investment Officer and investment staff. State law also gives the office of the Commissioner the responsibility for managing the state Unclaimed Property Division, and the Energy Infrastructure and Impact Office.

The Commissioner is responsible for implementing Board policy, the day to day management of the investment program, and implementing a process for selection and termination of investment managers that is sufficiently transparent for the Board to understand the process and provide meaningful oversight.

## **Investment Consultant**

The Investment Consultant (Consultant) is hired by and reports directly to the Board. The Consultant's duty is to assist the Board in oversight, and the Commissioner in managing the investment process. This includes regular meetings with the Board to provide an independent perspective on the Funds' goals, structure, performance, and managers. The Consultant will render investment advice to the Board regarding such matters as investment policy, strategy, overall portfolio monitoring and composition, and diversification of investments. The Consultant will conduct ongoing due diligence of external investment managers. The Consultant does not have any discretionary authority with respect to investments; the Board makes all final decisions regarding any investments.

## **Investment Managers**

Investment managers (Managers) are hired by and serve at the pleasure of the Board. The Commissioner will provide the Managers with explicit written investment guidelines<sup>5</sup> which detail permissible securities, investment strategies, and performance evaluation criteria. Each Manager will select, buy, and sell specific securities or investments within the parameters specified in their investment guidelines and in adherence to this Policy or to other policies set forth by the Board. Managers will construct and manage investment

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<sup>3</sup> N.D.C.C. § 15-02-01; Specific responsibilities of the Board and the Commissioner are set out in N.D.C.C. ch. 15-01 through 15-08.1.

<sup>4</sup> Commissioner of University and School Lands is the statutory name; in 2011 the Board adopted *The Department of Trust Lands* as the common reference to the agency.

<sup>5</sup> In cases where the Board has selected investments in commingled or mutual funds, the offering document becomes the specific investment guidelines.

portfolios that are consistent with the investment philosophy and disciplines for which they were hired. Managers will provide performance reporting at intervals specified by the Commissioner.

## **Custodian**

A custodian bank is a specialized financial institution hired by the Board to safeguard the Funds' financial assets; they are a third party that operates separately from Managers. The custodian(s) will collect income and safely keep all cash and securities, process all transactions, and provide monthly accounting/investment reports to the Commissioner and Consultant. The custodian may also provide securities lending, commission recapture, transition management, securities litigation monitoring, or other services for the Funds.

## **The Prudent Investor Rule**

North Dakota statute dictates that the Board apply the prudent investor rule in investing the Permanent Trust Funds under its control. The law states:

The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable investment returns.<sup>6</sup>

It is the Board's intent to invest all of the Funds in accordance with the Prudent Investor Rule.

## **Social and Economically Targeted Investing**

Social investing is defined as the practice of aligning one's investment policies with social responsibility. Some of the issues and topics addressed by social investing promoters include environmental causes, avoidance of tobacco producers, avoidance of politically sensitive parts of the world, and workers' rights. With different sets of values, what one investor may deem irresponsible, another may consider good policy.

The Board shall not use the Funds to participate in activist efforts to implement a social agenda regarding ownership of specific securities or efforts of shareholders to bring about social change.

Economically targeted investing is defined as an investment designed to create economic benefits for a targeted geographic area, group of people, or sector of the economy. Economically targeted investing is barred when investing the Permanent Trust Funds, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment Fund, unless the investment meets the Exclusive Benefit Rule.

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<sup>6</sup> N.D.C.C. § 15-03-04

## Exclusive Benefit Rule

The Exclusive Benefit Rule is met if the following four conditions are satisfied:

- The cost does not exceed the fair market value at the time of investment.
- The investment provides an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.
- Sufficient liquidity is maintained to permit timely distributions.
- The safeguards and diversity to which a prudent investor would adhere are present.

Economically targeted investing is allowed within the Coal Development Trust Fund and the Strategic Investment and Improvement Fund, if the investment meets the purpose of the fund and is directed by law.

## Conflicts of Interest

Members of the Board, the Commissioner, employees of the Commissioner, Managers, Consultants, and custodians involved in the investment process will refrain from personal business activity that could conflict with the proper execution and management of the Board's investment program, or that could impair their ability to make impartial recommendations and decisions. These parties are required to reveal all relationships that could create or appear to create a conflict of interest in their unbiased involvement in the investment process.

## Manager Selection and Evaluation

When analyzing and evaluating any Manager, the Board believes it is important to review the Manager within the context of the structure of the entire asset class and portfolio, and not in isolation. A key to portfolio construction is diversification, not just by asset class but within each asset class. The goal of diversification is to be exposed to different investment strategies, which will have different performance and risk patterns. Diversification is optimal when strategies are complementary.

## Search and Selection

The Board has established the following guidelines for hiring Managers. In establishing these guidelines, it is the Board's intention to assure all interested parties that decisions made in carrying out these actions occur in a full disclosure environment characterized by competitive selection, objective evaluation, and proper documentation. Any action to hire a manager should be based on one or more of the following observations:

- Identification of a new asset class or approach which has been approved in advance by the Board
- A need for diversification of managers and styles within an existing asset class
- A need to replace an investment manager
- A need to retain additional managers in order to reach an asset class structure target

The selection of new Managers will adhere to a consistent process to ensure a competitive and transparent search involving proper evaluation and due diligence of candidates, and selection of Managers that best demonstrate the characteristics sought in a specific search. The Commissioner will ensure that the

objectives for the mandate are clearly articulated and that pricing is reflective of the market. The evaluation process may be conducted by the Commissioner or the Consultant and will include but not be limited to the following steps:

1. Establish investment manager selection criteria
2. Identify qualified candidates through minimum qualification screening
3. Quantitative screening
4. Qualitative screening
5. Manager interviews
6. Analysis of quantitative and qualitative factors including portfolio fit and structure

The Commissioner will prepare documentation of the search process; this documentation will include disclosure of all relevant issues and related due diligence. When reviewing the documentation, the Board shall ensure that decisions were well reasoned, thoroughly considered, and prudent.

### **Monitoring, Evaluation, and Termination of Managers**

The decision to retain a Manager can have the same potential impact on the returns of an asset class composite as manager selection decisions and should be given the same degree of attention. The Board recognizes investment and management decisions directed at individual managers must be evaluated not in isolation but in the context of the overall structure of the asset class and the Fund's portfolio as a whole. To maintain the discipline necessary for a long-term focus, the Board will monitor and evaluate the performance of Managers and identify the specific problems and concerns that may affect returns, with the following objectives:

- Foster a long-term approach to manager evaluation
- Provide a review of the manager's "fit" in the overall asset class composite
- Provide a logical and statistically valid framework for manager skill evaluation
- Promote timely and appropriate responses to actual and potential performance issues
- Provide flexibility to allow application across all asset classes, management styles and market environments

Monitoring and evaluation relies on a process that includes:

1. Monthly reports from the custodian and Managers to the Commissioner
2. Quarterly performance reports from the Commissioner and Consultant for the Board. These reports will detail performance of the Funds, asset class composites, and the performance of individual managers against established benchmarks, as well as peer ranks for each category
3. Qualitative analysis generated in the course of regular, on-going contact between a Manager, the Commissioner, and the Consultant

### **Manager Termination Guidelines**

From time to time it will be necessary for the Board to terminate a contractual relationship with a Manager; these actions must be viewed in the context of the entire portfolio and as a business decision. The Board has established guidelines to assist in making these termination decisions. The overriding consideration

with respect to all decisions is that they shall be made solely in the best interest of the beneficiaries of the Funds.

Any action to terminate a manager should be based on one or more of the following criteria:

1. Significant changes in firm ownership and/or structure
2. Loss of one or more key personnel
3. Significant loss of clients and/or assets under management
4. Shifts in the firm's philosophy or process
5. Significant and persistent lack of responsiveness to client requests
6. Changes in the Board's investment strategy eliminating the need for a particular style or strategy
7. Violations of the Investment Policy or guidelines
8. Unsatisfactory investment performance
9. Identification of a new asset class or approach which has been approved in advance by the Board
10. Need for diversification of styles within an existing asset class
11. Need to reduce exposure to a single manager
12. Any other issue or situation of which the Commissioner, Consultant, and/or Board become aware that is deemed material

Prior to the termination decision, all relevant considerations and issues should be identified and documented in Board meeting minutes and supporting documents. It is the Board's intent to have a plan in place before termination of a Manager. The Commissioner will redeploy the assets of a terminated manager's portfolio in an expedient and prudent manner, which may involve hiring a third party to facilitate the transition or liquidation of assets.

## **General Investment Restrictions and/or Guidelines**

1. All investments made shall be subject to the quality and diversification restrictions established by the Prudent Investor Rule.
2. According to North Dakota law, the Board may not purchase as sole owner commercial or residential real property in the State.<sup>7</sup>
3. Assets may be held in commingled funds and/or privately managed separate accounts. Exposure through commingled funds and mutual funds shall be evaluated on a case-specific basis through analysis of that fund's offering document. Upon review by the Commissioner and approval by the Board, this offering document becomes the specific investment guidelines for that allocation.
4. No more than 5% of the stock of any corporation may be purchased.
5. The securities representing debt and equity of any one company shall not exceed 6% of the market value of any Manager's portfolio without prior approval from the Commissioner; such approval shall be reported to the Board.

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<sup>7</sup> N.D.C.C. § 15-03-04

6. Cash equivalents held by Managers can be disruptive to the allocation process. Unless otherwise authorized, Managers are expected to be fully invested in the types of securities for which they have responsibility.
7. Any use of leverage will be consistent with the strategy for which the Board hired the Manager. Use of leverage will be controlled as appropriate in the Manager's specific guidelines.
8. The Board recognizes that the Funds are exposed to currency risk through international equity, fixed income, and absolute return mandates; the Board prefers to utilize unhedged benchmarks and does not require its Managers to hedge the currency exposure in their portfolios.

## **Securities Litigation and Shareholder Legal Activism**

In carrying out its fiduciary duties to prudently invest and manage the assets entrusted to it, the Board invests in the securities of various public companies, or issuers. From time to time, class action lawsuits are brought against the issuers, directors, and/or officers for alleged violations of federal and state securities laws relating to various disclosure obligations and other breaches of fiduciary or other duties. As shareholders, the trust funds under the Board's control are putative members of the alleged classes.

At the present time, the Board relies on a designated agent to monitor settled class action securities litigation where the Funds have an interest. In resolved litigation, unless directed otherwise, the designated agent files proofs of claim on behalf of the Funds and posts disbursements or settlements to the appropriate portfolios as litigation settlement proceeds are received. The designated agent will provide the Department with its most current class action procedures and will follow such procedures on behalf of the Department. The designated agents class action procedures shall include reviewing various information sources for notification of class action suits, identifying transactions within the class period for the security involved and determining account eligibility and filing proof of claim and supporting documentation.

Department Investment staff will monitor the designated agent's compliance with the Securities Litigation Policy. Investment staff will review all notices and information concerning potential or pending class action litigation that are received by the Department. The Commissioner will report periodically to the Board on recoveries realized as a result of class action participation.

Although there may be value in influencing an eventual settlement or in pursuing a separate legal action in a lawsuit, the administration and opportunity costs can be substantial. The Board uses a monitoring approach to securities litigation to avoid the diversion of staff, financial, and legal resources in building and applying collective plaintiffs' arguments through depositions, discovery, and documentation. Serving as the lead plaintiff does not obtain any additional financial benefit, but rather a lead in a class action suit shares any final judgment or settlement with the class members on an equal, per share basis.<sup>8</sup> Opting out of a "class" or objecting to the terms of a proposed settlement and pursuing independent legal remedies may also be pursued although the administration and opportunity costs can be substantial and involve significant attorney's fees, costs, and expenses which may or may not be recovered.

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<sup>8</sup> The lead plaintiff may recover attorney's fees, costs, and expenses if the lawsuit is successful or a settlement is obtained.



The Commissioner will initiate active participation in securities cases only upon prior approval by the Board. Prior to bringing any recommendation to the Board, the Commissioner will assess the merits and prospects for active participation by reference to the criteria and factors outlined below. The Board, in consultation with the Attorney General, may consider more active forms of legal engagement in cases where:

1. Where the action is in the US, and the estimated loss is a minimum of \$5,000,000 of assets under management of the Board, or from the combined assets under management of the Board and the North Dakota State Investment Board; and
2. the trust funds are among the largest shareholders of the defendant issuer; and
3. service as a lead plaintiff or opting out of a proposed settlement to the “class” of claimants would be in the best interest of the Funds
4. the prima facie merits of the claim for loss, and the factual basis for the action, recognizing that the full discovery process will not commence until the class has been certified by the court in which such case is to be filed.
5. The potential that any defendants or insurers will be able to pay an adequate recovery to the class, without impairing the value of any current security holdings of the Board may yet hold in issuer in the portfolio.
6. Potential costs that may be incurred. Special consideration must be given to any case that must be filed in a non-U.S. venue under the “Morrison” criteria established by the U.S. Supreme Court in a 2010 decision, since costs of litigation and potential liabilities of unsuccessful claims may be significant.

The Board may engage one or more legal firms that specialize in prosecuting security class action cases; any such engagement is subject to special appointment requirements of N.D.C.C. § 54-12-08. For these purposes only, such firm(s) may be granted ongoing access to security holdings information through the custodian bank or designated agent.

The Board may contract with firms that provide securities litigation monitoring/tracking services if it determines it is prudent. In August of 2018 the Board approved the hiring of a securities litigation monitoring and claims filing firm; that firm is currently being brought onboard. In addition to providing litigation monitoring and claims filing services, the firm will work the Commissioner to develop a revised securities litigation policy for the Board.

- **NON-U.S./CANADA PASSIVE CLASS AND GROUP RECOVERY EFFORTS:** The Board has engaged a securities litigation monitoring and claims filing firm to identify and submit claims in non-U.S./Canada matters that involve passive claim filing regardless of loss size. To the greatest extent possible, the participation process will be automated. Our funds may serve as lead or representative plaintiffs in passive participation matters if the factors specified below for active participation have been met; or if there are other overriding considerations. The current “Passive” International Jurisdictions include Australia, Dutch Foundations and United Kingdom Regulatory Action Compensation Schemes.
- **NON US/CANADA GROUP OPT-IN LITIGATION:** The risks associated with direct litigation outside of the U.S. vary by country and our participation will need to be evaluated on a matter-by-matter basis. However, countries can be grouped into three risk profile categories - low, medium, and high - with

minimum damages thresholds set for each risk group to limit consideration to those matters where our funds' losses exceed these amounts.

The Board has engaged a securities litigation monitoring and claims firm to (a) identify "opt in" or group litigation, arbitration, settlement and/or other recovery efforts outside of the U.S. and Canada for which they may be eligible and provide damages estimates based on the methodologies accepted under local law, if they exist and recognizing that this will often be uncertain. The Board will compare those damages estimates against pre-defined loss thresholds below and, if damages exceed threshold amounts, evaluate whether participation in the matter will be in the Fund's best interest.

The following initial damages thresholds are based on perceived risks associated with recovery efforts in each country. The Board will periodically review these thresholds and make any necessary adjustments based on experience, updated information about specific risks, and other factors.

<b>Jurisdictional Description</b>	<b>Damages Threshold</b>
<u>Low risk</u> jurisdictions including Japan	To be inserted Ranges to be considered from \$100k to \$500k
<u>Medium risk</u> jurisdictions including Germany, Austria, Belgium, Switzerland, Denmark, Spain, Finland, France, Hong Kong, Indonesia, Ireland, Italy, Korea, Luxembourg, Malaysia, Norway, New Zealand, Portugal, Sweden, and Thailand	To be inserted \$1 mil to \$5 mil
<u>High risk</u> jurisdictions including Taiwan <sup>9</sup> and the United Kingdom	To be inserted Greater than \$7.5

When losses exceed threshold amounts, our funds should consider the following:

- The merits of the case in light of the remedies available under local law.
- Their expected losses and percentage recoveries or results from past matters in that country, if available.
- The process and administrative burden to joining a particular litigation or settlement effort.
- The costs associated with involvement including attorney fees, litigation expenses, and any other potential expense covered by the litigation funder without recourse to the funds.
- How the organizers intend to protect our funds from the risk of adverse party cost shifting.

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<sup>9</sup> While Taiwan is among the most active non-US/Canada jurisdictions, our funds are not likely to have eligibility and given the risks involved, they should limit their participation to situations where money has already been recovered.

- If the litigation or settlement is funded, the identity of the funder, the percentage and cost reimbursement the funder will take from the recovery if the efforts succeed.
- The lawyers handling the case including their reputation, past results, and terms of representation like fee structures, expenses, and contingencies.
- The registration requirements, the potential evidentiary and/or discovery burdens to the funds, and any other administrative burden that may be required from them including any obligation to travel.
- The extent to which the funds' involvement will be disclosed to opposing parties and/or the public.
- Any other reasonable considerations.

## Securities Lending

The objective of the securities lending program is to generate incremental income from overnight and certain term loans of securities. The Funds may participate in a securities lending program.

The program will utilize a high-quality and conservative collateral re-investment approach that safeguards the return of principal and maintains adequate daily liquidity to support trade settlement activity and portfolio restructuring activities. Each securities lending agent will ensure that specific guidelines are in place as to the quality, duration, liquidity and diversification of securities lending collateral.

The Board requires collateral for loans. The use of assets in any securities lending engagements should:

1. Earn a competitive market return through conservative securities lending practices, consistently with the preservation of capital.
2. Minimize risk with respect to both the borrower and the collateral,
3. Operate the securities lending program so that it will not interfere with the management of overall investment portfolio and strategies.

Unless explicitly exempted by the Board, the lending agent shall provide indemnification against losses arising from borrower default, insolvency, and failure to comply with the terms and conditions of the lending agreements.

The Commissioner shall provide a report to the Board annually, outlining the performance and status of the securities lending program.

## Proxy Voting

The Board believes that proxies should be voted in a manner consistent with the long-term interests and objectives of the investment program set forth herein, unless it is in the best interest of the Board not to vote. The Board delegates authority to vote shares to each Manager and expects Managers to vote shares. The principle behind this policy is that Managers have specific reasons for holding shares and will vote shares in a way the Manager believes will best add value to those shares. Managers shall submit written reports to the Commissioner by January 31 of each year advising of the manner in which each proxy was voted during the preceding calendar year and notify the Commissioner of controversial matters which may be subject to proxy voting.

Notwithstanding the forgoing, intangible factors such as social and environmental issues are increasingly being incorporated into proxy voting. The Board expects voting of social and environmental proposals will be based solely on enhancing or protecting long-term value to the assets under its control and not on establishing or endorsing social policy. As part of its fiduciary duty, the Board expects Managers to consider only those factors that relate to the economic value of the Board's investments and shall not subordinate the interests of the Funds to unrelated objectives.

It is the policy of this Board that the Commissioner shall regularly review related proxy votes by the Managers. Any proxy votes deemed by the Commissioner to be contrary to the interests of the Funds under the Board's responsibility, shall be fully explained by the Manager in writing and brought to the Board for its review. An exception to the above policy regarding voting of proxies is for shares held by the Board on behalf of holders of unclaimed property. As a passive holder of these particular shares the Board chooses not to exercise voting rights on the owners' behalf.

### **Funds Administered by the Board**

The pages that follow describe the various funds administered by the Board.

## Permanent Trust Funds

On February 22, 1889, Congress passed "An act to provide for the division of Dakota [Territory] into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments . . . ." This Act is commonly known as the Enabling Act. This act granted land to the new states "for the support of common schools," which in North Dakota's case totaled more than 2.5 million acres. Further land grants in this legislation provided for the support of colleges, universities, the state capitol, and other public institutions. These additional grants totaled approximately 668,000 acres, bringing the grand total of Enabling Act land grants to nearly 3.2 million acres.

### Purpose

The land grant from the federal government at statehood<sup>10</sup> and the state constitution<sup>11</sup> both provide that the Board of University and School Lands manage the trust land and minerals and associated proceeds, for the exclusive benefit of education and institutional support. In accordance with Article IX of the North Dakota Constitution as well as federal law<sup>12</sup>, the perpetual trust funds must be managed to:

1. Preserve purchasing power
2. Maintain stable distributions to trust beneficiaries

Chapter 15-03 of the North Dakota Century Code governs the management of the Permanent Trust Funds, including the requirement that any investments conform to the prudent investor rule.

### Listing of Permanent Trust Funds

The following are the beneficiaries of the Permanent Trust Funds described in Article IX of the North Dakota Constitution:

1. Common Schools (K-12)
2. North Dakota State University
3. University of North Dakota
4. Mayville State University
5. ND Youth Correctional Center
6. Ellendale State College<sup>13</sup>
7. Valley City State University
8. State College of Science
9. School for the Blind
10. School for the Deaf
11. State Hospital
12. School of Mines (UND)
13. Veterans Home

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<sup>10</sup> The Enabling Act of February 22, 1889 (25 Stat. 676, ch. 180)

<sup>11</sup> N.D. Const. art. IX, §§ 2, 3

<sup>12</sup> 7 U.S.C. § 309 and 25 Stat. 676, ch. 180

<sup>13</sup> Beneficiaries of the Ellendale permanent trust are now Dickinson State University, Minot State University, Dakota College at Bottineau, Veterans Home, School for the Blind, State Hospital, and the State College of Science as directed in 1973 N.D. Sess. Laws ch. 176.

## Funding Sources

### Funding Sources Common to All Permanent Trust Funds

Each permanent trust individually owns surface land tracts and mineral rights that provide revenue from agricultural leases, oil and gas royalties and lease bonuses, as well as other productive uses of the surface and mineral lands owned by each trust.

### Common Schools

The Common Schools Trust Fund is the largest of the Permanent Trust Funds administered by the Board. In addition to the revenues from the surface lands, minerals, and investments that the Permanent Trust Funds own, the Common Schools Trust Fund also receives funding from the following sources:

1. 10 percent of the oil extraction taxes collected by the state<sup>14</sup>
2. Net unclaimed property proceeds collected by the Department<sup>15</sup> until such time that property may be reunited with its owner.

## Distribution Policy

Article IX, Section 2 of the North Dakota Constitution states:

Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

The distribution formula<sup>16</sup> is also described in Article IX, Section 2:

[B]iennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

The year-end values used to calculate permanent trust distributions, as described in Article IX above, is the fund balance of each trust found in the Board's audited financial statements. When determining biennial distributions for the permanent trusts, annual distributions for each trust are rounded to the nearest one thousand dollars.

By statute, distributions from the Common Schools Trust Fund are paid to school districts monthly, from August to April of each fiscal year, through the state tuition fund.<sup>17</sup> . At the request of the Office of

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<sup>14</sup> N.D. Const. art. X, § 24

<sup>15</sup> N.D.C.C. § 47-30.1-23 and N.D. Const. art. IX, § 1

<sup>16</sup> This distribution formula is the result of a constitutional amendment that was approved by North Dakota voters on November 7, 2006. This constitutional change was validated at the federal level by the passing of the Omnibus Public Land Management Act of 2009 (Pub. L. No. 111-11, 123 Stat. 1446) which amended the First Morrill Act (The Act of July 2, 1862 [7 U.S.C. 301 et seq.]) and the Enabling Act of February 22, 1889 (25 Stat. 676, ch. 180). Prior to these changes, distributions for the Permanent Trust Funds were based on projections of interest and income for the funds; distributions could only be paid out of interest earned.

<sup>17</sup> N.D.C.C. § 15.1-28-01

Management and Budget, effective fiscal year 2018, distributions from the Common Schools Trust Fund will be made in relatively equal amounts from August to April of each fiscal year.

Distributions from the other 12 Permanent Trust Funds are made in equal amounts during January and June of each fiscal year and are distributed directly to the benefitting institutions.

## Investment Objective

The assets of the Permanent Trust Funds are invested with a perpetual time horizon, in a manner that seeks to balance the longer-term goal of preserving the purchasing power of the trusts with the shorter-term goal of maintaining a stable stream of distributions to beneficiaries. The long-term nature of the funds, combined with a disciplined investment approach, provide the ability to the Permanent Trust Funds to withstand short-term volatility, to profit from periods of elevated risk aversion, and to be rewarded for providing liquidity.

The Permanent Trust Funds are invested by the Board in a single comingled pool, along with the Indian Cultural Education Trust and the Theodore Roosevelt Presidential Library and Museum Endowment Fund (described further on pages 28 and 29).

## Strategic Asset Allocation

The Board recognizes that the most important determinant of long-term return and risk is the asset allocation decision. The asset allocation decision is intended to reflect the return objective and risk tolerance expressed in this Investment Policy Statement. It is designed to provide the highest probability of meeting the Funds' objectives at a level of risk and liquidity that is acceptable to the Board. In establishing its risk tolerance, the Board considers the Funds' ability to withstand short- and intermediate-term volatility in investment performance and fluctuations in financial condition of the Funds.

To determine the strategic asset allocation target, the Board, with assistance from the Commissioner and Consultant, examines the historical and projected risk and return of the approved asset classes, the correlation among these asset classes as well as the effect the expected investment performance will have on the obligations of the Funds. Based on its long-term return expectations and its determination of the appropriate risk tolerance for the Funds, the Board has chosen the following strategic asset allocation policy for the Permanent Trust Funds:

Asset Class	Strategic Asset Allocation Target	Minimum	Maximum
<b>Broad US Equity</b>	15%	12%	18%
<b>Broad International Equity</b>	15%	12%	18%
<b>Fixed Income</b>	25%	20%	30%
<i>Public Credit</i>	5%		
<i>Private Credit</i> <sup>1</sup>	20%		
<b>Absolute Return</b>	15%	10%	20%
<i>Global Tactical</i>	5%		
<i>Multi-Strategy Hedge Funds</i>	10%		
<b>Real Estate</b>	15%	10%	20%
<b>Private Equity</b>	8%	0%	12%

<b>Private Infrastructure</b>	7%	0%	11%
<b>Opportunistic Investments</b>	0%	0%	5%

<sup>1</sup> Private Credit includes hybrid public/private strategies

The Board and the Commissioner will review the strategic asset allocation policy at least annually for reasonableness relative to significant economic and market changes or to changes in the Funds' long-term goals and objectives. A formal asset allocation study will be conducted at least every four years to verify or amend the targets.

Recognizing that a long-term target allocation utilizing alternative asset classes can take a matter of years to implement prudently, the Board delegates implementation of strategic asset allocation policy to the Commissioner including funding of alternative asset classes and setting interim asset allocation targets.

In addition, during the implementation of a change to or modification of the asset allocation, some strategies may fall outside the allowable allocation ranges until the revised asset allocation is fully implemented.

Opportunistic investments do not have a specified target allocation, as the availability of opportunities is episodic in nature, and the best opportunities tend to appear during periods of market stress. Opportunistic investments are allowable up to a maximum of 5% measured at the time of commitment.

## Rebalancing

Rebalancing is the term that describes the periodic movement of funds from one asset or asset class to another in order to realign assets to the strategic asset allocation target. A rebalancing strategy is an important element of asset allocation policy. Systematic rebalancing can reduce portfolio volatility and increase portfolio return over the long-term. However, frequent rebalancing resulting from excessively tight ranges can lead to unnecessary transaction costs.

The Commissioner is responsible for developing and implementing a rebalancing plan that is appropriate for existing market conditions, with a primary objective of minimizing transaction costs, market impact, opportunity costs and portfolio disruptions. To the extent possible, cash flows and revenues will be used to maintain the strategic target allocation. The Commissioner may make minor changes among asset classes and within individual asset classes to more effectively maintain proper exposure to the strategic asset allocation and asset class portfolio structures.

Recognizing that at times it may be impractical or costly to reallocate assets when an upper or lower limit is breached, the asset class will be rebalanced to within its strategic asset allocation range as soon as is practically possible, subject to reasonable transaction costs.

## Benchmarks

One return objective to be considered when evaluating the Funds' performance is measured by applying the investment performance of the asset class benchmarks to the Funds' strategic asset allocation target. The Policy Index permits the Board to compare the Funds' actual performance to its total fund benchmark, and to measure the contribution of active investment management and policy adherence.



The Board has selected the following Policy Index for the Permanent Trust Funds:

Asset Class	Policy Index	Strategic Asset Allocation Target
<b>Broad US Equity</b>	Russell 3000 Index	15%
<b>Broad International Equity</b>	MSCI ACWI Ex USA IMI	15%
<b>Public Credit</b>	Barclays US Universal Index	5%
<b>Private Credit</b>	CS Leveraged Loans Index + 1.5%	20%
<b>Global Tactical</b>	Global 60/40 <sup>1</sup>	5%
<b>Multi-Strategy Hedge Funds</b>	HFRI RV Multi-Strategy Index	10%
<b>Real Estate</b>	NCREIF ODCE Index	15%
<b>Private Equity</b>	Cambridge US Private Equity Index	8%
<b>Private Infrastructure</b>	MSCI World Infrastructure Index	7%

<sup>1</sup> Global 60/40 Index: 60% Equity (MSCI All Country World IMI), 40% Fixed Income (Barclays US Aggregate Bond Index)

Recognizing that a long-term target allocation to alternative asset classes can often take a matter of years to implement prudently, the Board will also review an Interim Policy benchmark which will be adjusted as the Commissioner makes progress towards its long-term strategic asset allocation target.

## Permitted Investments<sup>18</sup>

The Board may invest in the following securities and investment activities as long as such investments comply with the Prudent Investor Rule<sup>19</sup>. Fund of Fund strategies are allowable in any of the asset classes. All investments are subject to approval of the Board and satisfactory legal review of applicable contractual terms and conditions.

### Equity

1. Preferred stock, common stock, initial public offerings, Real Estate Investment Trusts (REIT's), securities of foreign issuers listed on U.S. Exchanges, and any security convertible to common stock or American Depositary Receipts (ADR's) that are registered by the U.S. Securities and Exchange Commission (SEC) of any corporation whose securities are listed on at least one U.S. stock exchange that has been approved by or is controlled by the SEC or on the National Association of Securities Dealers (NASD). Global mandates may be considered.
2. Preferred stock, common stock, and convertible issues of any non-U.S. Corporation; which may be denominated in non U.S dollars, provided that the securities are traded on one or more national stock exchanges or included in a nationally recognized list of stocks; and the Board shall not be invested in more than ten percent of the voting stock of any company.

### Fixed Income (Public and Private)

1. Bonds, notes, or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations, or instrumentalities for which the credit of the United States

<sup>18</sup> Investments listed here are for general information purposes only. Each manager retained by the Board will be given specific guidelines with regard to permissible investments relevant to their mandate.

<sup>19</sup> N.D.C.C. § 15-03-04. See page 5 for more about the Prudent Investor Rule.

government is pledged for the payment of the principal and interest. Global mandates may be considered.

2. Bonds, notes or other obligations issued by a state, its municipalities, or other political subdivisions, that have received an investment grade bond rating.
3. Bonds, notes, commercial paper or other obligations of any corporation organized and operating within the United States.
4. Debt obligations of non-U.S. governmental or quasi-governmental entities, these may be denominated in foreign currencies; obligations, including but not limited to bonds, notes or commercial paper with an investment grade rating (unless otherwise approved by the Board) of any corporation organized outside of the United States. Currency transactions, including spot or cash basis currency transactions, forward contracts and buying or selling options or futures on foreign currencies, shall be permitted.
5. Collateralized obligations, including but not limited to mortgages, held in trust that: (1) are publicly traded and are registered by the SEC or other Self-Regulatory Organization (SRO) and (2) have underlying collateral that is either an obligation of the United States government or else has a credit rating above or equal to BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system or their equivalent by a national statistical ratings organization (NSRO) registered with the SEC(unless otherwise approved by the Board).
6. Derivatives including forwards, futures, options, mortgage derivatives, structured notes, and swaps.
7. High yield fixed income securities rated below 'BBB' according to the Standard and Poor's rating system and below 'Baa' according to the Moody's investors rating system.
8. Private Debt strategies approved by the Board.
9. Loans, warrants and other forms of debt approved by the Board, and managed in conjunction with the Bank of North Dakota, such as farm loans and energy construction loan, as long as the investment meets the Exclusive Benefit Rule described on page 7 of this Policy.

### **Absolute Return**

1. Liquid multi-asset/global tactical asset allocation (GTAA) funds that have the ability to shift capital tactically based on relative valuations, providing broad diversification across a range of global investments.
2. Multi-Strategy Hedge Funds approved by the Board.

### **Real Estate**

Real Estate Partnerships, including investments in private vehicles through limited partnerships or limited liability companies that have an ownership interest in direct real estate properties, whether income-producing or non-income producing. The investment strategies may include “core” and “value added” strategies, which derive their return from both income and appreciation. As well as, Real Estate Investment Trusts (REIT's) and other real estate securities and related index strategies for rebalancing tools.

### **Private Equity**

Private Equity Partnerships, including investments in private vehicles through limited partnerships or limited liability corporations, which have an ownership interest in any type of security across a company's capital structure. The investment strategies may include “buyout”, “growth”, “venture

capital” and “special situations” that are in the business of providing capital for start-up, expansion, buyout/acquisition, recapitalization, debt financing (including distressed debt) and similar business purposes.

### **Private Infrastructure**

Private Infrastructure Partnerships, including investments through limited partnerships or limited liability companies that have ownership interests in assets or properties where the majority of value of the investment is derived from revenue sources that have contractual linkages to inflation, implicit linkages to inflation and/or focus on the provision of services with low demand elasticity.

### **Opportunistic Investments**

From time to time, Permanent Trust Funds investments may be made in opportunistic investments. The objective of such investments shall be to enhance returns through opportunities that present themselves due to stressed conditions in the markets or other unique opportunities. The guidelines for such investments shall be determined by the investment management agreement or appropriate offering documents in the case of commingled or partnership investments. An opportunistic investment would occur in a situation where it is deemed the potential return would exceed the Total Fund performance excluding opportunistic returns, or another benchmark as deemed appropriate by the Commissioner and approved by the Board.

### **Cash Investment Guidelines**

The Commissioner will focus on quality when investing cash positions. Cash is an asset class that should emphasize minimal risk. Cash positions will be kept to the minimum necessary for liquidity, distributions and ongoing investment activities. Eligible securities include:

1. Repos secured by U. S. obligations or other securities backed by the U.S., A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less, or asset-backed securities rated AAA. All repo collateral must have a market value of at least 102% of the market value of the contract;
2. Commercial paper issued by corporations organized and operating within the U.S. and rated “prime” quality by a national rating service;
3. Prime bankers’ acceptances issued by money center banks;
4. Funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, “funding agreement” means a floating or variable rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company;
5. Time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

## Strategic Investment and Improvements Fund (SIIF)

### Fund Purpose

The Strategic Investment and Improvements Fund (SIIF), was created July 1, 2011 with merger of the Lands and Minerals Trust Fund and the Permanent Oil Tax Trust Fund.<sup>20</sup> The SIIF holds the assets and collects the revenues earned from State owned mineral acres. The SIIF also receives a substantial portion of the oil and gas production and extraction taxes collected by the State. The Board is responsible for managing the physical and financial assets of the SIIF.

The purpose of the SIIF is to provide for one-time expenditures relating to improving state infrastructure or for initiatives to improve efficiency and effectiveness of state government.

### Funding Sources

The SIIF collects the revenues earned from the mineral acres owned by the State, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the sovereign minerals located under navigable rivers and lakes. The SIIF also receives a portion of the oil and gas production and extraction taxes collected by the State.<sup>21</sup> Legislative changes to the oil tax revenue allocations are common and can have a major impact on the timing and amount oil taxes collected by the SIIF each biennium.

### Distribution Policy

There is no explicit distribution policy or objective; rather the Board is responsible for making sure funds are available to distribute or transfer when needed and as appropriated. The SIIF can be appropriated or obligated by the Legislature every two years, though State law dictates that the SIIF should be appropriated only to the extent that the moneys are estimated to be available at the beginning of the biennium in which the appropriations are authorized.<sup>22</sup>

### Investment Objective

State law provides no guidance as to how the assets of the SIIF should be invested; however, due to the short-term nature of spending decisions and the uncertainty of the fund's mineral based revenues, the Board invests the SIIF with a focus on principal preservation and liquidity. The Board has adopted an investment objective for the SIIF that provides for a diversified portfolio of fixed income securities that will exceed on a multi-quarter basis, net of fees, the return of the benchmark described below.

### Strategic Asset Allocation

Due to the expendable nature of the SIIF, the strategic asset allocation for the fund is 100% low duration investment grade fixed income investments.

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<sup>20</sup> N.D.C.C. § 15-08.1-08 and § 61-33-07

<sup>21</sup> N.D.C.C. § 57-51.1-07.5

<sup>22</sup> N.D.C.C. § 15-08.1-08

## Investment Guidelines

The SIF will be invested in a high quality portfolio that includes a combination of Treasuries, corporate bonds, asset and mortgaged backed securities, and commercial paper and will adhere to the following guidelines:

- Minimum average quality of AA
- Minimum quality for any security of BBB (limited to 10%)
- Neutral weighted average maturity of 1 year, range of 6 months to 1.5 years
- Maximum maturity: 3 years for fixed rate, 5 years for floating rate
- No more than 50% in investment grade corporate and agency backed securities
- Not more than 2% of the fund will be invested with any single issuer

## Benchmark

The benchmark is composed of 50% of the three-month U.S. Treasury Bill and 50% Barclays 1 – 3 Year Gov't Corp Index.

## Capitol Building Fund

### Fund Purpose

The Capitol Building Fund was created at statehood with a grant of land from the federal government. The purpose of the fund, as described in the Enabling Act of 1889, is to provide for “public buildings at the capital”.<sup>23</sup> The Capitol Building Fund was created under Article IX of the North Dakota Constitution; however, unlike the other trusts, this fund is not permanent in that the entire fund is subject to legislative appropriation each biennium.

The Capitol Grounds Planning Commission is responsible for managing all of the assets of the Capitol Building Fund.<sup>24</sup> The Board’s role is to invest and manage the various assets of the fund, as directed by the Capitol Grounds Planning Commission. These roles are statutory, not constitutional in nature; the law specifically states:

The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund and shall account to the commission concerning these funds at the commission's request.<sup>25</sup>

### Funding Sources

The Capitol Building Fund generates revenues from the almost 10,000 surface acres and more than 27,000 mineral acres, which provide revenue from agricultural leases, mineral royalties and lease bonuses.

### Distribution Policy

Since the Capitol Building Fund is a fully expendable fund, there is no distribution policy or objective; rather the Board is responsible for making sure funds are available to distribute or transfer when needed and as appropriated.

State law provides a continuing appropriation of up to \$175,000 per biennium that is available to the Capital Ground Planning Commission without requiring a legislative appropriation for a given biennium.<sup>26</sup> Historically, the legislature has also included a \$25,000 biennial appropriation for the operations of the Capitol Grounds Planning Commission.

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<sup>23</sup> The Enabling Act of February 22, 1889 (25 Stat. 676, chapter 180)

<sup>24</sup> N.D.C.C. § 48-10-02

<sup>25</sup> N.D.C.C. § 48-10-02

<sup>26</sup> N.D.C.C. § 48-10-02

## Investment Objective

Due to the fact that the entire balance of this fund can be appropriated by the legislature each biennium and the uncertainty of the fund's mineral based revenues, the Board has adopted an investment objective with a focus on principal preservation and liquidity.

## Strategic Asset Allocation

Due to the expendable nature of the Capitol Building Fund, the Capital Grounds Planning Commission has adopted a strategic asset allocation for the fund that is 100% fixed income investments.

## Investment Guidelines<sup>27</sup>

The Capital Grounds Planning Commission has adopted guidelines to invest the fund in a high quality portfolio that includes a combination of Treasuries, corporate bonds, asset and mortgaged backed securities, and commercial paper and will adhere to the following guidelines:

- Minimum average quality of AA
- Minimum quality for any security of BBB (limited to 10%)
- Neutral weighted average maturity of 1 year, range of 6 months to 1.5 years
- Maximum maturity: 3 years for fixed rate, 5 years for floating rate
- No more than 50% in investment grade corporate and agency backed securities
- Not more than 2% of the fund will be invested with any single issuer

## Benchmark

The benchmark is composed of 50% of the three-month U.S. Treasury Bill and 50% Barclays 1 – 3 Year Gov't Corp Index.

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<sup>27</sup> Due to the common investment objectives, strategic asset allocation, and investment guidelines, the assets of the Capitol Building Fund may be pooled with the SIIF for investment purposes.

## Coal Development Trust Fund

### Fund Purpose

The Coal Development Trust Fund is a permanent trust established under Article X, Section 21 of the North Dakota Constitution. The primary purpose of the fund is to provide loans to coal-impacted counties, cities, and school districts and to provide construction loans to school districts; any money that is not in use for loans may be invested by the Board. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources.<sup>28</sup> Both the Constitution and state law mandate that the income earned by the fund be used first to replace any uncollectable loans and the balance must be deposited into the General Fund.<sup>29</sup>

### Funding Sources

State law provides that 15% of coal severance tax revenues be deposited into the fund.<sup>30</sup> The Constitution provides that up to 70% of the taxes deposited into the fund each year may be appropriated by the legislature for lignite research, development, and clean coal demonstration projects approved by the industrial commission.<sup>31</sup> Thus, the Coal Development Trust Fund retains only 30% of the money deposited into the fund, which averages about \$500,000 per year.

### Distribution Policy

The income earned by this fund each year must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the State's general fund. The estimated fiscal year income for this fund is distributed in June of each year; any difference between estimated and actual income is distributed in November or December of each year, once final audited financial statements have been received.

### Investment Objective

Preservation of capital and added value over the benchmark over a full market cycle through active management of the portfolio subject to the investment guidelines set forth below.

### Strategic Asset Allocation

Due to the expendable nature of the income earned by the Coal Development Trust Fund, and the provision in state law about replacing any lost principal with income, the strategic asset allocation for the fund is 100% fixed income investments.

### Investment Guidelines

The Coal Development Trust will be invested in a high quality portfolio that includes a combination of Treasuries, corporate bonds, asset and mortgaged backed securities, and commercial paper and will adhere to the following guidelines:

- Minimum average quality of AA

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<sup>28</sup> N.D.C.C. § 57-62-02

<sup>29</sup> N.D. Const. art. X, § 21 and N.D.C.C. § 57-62-02

<sup>30</sup> N.D.C.C. § 57-62-02

<sup>31</sup> N.D. Const. art. X, § 21



- Minimum quality for any security of BBB (limited to 10%)
- Neutral weighted average maturity of 1 year range of 6 months to 1.5 years
- Maximum maturity: 3 years for fixed rate, 5 years for floating rate
- No more than 50% in investment grade corporate and agency backed securities
- Not more than 2% of the fund will be invested with any single issuer

#### **Benchmark**

The benchmark is composed of 50% of the three-month U.S. Treasury Bill and 50% Barclays 1 – 3 Year Gov't Corp Index.

## Indian Cultural Education Trust

### Fund Purpose

The Indian Cultural Education Trust was created in 2003 for the purpose of generating income to benefit Indian culture.<sup>32</sup> State law authorizes the Board to accept donations of money or land for this trust to be managed in the same manner that it manages its other trust land and financial assets, subject to state law and a required donor agreement with one or more federally recognized Indian tribes located in North Dakota, South Dakota, Montana, Minnesota, or Wyoming.

### Three Affiliated Tribes Cultural Education Account

The Three Affiliated Tribes Cultural Education Account is the sole account in the trust, which serves to benefit the Mandan, Hidatsa & Arikara Nation Cultural Education Foundation. Under an agreement signed by the tribe, North American Coal, and the Commissioner, the Board must manage and invest this account exactly as the Permanent Trust Funds are managed and invested.

### Funding Sources

Initial funding of the account was a result of donations of both money and land by North American Coal to the cultural education account. Revenue earned from the donated lands is deposited into the account. Further donations of land or money from Individuals or organizations may provide additional funding to the account.

### Distribution Policy

The distribution calculation for the Indian Cultural Education Trust is identical to that of the Permanent Trust Funds as detailed on page 16, however, the specific donor agreement for an account may dedicate a portion of the amount available to distribute to principal.<sup>33</sup>

The Three Affiliated Tribes Cultural Education Account donor agreement has mandated that no less than 25% of the annual amount available to distribute go to principal. Each year, the Commissioner notifies the Mandan, Hidatsa & Arikara Nation Cultural Education Foundation as to the amount eligible for disbursement. If written request for the disbursement is received by the Commissioner by March 31<sup>st</sup>, all or a portion of that amount shall be distributed as specified in the donor agreement.

### Investment Objective, Strategic Asset Allocation, and Investment Guidelines

Like the Permanent Trust Funds, the investment objective is to preserve purchasing power and maintain stable distributions with a long-term investment horizon. The assets of the Indian Cultural Education Trust are pooled with the Permanent Trust Funds. The strategic asset allocation, benchmarks, and investment guidelines are identical to those of the Permanent Trust Funds, which can be found in the corresponding sections beginning on page 17 of this Policy.

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<sup>32</sup> N.D.C.C. ch. 15-68

<sup>33</sup> N.D.C.C. § 15-68-04

## Theodore Roosevelt Presidential Library and Museum Endowment Fund

### Fund Purpose

The Theodore Roosevelt Presidential Library and Museum Endowment Fund was created in 2019 during the 66<sup>th</sup> North Dakota Legislative Session as a permanent endowment for grants to support the operation and maintenance of the Theodore Roosevelt Presidential Library and Museum.<sup>34</sup> State law authorizes the Board to accept donations of money for this trust to be managed in the same manner that it manages its other trust land and financial assets, subject to state law.

### Funding Sources

Initial funding of the account was a result of appropriation of money by 66<sup>th</sup> North Dakota Legislative Assembly and money borrowed from the Bank of North Dakota. Further appropriations from the North Dakota Legislature or donations of money from Individuals or organizations may provide additional funding to the account.

### Distribution Policy

The distribution calculation for the Theodore Roosevelt Presidential Library and Museum Endowment Fund is calculated and paid as follows<sup>35</sup>:

Annual distributions to the Theodore Roosevelt Presidential Library and Museum from the Theodore Roosevelt Presidential Library and Museum Endowment Fund in an amount equal to 4.0% of the Fund's trailing net average value calculated over the previous three (3) fiscal years shall be paid on or before December 31<sup>st</sup> of each year at the request of Theodore Roosevelt Presidential Library Foundation.

### Investment Objective, Strategic Asset Allocation, and Investment Guidelines

Like the Permanent Trust Funds, the investment objective is to preserve purchasing power and maintain stable distributions with a long-term investment horizon. The assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund are pooled with the Permanent Trust Funds. The strategic asset allocation, benchmarks, and investment guidelines are identical to those of the Permanent Trust Funds, which can be found in the corresponding sections beginning on page 17 of this Policy.

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<sup>34</sup> N.D.C.C. § 54-07-12

<sup>35</sup> Pursuant to the Agreement between the State of North Dakota and the Theodore Roosevelt Presidential Library Foundation executed June 30, 2020.

## History

Adopted:	08/27/2015
Revised:	09/29/2016
Revised:	10/26/2017
Revised:	09/26/2019
Revised:	12/18/2019
Revised:	01/21/2020
Revised:	04/30/2020
Revised:	02/24/2022
Revised:	08/25/2022

# **Section 5**

## **Minerals**

**COAL**

**Audit and examination.** Pursuant to the N.D. Admin. Code § 85-06-02-16, the Department shall serve by certified mail, a written request to payor specifying the documents requested. Payor shall have ninety days from the date of receipt of the request to provide the requested documents. Payor may request an extension of time to produce the documents. Any request must be in writing, specify the reason for the request, and be received by the Department within sixty days of receipt of the Department's request for documents. The Department may extend the time for production of documents. If the Department denies a request for an extension, the payor shall produce the information:

- a. Fifteen days after receipt of a denial of the request for an extension; or
- b. Ninety days after receipt of the original document request, whichever is later.

Effective Date: December 17, 2018  
Revised: January 1, 2020

## OIL AND GAS

**Audit and examination.** Pursuant to the N.D. Admin. Code § 85-06-01-13, the Department shall serve by certified mail, a written request to payor specifying the documents requested. Payor shall have thirty days from the date of receipt of the request to provide the requested documents. Payor may request an extension of time to produce the documents. Any request must be in writing, specify the reason for the request, and be received by the Department within thirty days of receipt of the Department's request for documents. The Department may extend the time for production of documents. If the Department denies a request for an extension, the payor shall produce the information:

- a. Fifteen days after receipt of a denial of the request for an extension; or
- b. Thirty days after receipt of the original document request, whichever is later.

Effective Date: March 28, 2019  
Revised: January 1, 2020

## **Minerals Valuation**

In order to provide a uniform and equitable leasing system for the Board's oil and gas mineral estate, the Department will conduct a Mineral Valuation Assessment (Assessment). In executing the Assessment, the Department shall consider all Proved Developed Producing wells currently under the Board's management and perform decline curve analysis to project future oil, gas, and water production for each well. For any undeveloped mineral acreage in which oil and gas reserves are prospective but unproven, the Board shall employ market rate conversions related to the recent leasing bonus payments.

As a part of the Assessment, the Board will approve the Commodity Effective Date, Commodity Price Schedule, and the Discount Rate.

### Commodity Effective Date

The Commodity Effective Date for the Board will be set for December 31 of each year.

### Commodity Price Schedule

Historical data from the Commodity Effective Date to the date economic reports are generated and NYMEX pricing from the date economic reports are generated forward shall be used.

### Discount Rate

The Board shall use the Discount Rate as follows:

Proved Developed Producing (PDP) – 10.0%  
Proved Developed Shut-In (PDSI) – 12.5%  
Proved Developed Non-Producing (PDNP) – 15.0%  
Proved Undeveloped (PUD) – 20.0%  
Probable Undeveloped (PROB) – 25.0%  
Possible Undeveloped (POSS) – 30.0%

Effective Date: June 25, 2020

Revised:



TITLE 85  
BOARD OF UNIVERSITY AND SCHOOL LANDS  
ARTICLE 85-06  
SUBSURFACE MINERAL LEASING

Chapter 85-06-07

POTASH AND OTHER SUBSURFACE MINERALS  
SOLUTION MINING

**Section**

85-06-07-01	Definitions
85-06-07-02	Lease Applications
85-06-07-02.1	Sovereign Lands
85-06-07-03	Advertisement and Public Auction
85-06-07-04	Rejection of Applications and Bids
85-06-07-05	Form and Terms of Lease
85-06-07-06	Pooling or Unit Agreements
85-06-07-07	Assignments and Releases
85-06-07-08	Royalties
85-06-07-08.1	Disputed Title Royalty Escrow Account
85-06-07-09	Breach of Lease
85-06-07-10	Reports of Lessee - Delinquency Penalty
85-06-07-11	Audits and Inspections
85-06-07-12	Preservation of Archaeological, Historical and Paleontological Resources
85-06-07-13	(reserved for future use)
85-06-07-14	Fees

**85-06-07-01. DEFINITIONS.** The terms used throughout this chapter and in documents used pursuant herewith have the same meaning as in the North Dakota Century Code Chapters 15-05, 15-08.1, 38-09, 38-11.2 38-12 , and 61-33, including:

1. **"Arm's length transaction"** means a transaction between parties with adverse economic interests where each party to the transaction is in a position to distinguish his economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint ventures, or between corporations or other entities having interlocking directorships or close business relationships which may compromise their individual interests.
2. **"Board"** means the board of university and school lands.
3. **"Commissioner"** means the commissioner of university and school lands.
4. **"Completion"** means, in the case of a subsurface mineral well, when the first commercial marketable quantity is produced through surface equipment into tanks from the ultimate producing interval after casing has been run.
5. **"Fund"** means any one of the various trust funds or assets under the control and jurisdiction of the board.
6. **"Byproducts"** means all potassium, sodium, phosphorus and other chemical substances of a similar occurrence and their salts and compounds.
7. **"Extraction Facility"** means any well or mine or other extractive process operated for the purpose of recovering subsurface minerals
8. **"Gross proceeds"** shall be the sum of all consideration in whatever form or forms, paid for the potash and byproducts attributable to the lease.
9. **"Leased premises"** means the land area subject to a given potash lease under the authority of the board of university and school lands.
10. **"Lessee"** means the party specified in a potash lease as the lessee, and his permissible assignees or other successors in interest.
11. **"Lessor"** means the state of North Dakota acting by and through the board of university and school lands and its agent, the commissioner of university and school lands.

12. **"Market value"** means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or seller is not compelled to sell without deductions of any kind including transportation discounts.
13. **"Net mineral interest"** means all or that undivided portion of the total subsurface mineral estate in a tract of land, the title to which is in the state of North Dakota acting by and through the board of university and school lands.
14. **"Solution Mine"** means the extraction of soluble minerals from subsurface strata by injection of fluids, and the controlled removal of mineral-laden solutions.
15. **"State Land Department"** means the office of the commissioner of university and school lands.
16. **"Subsurface minerals"** means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of boron, bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds, but does not include hydrocarbons (i.e. oil and gas), sand and gravel and rocks crushed for sand and gravel.
17. **"When run"** means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time shall be considered to be 7:00 a.m., local time, on the day the production is delivered to the purchaser or user regardless of the actual time delivered.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented

**85-06-07-02. LEASE APPLICATIONS.** Lease applications in writing, by facsimile transmission, or by electronic email, may be made only for tracts not already leased for the production of subsurface minerals as shown on the tract books of the state land department, except applications may be accepted for a tract already under lease when it appears that such lease will expire prior to the date of the lease sale. An application shall be accompanied by a nonrefundable application fee of \$50.00 per tract plus other fees specified in section 85-06-07-14 of this chapter and shall indicate the bonus offered. The bonus offered will serve as a bid in the auction. Each tract is limited to a maximum of one quarter section within the same quarter or governmental lots corresponding thereto within the same section. Applications of more than one quarter section will be divided and considered a separate application. Applications not accompanied by the application fee and not in the proper form shall be rejected. All applications are to be submitted to the State Land Department, P.O. Box 5523, Bismarck, North Dakota 58506-5523 (telephone no. 701-328-2800).

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-02.1 SOVEREIGN LANDS.** Notwithstanding section 85-06-07-02, a lease application for navigable lakes and streams may include up to a section if the tract or tracts cannot reasonably be subdivided by quarter or half section. Sovereign lands lease acreage, including islands, may be offered for lease as, more or less, and may be adjusted for accretions, relictions, or avulsive changes, as survey information is obtained, the ordinary high watermark is delineated, and other reliable relevant facts are identified. Lease acreage adjustments will be limited to within the same quarter section, half section or section.

General Authority  
NDCC 15-05-09 and NDCC 61-33-06  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-06-03. ADVERTISEMENT AND PUBLIC AUCTION.** Prior to the offering of subsurface mineral leases for sale, the commissioner shall publish notice of the sale in the official newspaper of the county or counties in which lands for lease are located, and in the Bismarck Tribune. The notice must be published once each week for two weeks, the last publication being at least ten days prior to the day of the lease sale. The advertisement shall specify the date, time and place of the lease sale; and shall specify how any interested person may obtain a list of the tracts that are being offered for lease. Bidding shall be on the basis of such bonus as the bidder may offer. Every subsurface mineral lease granted by the commissioner shall be issued to the successful bidder as soon as possible after collected funds are received from the successful bidder. Before any lease shall be issued the successful bidder shall, no later than seven calendar days from the conclusion of the auction, pay five years rental, the bonus, and the advertising fee specified in section 85-06-07-14. Should publication of any notice be inadvertently omitted or should such notice as published contain typographical errors, the commissioner may proceed with the scheduled leasing where it appears that the omission or error is not prejudicial to the fund.

Bids may be accepted electronically for a subsurface mineral lease sale. The highest of those bids received in writing before an electronic auction will be the opening bid of a particular tract of minerals. Land Department personnel may not bid incrementally on anyone's behalf.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-04. REJECTION OF APPLICATIONS AND BIDS.** The commissioner may reject any and all applications or bids at any time prior to the issuance of a lease.

General Authority  
NDCC 15-05-09  
History: March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-05. FORM AND TERMS OF LEASE.** Leases shall be issued on forms furnished by the commissioner. All leases shall be made for a term of not less than five years and shall continue in effect under the terms thereof for as long as potash and subsurface minerals may be produced from the leased premises in commercial quantities or for as long as extended as provided therein. The lease may provide for a reasonable shut-in clause, force majeure clause, and drilling and reworking continuation clause. The lease shall provide for a bonus of not less than \$1.00 dollar per acre and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the state land department at the time the lease is issued. The lease shall provide for a royalty of two and one-half percent (2.50%) of all potash and subsurface minerals produced from the leased premises without deductions of any kind, regardless of the place of sale. The fraction of percentage established by the board as a royalty shall be construed to mean such fraction or percentage of the net subsurface mineral interests. The lease may contain such terms and conditions as the board or commissioner, acting on behalf of the Board, shall deem appropriate.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-06. POOLING OR UNIT AGREEMENTS.** The board, or commissioner acting on behalf of the board may enter into an agreement for the consolidation of the leased premises with other lands for the purpose of joint development and operation of an entire consolidated area as a unit. Such agreement shall provide that the leased premises shall share in the royalty on potash and other subsurface mineral substances produced from a consolidated tract in the proportion that the leased premises bears to the total area of such unit, or upon such other royalty sharing basis as may appear equitable to the board. The operations or production on such an area shall have the same effect as operations or production under the terms of each such lease included therein. All such agreements must be submitted to and approved by the board or the commissioner acting on behalf of the board.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-06-07. ASSIGNMENTS AND RELEASES.** All leases may be assigned or released in whole or in part. An assignment, when submitted to the board for approval, shall be executed and acknowledged in the same manner prescribed for the conveyance of interests in real estate and shall be filed in duplicate with the commissioner. One copy shall be filed in the state land department and a duplicate returned to the assignee. The approval of the board acting by and through the commissioner shall be noted upon all copies. All lease obligations of assignor must be current at the time such assignment is approved. Upon payment of the then current assignment fee and upon approval of an assignment by the board, lessee shall be relieved of all obligations with respect to assigned portions. Provided all lease obligations are current at the time a release or partial release is made, all lease obligations and liabilities shall cease as to the released portions.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09  
15-05-15

**85-06-07-08. ROYALTIES.** If a sale of potash or any other subsurface mineral substance produced or manufactured from the leased premises does not constitute an arm's length transaction, the royalties due the lessor shall be as follows: Two and one-half percent (2.50%) without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities, depreciation, risk capital, and otherwise making the potash and other subsurface mineral products produced hereunder ready for sale or use.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09  
15-05-10

**85-06-07-08.1. DISPUTED TITLE ROYALTY ESCROW ACCOUNT.** Any lessee, assignee, or entity that assumes, or agrees to perform, any of the lessee's rights and responsibilities under the lease, that proposes to withhold royalty payments based upon an ownership dispute must establish an escrow deposit account and must deposit the disputed payments into this account. The account must be established at the Bank of North Dakota, or other state or national chartered insured financial institution approved by the Commissioner, with the Board as a party to the escrow agreement. Upon final resolution of the dispute, and with consent of the Commissioner, the escrow agent shall be authorized to release all monies held in the account to the entity that established the escrow account for proper distribution to the rightful owners. The Board shall be entitled to any interest income earned on the account attributable to the State's ownership interest. This section applies to matters where the amount of the disputed royalties is ten thousand dollars or more over a twelve (12) month period. This section may apply to leases executed prior to the effective date of this section if agreed to by the Commissioner and the lessee, assignee, or entity that assumes, or agrees to perform, any of the lessee's rights and responsibilities under the lease.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09  
15-05-10

**85-06-07-09. BREACH OF LEASE.** The board may pursue any legal remedy for nonpayment of any sum due under the lease or for breach of any of the terms or conditions of a lease. In addition, the board may cancel any lease for nonpayment of any sum due under the lease or for breach of any of the terms or conditions of a lease provided that such cancellation shall not release lessee from liability for any sum due lessor or from any damages on account of the breach. Before a lease shall be canceled, the commissioner, at the direction of the board, shall mail to the lessee by registered or certified mail addressed to the post office address of such lessee as shown by the records of the state land department, a thirty (30) day notice of intention to cancel such lease, specifying the reason for cancellation. If lessee shall not have remedied the default within thirty (30) days after receipt of such mailing, the commissioner, with board approval, may enter cancellation upon his records. A lease shall be canceled only after reasonable attempts have been made to secure voluntary payment of any sum due and compliance with the lease terms and conditions. The pursuit of one remedy shall not bar the pursuit of other remedies. The commissioner may, in writing, waive any breach of a lease except such terms and conditions as are required by law, but any such waiver shall extend only to the particular breach so waived and shall not limit lessor's rights with respect to any future breach. Notwithstanding the foregoing, failure to pay the annual delay rental by the date due shall result in automatic termination of a lease. An annual mineral lease rental payment shall be considered paid if the payment is postmarked or received in the office of the Commissioner on the day the payment is due. If for any reason a payment is received in the office of the Commissioner more than seven calendar days after the date the payment was due, the lease involved shall automatically terminate effective as of the date the payment was due.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-10. REPORTS OF LESSEE - DELINQUENCY PENALTY.** Lessee shall immediately notify the commissioner in writing when a permit to drill a well on the leased premises has been issued and shall indicate the location of the proposed well. Immediately upon obtaining production of potash and subsurface minerals in commercial quantities, the producing lessee shall notify the commissioner in writing, giving the date production was commenced. Within ninety (90) days following initial production of oil and within one hundred twenty (120) days following initial production of gas, lessee shall file with the commissioner a production and royalty statement showing total production and indicating the royalty due together with payment of such royalty. Thereafter, such statement and payment of royalty shall be due each month on or before the last day of the month succeeding each month of production. These time limits may be extended by the commissioner for good cause. The commissioner may request other information and to require that such reports be made on forms furnished by the commissioner. Any sum, other than annual delay rentals, not paid when due shall become delinquent and will be subject to a delinquency penalty of one percent (1%) of such sum for each thirty (30) day period of delinquency or fraction thereof.

In addition to the delinquency penalty, unpaid royalties also bear interest in accordance with N.D.C.C. 47-16-39.1. The commissioner may initially seek to collect either the delinquency penalty or interest, or both. Failure to seek collection of both penalty and interest shall not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim is not satisfactorily settled. At such time as a claim for unpaid royalties, if any, and penalties and interest is settled and payment received, the amount of penalty and interest not collected shall be deemed waived. In addition to the discretion to seek only penalty or interest in the initial claim for payment, the commissioner may, for good cause waive up to \$2500 of the penalty or interest initially sought. In determining whether good cause exists, the commissioner may consider one or more of the following: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; and any other relevant factors. Only in extremely rare circumstances will the commissioner consider waiving penalty or interest below the equivalent of the loss of interest earnings to the trust fund involved. Requests for interest or penalty waivers in excess of \$2,500 shall be presented to the Board, with the commissioner's recommendation thereon, for review and decision. Lessor shall have a first lien upon all oil and gas produced from the leased premises to secure payment of all unpaid royalties or other payments that may become due under this lease.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-11. AUDITS AND INSPECTIONS.** The cuttings, cores, and well logs of all wells on the leased premises and all books, accounts, receipts, and discharges of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale, and marketing of the subsurface minerals or other products produced on the leased premises shall at all reasonable times be subject to examination and audit by the commissioner or his representative.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09

**85-06-07-12. THE PROTECTION OF ARCHAEOLOGICAL, HISTORICAL AND PALEONTOLOGICAL RESOURCES.** Where an archaeological, historical, or paleontological resource is known at the time of leasing and needs to be protected, the board's potash lease will include a stipulation requiring that, at least twenty (20) days prior to beginning any surface disturbance on the leased premises, the lessee shall notify the state land department of the location of the intended surface disturbance. The state land department shall, based upon advice from the North Dakota Historical Board according to N.D.C.C. § 55-02-07, notify the lessee of the

protection requested to preserve the resource. If the lessee objects to the requested protection, the lessee may present its objection to the state land department. The commissioner, subject to appeal to the board, shall make the final determination as to what protection or preservation measures must be undertaken before surface disturbance begins. The board's subsurface mineral leases shall also contain a provision stating that in those instances in which a historical, archaeological, or paleontological resource, not known at the time of leasing, is discovered by the lessee during its operations on the leased premises, the lessee shall immediately stop work and do nothing to disturb or alter the resource. Upon discovery of such a resource the lessee shall immediately notify the state land department. The lessee shall not resume work until the state land department notifies the lessee what protective measures, if any, the commissioner may require to preserve or protect the resource. The lessee shall comply with all protective measures required by the commissioner or the board pursuant to this section. For the purposes of this section "surface disturbance" means any disturbance of the top soils or subsoil.

General Authority  
NDCC 15-05-0  
History: Effective March 31, 2011

Law Implemented  
NDCC 15-05-09  
55-02-07

**85-06-07-13.** (Reserved for future use)

**85-06-07-14. FEES.** Repealed.

General Authority  
NDCC 15-05-09  
History: Effective March 31, 2011  
Repealed: June 26, 2014

Law Implemented  
NDCC 15-05-09

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