



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

Kelly Armstrong  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

Tuesday, March 25, 2025

Governor's Conference Room or Microsoft Teams – 1:00 pm

Join on your computer or mobile app

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Or call in (audio only)

[+1 701-328-0950,,88870643#](#)

## **I. Roll Call and Pledge of Allegiance**

(approximately 1:05 pm)

## **II. North Dakota Housing Finance Agency – Dave Flohr, Jennifer Henderson**

- A. **Consideration of Approval of the 2026 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan** (Attachment 1A,B,C)
- B. **Consideration of Approval of 2025 Housing Incentive Fund (HIF) Allocation Plan** (Attachment 2A,B)
- C. Report on 2025 HOME and Housing Trust Fund Allocation Plans (Attachment 3A,B,C)
- D. Report on 2025 Emergency Solutions Grant and ND Homeless Grant Allocation Plans (Attachment 4A,B,C)
- E. Report on Declaration of Intent to Issue Multifamily Revenue Bonds – Wild Rose Senior Housing, Minot – (Attachment 5A,B,C)
- F. Other NDHFA Business

(approximately 1:30 pm)

## **III. North Dakota Public Finance Authority – DeAnn Ament**

- A. **Consideration of Approval of the Following State Revolving Fund Loans:**
  - i. City of Hazen – Clean Water - \$2,506,000 (Attachment 6A-F)
  - ii. City of Mandan – Clean Water - \$12, 478,000 (Attachment 7A-F)
  - iii. City of Mandan – Drinking Water - \$6,909,000 (Attachment 8A-F)
- B. Presentation of Memo from NDPFA Advisory Committee Regarding SRF Loans Approved Under Policy P-3B (Attachment 9)
  - i. City of Colfax – Drinking Water - \$245,000 (Attachment 9A,B)

- ii. City of Jamestown – Drinking Water - \$1,618,000 (Attachment 9C,D,E)
  - iii. City of Zeeland – Drinking Water - \$60,000 (Attachment 9F,G)
- C. Legislative Update
- D. Other NDPFA Business

(approximately 1:45 pm)

**IV. Bank of North Dakota – Don Morgan, Kelvin Hullet, Craig Hanson, Kirby Evanger, Mike Morey**

- A. **Consideration of Approval of Rural In-House Non-Compliant Residential Loan Program** – Don Morgan (Attachment 10)
- B. **Consideration of Approval of Amendments to General Loan Policy (Annual Policy Amendments)** – Kirby Evanger (Attachment 11)
- C. Presentation of Stress Testing – Kirby Evanger, Mike Morey (Attachment 12)
- D. Legislative Update
- E. Presentation of January 15, 16, 2025 Non-confidential Advisory Board and Committee Minutes (Attachment 13)
- F. Other BND Business

**Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2 and 54-17.5-06**

(approximately 2:30 pm)

**V. Bank of North Dakota Executive Session – Don Morgan Kirby Evanger**

- A. Presentation of Problem Loans as of 2/28/2025 – Kirby Evanger (Confidential Attachment 14)
- B. Presentation of January 15,16, 2020 Confidential Advisory Board and Committee Minutes (Confidential Attachment 15)

(approximately 2:45 pm)

**VI. Department of Mineral Resources Executive Session – Nathan Anderson, Cody VanderBusch**

- A. Attorney Consultation Regarding Cares Act Funding and Recovery of AWPSRF Funds Expended for Well Plugging and Reclamation (Confidential Attachment 16)

(approximately 3:15 pm)

**VII. Lignite Research, Development and Marketing Program Grant Round 106 Executive Session – Jordan Kannianen**

- A. **Consideration of Confidentiality Request Pursuant to 54-17.5-06.**  
(Confidential Attachment 17, 17A)

**Meeting Returns to Open Session**

(approximately 3:30 pm)

**VIII. Executive Session Actions**

**IX. Lignite Research Development and Marketing Program Grant Round 106 – Jordan Kannianen, Mike Holmes**

- A. Presentation of Lignite Research Program Project Management and Financial Report – Jordan Kannianen (Attachment 18)  
B. **Grant Application 106A: Carbon Ore, Rare Earth, and Critical Minerals (CORE-CM) Initiative – Phase II, Applicant EERC** (Attachment 19)  
C. **Grant Application 106B: The Regulatory & Litigation Support Project for the North Dakota Lignite Industry, Applicant Lignite Energy Council** (Attachment 20)  
D. Other LRP Business

(approximately 4:00 pm)

**X. North Dakota Pipeline Authority – Justin Kringstad**

- A. Natural Gas Pipeline Development Update (Attachment 21)  
B. Legislative Update  
C. Other NDPA Business

(approximately 4:20 pm)

**XI. Department of Mineral Resources – Nathan Anderson**

- A. Legislative Update

(approximately 4:30 pm)

**XII. Legal Update – Phil Axt, Matt Sagsveen, David Garner**

- A. Challenges to State Law:  
i. NW Landowners v. State  
B. Challenges to Federal Rules:

- i. EPA Mercury and Air Toxins Rule (DC Cir)
  - ii. EPA Carbon Rule (DC Cir)
  - iii. EPA Methane Tax Rule (DC Cir)
  - iv. EPA Methane OOOO Rule (DC Cir)
  - v. EPA PM2.5 Rule (DC Cir)
  - vi. EPA WOTUS Rule (DND)
  - vii. EPA/DOT Vehicle Mandate rules (DC Cir; CA6)
  - viii. BLM Venting & Flaring Rule (CA8)
  - ix. BLM Conservation Rule (DND)
  - x. BLM Resource Management Plan (DND)
  - xi. CEQ NEPA Phase 2 Rule (DND)
- C. Interventions to Defend Against Federal Actions
  - i. DAPL Operation (DDC)
- D. Other States' Actions of Concern:
  - i. Minnesota Carbon-Free Power Law
  - ii. New York Climate Superfund Law

\* Possible Executive Session under N.D.C.C. 44-04-19.1(9) & 44-04-19.2 for attorney consultation

(approximately 4:45 pm)

**XIII. Office of the Industrial Commission – Karen Tyler, Jordan Kannianen**

- A. **Consideration of February 19, 2025, Industrial Commission Meeting Minutes** (Attachment 22)
- B. Legislative Update (Attachment 23)
- C. Other Office of Industrial Commission business

**XIV. Adjournment**

Next Meeting – Thursday, April 24, 2025, 1:00 pm  
Governor's Conference Room

March 25, 2025

**TO: Industrial Commission**

**FR: David Flohr, Executive Director**

**RE: 2026 Low Income Housing Tax Credit Qualified Allocation Plan**

The NDHFA Advisory Board recommends the **Industrial Commission approve the 2026 Low Income Housing Tax Credit Qualified Allocation Plan (attached).**

Section 42 of the Internal Revenue Code requires that the Agency allocate Low Income Housing Tax Credits in accordance with a Qualified Allocation Plan (QAP).

The initial draft 2026 QAP was published on February 14, 2025, for a 15-day public comment period that ended at 5 pm on March 3, 2025. A public hearing was held on March 5, 2025. Interested parties had the option to attend either in person at NDHFA Executive Board Room or via Microsoft Teams. Below is a summary of the substantive changes to the draft plan and the comments received. A copy of the final red-line draft is provided. Following Industrial Commission approval, the final QAP will be published to the Agency website. The application round will open on September 1, 2025, and close on the last business day in September.

Section 2: General Provisions

**Maximum Developer Fee (page 2)**

Proposed to increase the maximum developer fee for applications utilizing 4% credits from 20% to 30% of the project's eligible basis and requiring a percentage of such fee to be deferred. Allowance of a higher developer fee allows the developer to access additional basis, which increases the access to additional credits and private equity investment. The requirement to defer portions of the developer fee allows the developer to be paid based on success of the project. Tax credit investors also limit the amount of fee that can be deferred based on financial projections that the fee can successfully be repaid. These changes create a self-regulating fee scenario by which the developer will select an appropriate fee that is in line with the project's financial projections and are reasonably able to be repaid.

There were no comments received related to the proposed change.

**Contingencies (page 5)**

Added language requiring any unspent construction contingency to be used to pay down a mortgage or help fund replacement or operating reserves.

Several comments were received requesting to include deferred developer fee as an eligible use of contingency funding.

The QAP was updated to allow unspent contingency to be spent on any liability of the owner, which would include deferred developer fee.

#### Section 5. Threshold Requirements

##### **Appraisal (page 9)**

Removed the requirement to provide written acknowledgement confirming the requirement to provide an appraisal in certain circumstances. Appraisals are still required when acquisition costs exceed 15% of total development costs or when a project has project based rental subsidy and those requirements are enforced in other steps on the approval/development process and a written acknowledgement is unnecessary documentation.

There were no comments received related to the proposed change.

##### **Unit Size Maximums (page 9)**

Removed the unit size square footage requirements. Project size is already limited by a maximum qualified basis per square footage calculation, so an additional limitation is redundant.

There were no comments received related to the proposed change.

#### Section 7: Project Ratings

##### **Tenant Support Coordinator (page 11-12)**

Changed the scoring category to Service Coordinator and added descriptions of core functions required. These changes were adapted from HUD's multifamily service coordinator toolkit, which references best practices of the role. Removed the additional points for contracting with a Medicaid Service Provider to provide supportive services to Medicaid eligible tenants.

The role of a Service Coordinator is to be able to identify and refer individuals to appropriate services including Medicaid eligible services such as Home and Community Based Services and 1915i tenant supports. Contracting with a Medicaid provider upfront adds excess operating costs, an unintentional consequence of the scoring criteria. The focus of this scoring criteria was to have staff onsite who can help tenants identify and access supports they may need.

Commentors supported the removal of the Medicaid provider points, but also indicated that a tenant support coordinator/service coordinator adds significant costs to operating and may not make sense for all types of properties. Staff is recommending no additional changes to the scoring criteria.

##### **Universal Design (page 13)**

Lowered the percentage range of units necessary to receive points in each scoring range. Developers and architects throughout the past year have commented on the excessive costs associated with units that meet the universal design standards and indicated challenges in filling the units. All agree on the need for true accessible units, but indicated that a lower percentage still fulfills then needs.

Several commentors requested the agency reconsider the proposed changes, stating that the units created with this scoring criteria are needed in the community. Others commented that the lowering of the percentage is warranted as the units are the hardest to fill and are more expensive to build.

Staff is recommending to maintain the lowered percentage as proposed.

#### Other Comments Received

##### **Committed Leverage (page 15)**

Comments were received requesting the agency to consider adding language to allow other forms of leverage such as a PILOT to be valued as committed leverage. As the scoring category reads now only leverage that reduces debt is allowed and a PILOT, for example, reduces operating expenses and is valuable to a project.

Staff is recommending including sources that reduce operating expenses as an allowable leverage source. The language was updated to include a present value calculation of those sources.

##### **New Development/Preservation Parity (page 16)**

Written comments were received requesting NDHFA to consider projects that preserve existing affordability to qualify under the renovation parity.

The parity is simply to ensure that annually at least one project that adds additional units and one project that rehabilitates/preserves existing units are selected for funding, staff proposes no additional changes needed to this section.



## 2026 ALLOCATION PLAN

### Low Income Housing Tax Credit Program



Community Housing and Grants Management Division  
2624 Vermont Ave. | PO Box 1535 | Bismarck, ND 58502-1535  
800-292-8621 or 701-328-8080 | 800-435-8590 (Spanish) | 711 (TTY)  
[www.ndhfa.org](http://www.ndhfa.org) | [hfainfo@nd.gov](mailto:hfainfo@nd.gov)

Una traducción al español de este documento está disponible solicitándola en [ndhfa.org](http://ndhfa.org)



The information in this plan is provided as a general overview and should not be relied on for tax purposes. Individual applicants are solely responsible for compliance with section 42 of the internal revenue code, as amended. Each applicant will be responsible for the determination of the amount of tax credit for which they apply. Agency recommends that applicants seek professional advice prior to submitting an application.

This recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Accommodations: Individuals who require accommodations including translated documents, an alternate format, or to request a copy of the plan may contact:

504 Coordinator:  
Jennifer Henderson  
North Dakota Housing Finance Agency  
2624 Vermont Avenue  
Bismarck ND 58504  
800-292-8621 or 701-328-8080  
800-435-8590 (Spanish)  
711 (Voice or TTY)

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## SECTION 1: INTRODUCTION

North Dakota Housing Finance Agency ("Agency") is responsible for the administration of the Low-Income Housing Tax Credit ("LIHTC") Program for the State of North Dakota. Agency developed a Qualified Allocation Plan ("Plan") defining the process by which it will distribute housing tax credits. The LIHTC program is regulated by the U.S. Internal Revenue Service Code ("Code") section 42. Applicants must understand this Plan and follow all its provisions precisely.

## SECTION 2: GENERAL PROVISIONS

Agency may modify or waive any condition of this Plan, which is not mandated by the Code, on a case-by-case basis.

For purposes of this Plan, the term Developer is the individual or entity to which the developer fees are paid for promoting the project ("Developer"). The Developer may or may not be the Applicant. The Applicant is either the owner of the project or the entity that has controlling interest in the ownership entity ("Applicant") (i.e. the general partner, managing member).

A. **Discretion:** In administering the LIHTC and other rental housing programs, Agency will make decisions and interpretations regarding applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations.

B. **Basis Boost:** Applicants must provide a narrative explanation justifying the need to increase the eligible basis. Basis boost is not available on 4% acquisition LIHTCs. Non-acquisition eligible basis may be increased by 30% for projects meeting any of the following conditions.

**Basis boost under options 1 and 2 are available to tax-exempt bond financed projects.**

1. The project is entirely located within a HUD-designated Difficult Development Area (DDA).

2. The project is entirely located within a HUD-designated Qualified Census Tract (QCT).

**Basis boost under option 3 is not available to tax-exempt bond financed projects.**

~~2-3.~~ The project meets one of the following Agency designations:

- The project is designed to primarily serve special needs populations, (i.e. homeless or those requiring permanent supportive services).
- The project targets 20% or more of the units at 30% of area median income or less.
- The project is entirely within the bounds of tribal land (either held in trust or fee-simple), including the Trenton Indian Service Area.
- The project entails new construction on in-fill lots with existing structures which either need to be demolished or require substantial environmental remediation.
- The project is entirely located within a rural area without sufficient soft financing to be financially feasible in low market-rent areas. Proposed rents, including utility allowance, must be the lesser of current Fair Market Rents, as published by the U.S. Department of Housing and Urban Development ("HUD"), or a minimum of 20% below LIHTC rent ceilings, either of which will be enforced through a land use restriction agreement ("LURA"). Developments with a project-based federal rent subsidy are not eligible.
- The project is entirely located within an Opportunity Zone, as defined in Section 1400Z-1 of Code.

~~B-C.~~ **Maximum Developer Fee:** Applications for 9% credits will be limited to maximum Developer fee of 15% of the project's total eligible basis. A Developer fee for the acquisition portion of an acquisition/rehabilitation project

shall not exceed 5% of acquisition basis. Fees from consultants and all parties with an Identity of Interest with the Developer(s) of the project will be taken into consideration when calculating the maximum Developer fees. If the Developer(s) and the contractor are the same or related entity, in addition to the fee limits stated above, the combined sum of Developer fees and contractor fees may not exceed 20% of the project's total eligible basis. All Developer fees exceeding the established maximums are not able to be included in eligible basis.

Applications for 4% credits will be limited to a maximum Developer fee of ~~20~~30% of the project's total eligible basis. A Developer fee for the acquisition portion of an acquisition/rehabilitation project shall not exceed 5% of acquisition basis. Fees from consultants and all parties with an Identity of Interest with the Developer(s) of the project will be taken into consideration when calculating the maximum Developer fees. If the Developer(s) and contractor are the same or related entity, the combined sum of Developer fees and contractor fees may not exceed 35% of total eligible basis. As detailed below, the higher the percentage of Developer fees, as a proportion of total eligible basis, the greater the percentage of the Developer Fees must be deferred:

1. If Developer fees, or the combined sum of Developer fees and contractor fees if they are the same or related entities, are greater than 15% but less than 25% of total eligible basis;
  - Developer fees more than 15% of total eligible basis must be deferred.
2. If Developer fees, or the combined sum of Developer fees and contractor fees if they are the same or related entities, are equal to or greater than 25% of total eligible basis;
  - Developer fees more than 10% of total eligible basis ~~Any developer fee over 15% must be deferred.~~ must be deferred.

~~C.D.~~ **Maximum Contractor Fees:** Contractor fees may not exceed the following limits:

1. Contractor's Profit, 6% of hard construction costs.
2. Contractor's Overhead, 2% of hard construction costs.
3. General Requirements, 6% of hard construction costs.

Fees in one area may exceed the stated percentage if other areas are not at their maximum, so long as they do not exceed 14% collectively.

~~D.E.~~ **Average Income (AI):**

1. Projects with multiple residential buildings must answer "Yes" to question 8b on IRS Form 8609, thereby designating the development as a multiple building project.
2. AI is not available on resyndication projects which will not have completed their original Extended Use Period prior to the Credit Period Start Date for a new LIHTC Award.
3. Tax-exempt bond financed projects electing AI for LIHTC must also elect a minimum set-aside for the tax-exempt bond financing.
4. Unit Designations within an AI project shall be floating and not fixed to specific units.

~~E.F.~~ **Extended Low-Income Housing Commitment:** Prior to a final allocation of LIHTCs, the owner must waive their right to request a qualified contract under Code (IRC § 42(h)(6)(F)) and enter into an Extended Use Agreement which requires the owner and any successors to meet the applicable fraction of low-income occupancy for an extended use period of at least 15 years beyond the initial 15-year compliance period. The owner must record this agreement as a restrictive covenant.

~~F.G.~~ **Compliance Monitoring:** Agency will monitor all LIHTC projects through the end of the Extended Use Period. A copy of the Agency LIHTC Compliance Manual is available on the [Agency's website](#) and is incorporated herein by reference.

Applicants, Developers, and Property Managers must remain in compliance with LIHTC program guidelines throughout the agreed upon extended use period. An Applicant, Developer, or Property Manager involved with

an existing project that Agency determines is significantly out of compliance may not participate in new LIHTC projects until the issues are resolved to Agency's satisfaction. Relevant noncompliance includes both federal and state imposed LIHTC requirements (e.g. improperly funded reserves, unpaid fees, not meeting scoring criteria previously promised), as well as noncompliance within any other Agency funded or administered programs.

1. Agency will charge each project an annual monitoring fee, currently set at \$50 per project plus \$40 per LIHTC unit. Projects with multiple buildings located in different municipal jurisdictions shall pay a fee of \$50 per municipal jurisdiction plus \$40 per low-income unit. Agency may adjust the annual fee and assess additional fees to a project in substantial noncompliance to cover added costs of monitoring.
2. Approximately 120 days before placing a project in service, the owner must request and hold a meeting with the individual(s) responsible for processing tenant income certifications and/or approving tenant files; the property management company; Agency compliance and development staff; and other providers of project funding which impose income or other restrictions on the project. The purpose of the meeting is to ensure all parties are aware of all applicable restrictions prior to any lease-up activities.
3. Prior to issuance of the IRS Form 8609, the owner and on-site managers must attend or document that they have recently attended industry recognized training on management and compliance. Agency may require further follow-up training following significant or repeated noncompliance events.

**H. Maximum Credit Limit:** A project may not receive credits more than the lessor of the basis calculation or the gap calculation as determined within their accompanying Exhibit A's "Tax Credit Calc" tab.

No one project will be eligible to receive a conditional Reservation for more than an aggregate 34% of the annual LIHTCs available other than in the following circumstances:

1. If during the regular allocation cycles, the only requests remaining are from Applicants that have not reached the Maximum Credit Limit.
2. If, after the regular cycles, there are recaptured or unallocated LIHTCs, they may be allocated without regard to the Maximum Credit Limit.
3. At Agency's discretion to address an emergent need.

**G-I. Discrimination:** All housing receiving LIHTCs must be open to all persons regardless of race, color, national origin, religion, creed, sex, disability, or familial status.

**H-J. ADA, 504 and Fair Housing Acts:** Properties containing facilities that are available to the public must meet the Americans with Disabilities Act (ADA) requirements and, if federal assistance is involved, must also comply with Section 504 of the Rehabilitation Act of 1973. The property must also comply with the Fair Housing Amendments Act of 1988.

**I-K. VAWA:** All housing receiving LIHTCs must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Guidance is available on the [Agency's website](#).

**J-L. Tenant Protections:** The ownership entity and management agent shall:

1. Expressly include reasonable accommodation in the application for tenancy.
2. Not ask applicants/residents for medical or other protected information unless and only to the extent legally necessary.
3. Use standard leases with the same rights available to, and responsibilities expected of, all households, including duration of tenancy.
4. Ensure participation in any supportive services is entirely voluntary.
5. Not give a preference based on either disability type, actual or perceived, or being a client of a particular provider.

**K-M. Reserve Accounts:** Each reserve account identified in this section must be accounted for separately within the project owner's accounting records and held at a federally insured financial institution or the Bank of North Dakota.

All projects shall maintain and regularly fund a Replacement Reserve account through the Extended Use Period. The Replacement Reserve requirement for projects primarily designed for:

1. Seniors will be no less than \$350 per unit per year, inflated at 3% annually.
2. General occupancy will be no less than \$400 per unit per year, inflated at 3% annually.

This account shall not be used for routine maintenance and upkeep expenses or for operating expenses. Project owners must provide Agency with a record of all activity in the Replacement Reserve account during the prior fiscal year in conjunction with submission of the project's annual compliance monitoring materials. The ownership entity agreement must require that the Replacement Reserves may only be used for the funding of capital expenditures and replacement of building and site components and may not be distributed to owners or partners prior to the end of the Extended Use Period.

All projects shall establish and maintain, until the project has achieved a minimum of five years of stabilized operations, an Operating Reserve equal to a minimum of six months of projected operating expenses, must-pay debt service payments, and annual Replacement Reserve payments. This requirement can be met with an up-front cash reserve or a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee.

Projects which have committed to including a Rent Rebate for Homeownership program for its tenants shall be required to include within the ownership entity agreement details regarding the maintenance and funding of a Rent Rebate Reserve.

If not already maintained by the Project's mortgage servicer, an Escrow Reserve shall be maintained and regularly funded.

**L-N. Tax-Exempt Financed Projects:** Project applications with tax-exempt bond financing are subject to all requirements of this Plan except for the score requirements listed in Section 7 of this Plan.

**M-O. Identity of Interest:** The Applicant must disclose all relationships, generally based on financial interests or family ties, with others involved in the project. This disclosure is required for all parties which:

1. Have an ownership, development, or financial interest in the project, excluding limited partners with less than a 15% ownership interest.
2. Have current or future management control of the project.
3. Have any current or contingent financial or management liability for the project, including guarantees, letters of credit, takeout agreements, or support agreements.
4. Are involved in the project and have been debarred from any North Dakota program, other state program or any federal program.

This disclosure requires the names and addresses of all parties, including corporate officials, if applicable. Forfeiture of the reserved LIHTCs may result if this information is not adequately disclosed, or if the information changes.

**N-P. Disclosure of Interest:** The Applicant must disclose the names and addresses of all parties, including corporate officials, that have a significant role in the project, including but not limited to the general contractor, all subcontractors whose aggregate contract will exceed 10% of the cost of the project (excluding the acquisition of land), accountants, architects, engineers, financial consultants, and any other consultants.

**Q. Notice to Local Jurisdiction:** If required under federal law, the Agency will notify the jurisdiction where the project will be located after application submission. Agency may utilize any responsive comments in its decision-making process.

~~Q-R. Contingencies: Unspent contingency at the end of construction or rehabilitation the project's construction must be used either to pay down a mortgage liability of the Owner or help to fund the project's Replacement or Operating Reserve. Upon request by the Agency, the Applicant may be required to provide an accounting of a contingency and/or verification of the distribution of any unspent contingency. The ending balances of the contingencies and the use of any unspent contingency funds at the end of construction or rehabilitation must be proven prior to the Agency's execution of the Project's release of IRS form 8609(s).~~

### SECTION 3: TYPES OF DEVELOPMENTS

- A. **Substantial Rehabilitation:** The minimum average rehabilitation is \$15,000 per restricted unit in hard construction costs.
- Agency may waive the minimum average rehabilitation threshold requirement if a Capital Needs Assessment supports a lower rehabilitation requirement.
  - Projects involving rehabilitation or adaptive reuse must, upon completion, comply with the Agency [Minimum Housing Rehabilitation and Property Standards \(Property Standards\)](#), which are hereby incorporated into this Plan by reference. Rehabilitation projects, including adaptive reuse, must, at a minimum, cure all deficiencies identified in Section 15 of the Property Standards upon completion. For projects which include acquisition and/or rehabilitation of occupied housing, any life-threatening health and safety deficiencies, as defined in the Property Standards, must be corrected immediately.
- B. **Ineligible Projects:** Most residential projects qualify for tax credits. Ineligible projects include transient housing (i.e. housing leased for less than 6 months); projects of 4 units or less which are occupied by the owner or a relative of the owner; nursing homes; life care facilities; and mobile home communities.

*Assisted Living:* Assisted living, or projects serving a similar purpose, are not eligible under this Plan.

Agency may reject an application for detrimental characteristics on or adjacent to the proposed project site unless a satisfactory remediation plan and budget are provided. Unsuitable sites include, but are not limited to, those that:

- Are within ½ mile of airports, industrial properties, pipelines, hazardous waste disposal or storage sites, sewage treatment plants, sanitary landfills, commercial junk or salvage yards, wastewater treatment facilities.
- Are within 500 feet of frequently used railroad tracks, electrical substation, power transmission lines or towers.
- Have unsuitable slope, terrain, or physical barriers.
- Are in a flood hazard area or wetlands.

### SECTION 4: APPLICATION PROCESS

#### 9% Credits:

Agency forms must be used to apply. The following are the Agency's anticipated application round(s). Additional application rounds shall be published at the sole discretion of the Agency.

Application Round	Application Closing Date	9% Credits to be Allocated
1	September 30, 2025	\$3,185,000 plus any additional amounts

A fully executed and complete Multifamily Application, including all required application attachments, must be received by the Agency by 5:00 p.m., CT, on the Application Closing Date of any Application Round to be eligible for

~~03/13/202502/06/202502/05/2025~~

consideration in that Application Round.

Applications selected for funding will be given a Conditional Commitment which will detail specific requirements needing to be satisfied for the Agency to Reserve to credits for the Project.

**4% Credits:**

Proposals for bond-financed projects with an allocation of 4% credits may be submitted to Agency at any time between January 1<sup>st</sup> and August 31<sup>st</sup>.

## SECTION 5: THRESHOLD REQUIREMENTS

When an application is received and its corresponding Application Processing Fee has been verified as collected by the Agency, the application shall be issued an application number and reviewed for eligibility to be scored. To be eligible for scoring, an application must be fully executed, fully completed, and satisfy each Threshold Requirement detailed within this section.

An Applicant may request an exemption to the requirement of attaching a CNA to the application if there are other funding sources for the project which would, due to the timing, require additional costs or multiple reports. Any such exemption must be received from NDHFA prior to and included within the project's application. If granted such an exemption(s), the application will not be subject to a scoring deduction for the exempted requirement(s); however, the report(s) are required prior to the issuance of a [Carryover Allocation or Equity Closing, whichever occurs first](#).

- A. **Application:** NDHFA's currently published Multifamily Application must be fully completed and executed. All applicable Exhibits to the application must be fully completed and submitted.
- B. **Demonstrated Site Control:** Applicant must provide evidence that the Applicant, or Applicant's affiliate, currently has, and is contractually able to maintain throughout the entirety of the application period, site control for the entirety of the project's anticipated scope. An as-developed site plan must accompany the application.
- C. **Zoning, Codes, and Ordinances:** Applicant must provide evidence of current appropriate zoning for the entire scope of the proposed project. If current zoning does not comply, verification must be provided from the jurisdiction-having municipal office verifying, at a minimum, a preliminary review of the project's plans and proposed land use complies with the zoning type being sought.

Upon completion, the project must meet all applicable State and local codes, ordinances, and requirements as applicable, or, in the absence of a State or local building code, the International Residential Code, International Building Code (as applicable to the type of structure), or the International Existing Building Code (for rehabilitation projects) of the International Code Council.

- D. **Infrastructure and Utility Availability:** Evidence must be provided that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas, Broadband Infrastructure, etc.) are in-place, or are able to be put in-place, and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official.

Projects must install Broadband Infrastructure to all units and common area community rooms. A letter from the project architect confirming the inclusion of Broadband Infrastructure is within the project's plans shall be included.

Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent and integral infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download and 3 Mbps upload.

If all required infrastructure is not currently, or will not be, available on the proposed site(s), or on land directly

adjacent to the proposed site(s), as of the Application Closing Date, a letter from the local jurisdiction must accompany the application confirming that no adequate infill opportunities exist within the community.

- E. **Development Team:** Application must demonstrate, to the satisfaction of the Agency, all members of the team have the experience, ability, and financial capacity, in their respective roles, to develop, construct, own, operate, manage the project, and are familiar, and prepared to fully comply, with this program's requirements.

9% or 4% LIHTC:

1. Applicants new to LIHTCs must partner with a developer, sponsor, and/or consultant included in a development team which received a LIHTC allocation from a federally approved allocator for a specific project and has placed that project in-service within the prior five years.
2. An Applicant, or closely related party of an Applicant, who has not yet placed a LIHTC project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

HOME or HTF:

3. Application including the use of HOME and/or HTF funding shall include a copy of the Applicant's current Active Registration on Sam.gov.
4. Application should demonstrate the proposed team's experience with, or working knowledge of, all federal cross-cutting requirements including, but not limited to, Section 3, Women-owned and Minority-owned Business Enterprise contracting practices, Davis-Bacon and related acts, environmental review, Section 504 and ADA requirements, lead-based paint mitigation, Uniform Relocation Act, and property condition requirements.

4-5. An Applicant, or closely related party of the Applicant, who has not yet completed a HOME or HTF project in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

Applications including any of the development team with limited experience in the development, construction, ownership, and/or management of an affordable Multifamily Project are encouraged to partner with an experienced developer, party, and/or sponsor. Agency may require the Applicant to provide historical financial statements as deemed necessary.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for or have pleaded guilty, including a plea of nolo contendere, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification, or destruction of records are ineligible. Applicants who have been debarred from any North Dakota program, other state program or any federal program are ineligible. Agency may determine Applicants having an Identity of Interest with any debarred entity are ineligible.

Agency may inquire to other state allocating agencies about the Applicant's or Developer's performance history. Negative performance may result in the application being ineligible.

- F. **Ownership:** The Applicant must be either the owner or developer of the project. If the Applicant intends to sell or transfer the project within five (5) years from the application date, the Applicant must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of those who will purchase or receive the project. Failure to provide this information may result in forfeiture of any Conditionally Committed or Reserved LIHTCs.

Credits are allocated to the proposed project's Owner. A sale or transfer of a controlling ownership interest of the Owner prior to issuance of the Final Allocation requires an amended application, Agency approval and payment of a nonrefundable transfer fee of \$2,500, or 1% of the annual credit amount currently allocated to the Owner for the proposed project, whichever is greater. Payment of this fee does not oblige the Agency to approve the transfer.

- G. **Financial Projections:** NDHFA's currently published Multifamily Application Exhibit A, must be submitted in Excel format. All applicable tabs must be fully completed.

The reasonableness of development costs and operating expenses, in relation to other similar developments, will be assessed when the Agency evaluates a project's financial feasibility.

The Agency reserves the right to decline any application if, during underwriting, the project is determined to have a Hard-Debt-Service Coverage Ratio, or Expense Coverage Ratio for a project which proposed no hard-debt, less than 1.10.

- H. **Subsidies:** The application package must include a signed certification as to the full extent of all federal, state, and local subsidies expected to apply to the project.
- I. **Public Housing Waiting List:** The application package must include a copy of a written communication from the Applicant to the applicable public housing authority (PHA) describing the proposed project. The Applicant's communication shall include a commitment to communicate project completion and work directly with the PHA during the proposed project's lease-up in an attempt to house households on PHA waitlist(s) and granting waitlisted households' priority in obtaining occupancy within the project.
- J. **Housing Need:** Applications must include a comprehensive market study of the housing needs of low-income individuals in the market area to be served by the project. The market study should be completed at the Developer's, or affiliate of the Developer, expense by an acceptable disinterested party to the Agency.

The market study must demonstrate there is sufficient sustained demand in the market area to support the proposed development, and that the development of any additional affordable units will not have an adverse impact on the existing affordable units in the market area. The market study must have been completed within six (6) months of Application Close Date and must contain the National Council of Housing Market Analysts' (NCHMA) current model content standards unless the Agency authorizes deviation from these standards.

- K. **Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation, adaptive reuse, or acquisition of an existing building which will, in-whole or in-part, remain an asset of the project.

The CNA must be completed by a competent, independent third party acceptable to the Agency, such as a licensed architect and/or engineer. The assessment must include a site visit and a physical inspection of the interior and exterior of all units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies.

The assessment must consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment must include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than fifty percent (50%) of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life is less than the Affordability Period, the application package must provide a practical way to finance the future replacement.

The assessment must also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:

1. Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utilities and their lines.
2. Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage.
3. Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors.
4. Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire

protection, and elevators.

Application packages involving the demolition and new construction replacement of existing housing units must demonstrate the benefit of such activity over rehabilitation, including an opinion of cost of rehabilitation to assist Agency to determine the cost savings and/or other benefits.

~~L. **Appraisal:** Applicant must provide a written acknowledgement confirming the Applicant's requirement to provide an appraisal of the subject property associated to the application if any of the following are proposed or, prior to closing, include:~~

- ~~1. Acquisition costs exceeding 15% of the Total Development Costs.~~
- ~~2. Any source of Project-Based Rental Subsidy. Projects proposing the acquisition of land held in a Tribal Trust and are proposing a source of Project-Based Rental Subsidy from HUD's Office of Native American Programs (ONAP) shall be exempt from producing an appraisal prior to equity closing so long as all necessary parties concur with the omission of an appraisal for purposes of any Subsidy Layering Analysis.~~

~~M.L.~~ **USDA Financing:** An application proposing the inclusion of new or existing USDA debt must include written confirmation from the regional USDA officer which verifies any progress made on an initial transfer request and/or the approval of any proposed debt additional to the existing USDA debt, and any associated lien to the debt, proposed.

~~N.M.~~ **Self-Scoring:** The Applicant must provide a self-scoring narrative indicating the number of points being sought in each scoring category. The narrative should be brief but also explain the Applicant's justification(s) for the points being sought.

Agency will review application packages' completeness prior to scoring. Applications missing any Threshold Requirement(s) after an Application Cycle's Closing Date will have a reasonable time to submit the missing Threshold Requirement(s); however, a 2-point scoring deduction will be assessed for each missing Threshold Requirement.

Applications may be submitted to the Agency during the calendar month prior to an Application Cycle's Closing Date for a one-time pre-review and feedback by the Agency. Applications received by the Agency within the calendar month of an Application Cycle's Closing Date will be considered an Initial Application.

Agency may reject an application if:

1. The qualified basis per square foot exceeds 110% of the median qualified basis per square foot of selected projects in the previous two years.
  - Maximum qualified basis per square foot: ~~\$312.49~~468.25
- ~~2. Unit size exceeds the square feet of living space (excluding garages and, in multi-level Single family Style Structures, interior stairwells) per unit. The Agency may consider basis for special circumstances such as adaptive reuse projects limited by the existing architecture of the building.~~

	Multi Level	
	Single family Style	Multifamily Style
1 bedroom	1,150	862
2 bedroom	1,250	1036
3 bedroom	1,514	1,335
4 bedroom	1,686	1,460

## SECTION 6: APPLICATION AND ALLOCATION FEES

**Application Processing Fee:** Remittance of a nonrefundable Application Processing Fee, payable to "North Dakota Housing Finance Agency," in the amount of \$500 shall be received by the Agency prior to 5:00 p.m., CT, on any

~~03/13/2025~~03/06/202502/05/2025

Application Closing Date for its corresponding application to be reviewed for eligibility and/or considered for funding within any competitive funding round. For applications of 4% LIHTC received outside a competitive funding round, the Application Processing Fee shall be remitted by the Applicant to the Agency upon the Applicant's submittal of an Intent to Apply and shall be received by the Agency prior to any consideration of funding.

**Allocation Fee:** Successful applications will be assessed a nonrefundable Allocation Fee, totaling 10% of the LIHTC Allocation and shall be due and payable as follows:

- A. Installment 1: Reservation: A Reservation Fee of 1% of the LIHTC Allocation shall be paid to the Agency prior to the Reservation of LIHTC(s) for the Project.
  - For Projects with tax-exempt bonds, Installment 1 shall be due at the project's equity closing.
- B. Installment 2: Carryover: Projects not able to have all 8609(s) issued prior to December 15<sup>th</sup> of the LIHTC(s) credit year shall pay to the Agency a Carryover Fee of 1% of the LIHTC Allocation prior to the Agency's execution of any Carryover Allocation Agreement.
  - For Projects with tax-exempt bonds, Installment 2 shall be due upon issuance at the project's equity closing.
- C. Installment 3: Final Allocation: The balance of the Allocation Fee is due prior to the Agency's issuance of any 8609(s).

## SECTION 7: PROJECT RATINGS

Applications must receive a minimum of 55 points as determined by the Agency to be eligible for further consideration. Based on ranking, projects will be selected for Conditional Commitment. In the case of a tie between two or more projects, the project requiring fewer LIHTCs per unit will be selected first. Representations made by Applicants will be binding and will be reviewed during ongoing compliance monitoring.

- A. **Serves Lowest Income Groups** **Up to 45 points**  
Points will be awarded to projects with a minimum percentage of units having gross rents based upon 50% or less of AMI. For purposes of this scoring category, gross rent is defined to include the tenant portion plus utility allowance.

### Percent of Median Income on Which Gross Rent is Based

50% AMI		40% AMI		30% or less AMI	
% of Total Units	Points	% of Total Units	Points	% of Total Units	Points
20%+	10	20%+	15	50%+	45
10%<20%	5	10%<20%	10	40%<50%	40
5%<10%	4	5%<10%	5	30%<40%	30
1%<5%	3	1%<5%	2	20%<30%	20
0%<1%	0	0%<1%	0	10%<20%	10
				0%<10%	0

All fractions of units are rounded up (i.e. 10% of 24 units is 2.4 or 3 units).

- B. **Redevelopment and Revitalization** **5 points**  
**Adaptive reuse projects are eligible for points under this scoring category. Rehabilitation of existing habitable and occupied housing is not.**
- C. A project will receive 5 points if it meets one of the following conditions:
  1. The project is located on a site considered by the Agency to be a previously developed property.
  2. The project is in a QCT or city revitalization area established by resolution or other legal action by the city, and the development of the project contributes to a concerted community revitalization plan,

including a Main Street Initiative plan. For purposes of this Plan, a concerted community revitalization plan is defined as a locally approved revitalization plan targeting specific existing areas or neighborhoods within the community for housing and economic development including the infill new construction or rehabilitation of housing. To qualify, the plan must be officially adopted by the local governing body, identify a specific time period, and apply only to a defined geographic area within the community. Local housing needs surveys, consolidated housing or economic development plans, short-term work plans, municipal zoning, or land use plans, or plans which are so broad as to encompass the entire community or so narrow as to encompass only the project's subject property do not qualify under this definition.

3. The project is entirely located within an Opportunity Zone, as defined in Code Section 1400Z-1.

**D. Historic Properties**

**4 points**

Properties that are on the National Register of Historic Places and receiving Historic Rehabilitation Tax Credits, will receive 4 points.

**E. ~~Tenant Support~~Service Coordinator**

**Up to 105 points**

Projects which commit to providing, either through direct employment or by contract with an experienced third party, a Service Coordinator for the residents of project. The Service Coordinator must be available to residents on-site at least one hour per project unit per month.

The role of a Service Coordinator is to manage and provide access to necessary supportive services in the community, provide proactive case management services as needed and requested, and develop programs and resources that support wellness for the entire resident population.

A Service Coordinator shall fulfill the following core functions:

1. Conducting comprehensive, non-clinical assessments of residents for wellness and social needs; and
2. Helping residents to identify, access, and coordinate services, including monitoring of services provided and follow-up communication with services providers; and
3. Monitoring the receipt and following through of services, including encouraging and motivating residents to engage with providers and participate in their own care/services management; and
4. Proactively developing and arranging educational/preventative health programs and services for residents; and
5. Developing and sustaining partnerships with North Dakota Service Providers (ND Health & Human Services) and other community stakeholders; and
6. Maintaining an up-to-date resource directory with all local Service Providers and making it available to residents' use.

HUD's Service Coordinators in Multifamily Housing (SCMF) Program is the basis for this scoring category. The SCMF Program Online Learning Tool, available on the HUD Exchange website, should be used as a resource for important additional details required to be implemented in order to provide residents with an effective Service Coordinator.

Projects which are committed to supporting tenants with special needs affecting their long term housing stability and which create an environment that encourages and provides service coordination.

**1. ~~Tenant Support~~ Coordinator**

**5 points**

Owner will provide, either through direct employment or by contract with an experienced third party, a dedicated Tenant Support Coordinator (TSC) for at least one hour per project unit per month. The TSC would be required to develop and maintain working relationships with tenants in the project. The TSC's role is to increase the ability of all tenants to maintain stability and uphold lease obligations through the following: facilitating provision of supportive services by connecting tenants with appropriate providers, identifying needs for assistance, and educating tenants on available resources.

~~2. **Plus Medicaid-Approved Service Provider** **5 points**~~

~~Owner will provide the TSC provisions in paragraph 1 herein and also enter into a formal letter of intent with one or more qualified service agencies with demonstrated experience providing services consistent with the needs of the project's residents. The service provider(s) must document their ability to process for Medicaid reimbursement and provide their Medicaid biller number issued by the State of North Dakota. The letter of intent must be detailed regarding the suite of supports and services to be made available to tenants who need and want them.~~

~~Projects receiving points under this scoring category must include tenant support coordination capable of the following, at a minimum:~~

- ~~a. Support the person to understand and maintain income and benefits to retain housing by providing the following:
  - ~~Household budgeting and financial management.~~
  - ~~Assistance in applying for benefits related to housing affordability.~~
  - ~~Assistance with establishment of payee/guardian services as needed.~~
  - ~~Assistance with the income recertification process.~~
  - ~~Wealth and asset building initiatives.~~~~
- ~~b. Support the building of natural housing supports and resources in the community.~~
- ~~c. Encouragement of community activity.~~
- ~~d. Facilitation of meetings with a tenant support team.~~
- ~~e. Identify and prevent behaviors that may jeopardize continued housing.~~
- ~~f. Coordination with parole and probation requirements.~~
- ~~g. Collaboration with law enforcement (i.e. the creation of safety plans).~~
- ~~h. Training in lease compliance, household management and best practices of successful tenants.~~
- ~~i. Promote health and wellbeing that enable tenants to retain housing by providing the following:
  - ~~Connecting tenants with health providers.~~
  - ~~Assistance in securing and increasing employment.~~
  - ~~Assistance in securing childcare.~~
  - ~~Identifying educational opportunities in areas such as nutrition, education, and physical wellness.~~
  - ~~Parenting supports.~~
  - ~~Life coaching via peer support specialists.~~
  - ~~Facilitating connections to Home and Community Based Care services.~~~~

~~A tenant selection plan must be provided as part of the initial application. If applicable, the tenant selection plan must describe in detail how individuals and/or families with special needs will be identified, affirmatively marketed to, and assisted in renting units at the project.~~

~~Projects which received 10 points under this scoring category will be required to submit, prior to equity closing, a formal executed agreement with each provider identified in the letter(s) of intent.~~

~~Compliance monitoring activities will include:~~

- ~~j. Confirmation of hiring or contracting with a TSC.~~
- ~~k. Confirmation of the provision of the services pledged at the time of LIHTC application, if applicable.~~

~~l. Review of marketing efforts targeted at special needs populations.~~

For purposes of this scoring category, tenants with special needs include individuals or families who:

~~m. Suffer from serious or persistent mental illness.~~

~~n. Suffer from substance use disorders.~~

~~o. Have disabilities, including intellectual, physical, or developmental.~~

~~p. Are experiencing long term homelessness or are at significant risk of long term homelessness.~~

~~q. Are justice involved.~~

~~r. Are frail elderly, defined as those 62 years of age or older, who are unable to perform one or more "activities of daily living" without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities. Assisted living, or projects serving a similar purpose, are not eligible under this Plan.~~

#### **~~F-F~~ Design Standards**

**Up to 10 points**

1. Elevator in each residential building..... 10 points
2. A separate outside main entrance for each unit..... 10 points

Projects may score points under only one Design Standard. Projects with multiple buildings must include any anticipated Design Standard, in which the Applicant is seeking points, in all buildings.

#### **~~F-G~~ Universal Design**

**Up to ~~15-12~~ points**

Applicants seeking Project Standards points are required to provide a written statement from the project's architect, verifying the architect has fully reviewed NDHFA's current [Universal Design Standards](#) and that 100% of the Project Standards will be implemented within the design of the proposed project.

1. All Project Standards Implemented.....3 points

Applicants seeking Unit Standards points are required to provide a written statement from the project's architect, verifying the architect has fully reviewed NDHFA's current Universal Design Standards and that 100% of the Unit Standards will be implemented within specific units in the proposed project. The Applicant and architect shall specify which units are proposed to be these Universal Design Units.

2. Greater-than ~~or equal to 10.000.00%~~ but less than ~~15.005.00%~~ of the [project's total](#) units .....~~3-1~~ points
3. Greater-than or equal to ~~15.005.00%~~ but less than ~~20.0010.00%~~ of the [project's total](#) units .....~~6-3~~ points
4. Greater than or equal to ~~20.0010.00%~~ but less than 25.00% of the [project's total](#) units.....~~9-6~~ points
5. One point for each universal design unit which is two-bedroom or larger ..... Up to 3 points

#### **~~G-H~~**

**G**

#### **reen Communities**

**Up to 7 points**

To be eligible to earn any points in this scoring category, Applicants must submit a written development plan outlining the integrated design approach that demonstrates involvement of the entire development team. The plan should provide a statement of the overall green development goals, the expected outcomes from addressing those goals, and the rationale for choosing each of the green features. Green Communities criteria are listed and must be certified via the Multifamily Application Exhibit E.

Applications involving rehabilitation:

1. 10 Green Communities' criteria.....3 points
2. 17 Green Communities' criteria.....5 points
3. LEED, Green Communities, or ICC 700 National Green Building Standard Certification .....7 points

Application NOT involving rehabilitation:

4. 10 Green Communities' criteria ..... 1 point
5. 15 Green Communities' criteria ..... 3 points
6. 20 Green Communities' criteria ..... 5 points
7. LEED, Green Communities, or ICC 700 National Green Building Standard Certification ..... 7 points

**H.I. Rent Rebate for Homeownership 2 points**

Commitment to set aside at least 5% of the tenant paid rent for homeownership will receive two points. The owner shall enter into a binding contract with all tenants of LIHTC units, at the tenant's initial occupancy, agreeing to a rebate of rent should the tenant household move directly into homeownership upon the tenant's vacancy from the Project. The accrual of rent to be rebated must be for the tenant's entire term of occupancy within a project. Any vesting period can be no longer than three years of continuous occupancy. Applications seeking points in scoring category **L.K** are not eligible for points under this scoring category.

**H.J. Tenant Ownership 1 point**

To be eligible to earn any points in this scoring category, all residential buildings in the Project must be individually surveyed, platted, and have separate physical addresses. Applications must include:

1. A feasible plan that sets forth the process for transferring the property in whole.
2. The future purchase price.
3. Homebuyer counseling efforts.
4. Any other information requested by the Agency.

**J.K. Housing for Individuals with Children 5 points**

At least 20% of the low-income units are three-bedroom or larger. Applications seeking points under scoring category **L.K** are not eligible for points under this scoring category.

**K.L. Housing for Older Persons 6 points**

Housing designed for and marketed to households consisting of individuals 55 years of age and over and include a community room with kitchen facilities for the use of the tenants at no charge are eligible for 6 points. The marketing plan must be consistent with the Fair Housing Act's "Housing for Older Persons" exemption.

Housing for Older Persons exemptions apply to the following housing:

1. Provided under any state or federal program the Secretary of HUD has determined is specifically designed and operated to assist elderly persons.
2. 100% occupied by persons 62 years of age or older.
3. Houses at least one person 55+ in at least 80% of the occupied units and adheres to a policy that demonstrates an intent to house persons 55+.

**L.M. reserve Existing Affordability Up to 10 points P**

It is highly recommended for applicants seeking scoring under this category begin a dialog with the Agency well ahead of application submission to discuss their proposed scenario to help determine what information and documentation NDHFA would expect to be submitted with the application for scoring under this category.

To be eligible for points the Applicant must provide a narrative with sufficient detail for NDHFA to fully understand all aspects of the asset and/or subsidy proposed to be preserved and/or any current affordable housing program(s) associated to the asset which qualify the proposed project for points under this scoring category. Narrative shall also detail the process and timeline for the loss of any current affordable housing program associated to the asset and/or the process and timeline required to facilitate the proposed transfer of any subsidy.

The applicant shall attach to their narrative all documentation required to support that narrative. NDHFA will need to be able to understand the terms and requirements of any exiting affordable housing program assisting the current asset and/or subsidy proposed to be preserved. Applicant should include any documentation which verifies details provided within the narrative.

1. Asset Preservation.....10 points  
A project proposing the acquisition and/or rehabilitation of a multifamily project currently assisted from a State or Federal affordable housing program in which the applicant can adequately demonstrate the project is at risk of being lost from the State's affordable housing inventory within the next 60-months it shall be eligible for up to 5 points. If the applicant can adequately demonstrate the project is at risk of being lost from the State's affordable housing inventory within the next 30 months, it shall be eligible for up to 10 points. A transfer of an asset between parties with an identity of interest in the proposed project will be eligible for a maximum of 5 points.

2. LIHTC with waived EUP Asset Preservation .....5 points  
A proposed project is an existing LIHTC project past its initial 15-year compliance period which has waived its ability to opt out of the Extended Use Period (EUP) will be eligible for a maximum 5 points.

- ~~3.~~ Subsidy Preservation.....10 points  
A project proposing the preservation of a long-term affordable housing subsidy which the applicant can adequately demonstrate is at-risk of being lost to the State, and the applicant has secured, at least conditionally, a transfer of that long-term assistance to subsidize the proposed project. Eligible for up to 10 points. A transfer of a subsidy between parties with an identity of interest in the proposed project will be eligible for a maximum of 5 points.

- ~~4.3.~~ Subsidy Preservation between Interested Parties .....5 points  
~~A transfer of a subsidy by or between parties with an identity of interest in the proposed project will be eligible for a maximum of 5 points under this scoring category.~~

- N. **Committed Leverage** **Up to 4 points**  
Applications which provide signed, firm commitments of funding source(s), identified within the Multifamily Housing Application Exhibit A, which reduce the project's need to carry debt with a reasonable expectation of repayment or are an operating subsidy which substantively reduces the project's operating expenses (such as a PILOT).

For purposes of scoring in this category, funds which require a repayment, are temporary in nature, or do not exist for at least the Compliance Period are not eligible. Only the present value of an operating budget's reduction which will be realized for the guaranteed term of the subsidy is eligible. If using an operating budget reduction, it is highly recommended you contact the agency to correctly calculate that reduction's value for this scoring category. A project may receive points under only one of the following:

1. Applications proposing twin-financed 9% LIHTCs and 4% tax-exempt financing .....2 points
2. At least 1% but less than or equal to 5% of the total development costs .....2 points
3. More than 5% but less than or equal to 10% of total development costs .....3 points
4. Greater than 10.00% .....4 points

#### M-O. **Geographic Location**

No more than two projects will be approved in any one city during an application round. Projects approved under a prior year which are receiving an additional allocation of LIHTCs in the current year will not trigger this limitation in the current year.

## SECTION 8: SET-ASIDES AND TARGETED AREAS

Agency has established the following set-asides and targets:

- A. **Non-Profit Participation:** Ten percent of the state's LIHTC allocation will be set aside for projects involving non-profit organizations. To qualify for this set-aside, the Applicant must be a qualified non-profit organization (501(c)(3) or 501(c)(4) status) which has as an exempt purpose of fostering low-income housing; owns an interest in the project (directly or through a partnership); and materially participates on a regular, continuous, and substantial basis in the development and operation of the project throughout the compliance and extended use periods. Ownership interest is defined as a minimum 50% general partner position in a limited partnership.

The initial application must include:

1. Explanation illustrating that the non-profit has been actively involved within the community as a non-profit organization.
2. Explanation outlining the rights and responsibilities of the non-profit organization including the right of the non-profit to purchase the project in the future.
3. Information to show that the non-profit organization is not affiliated with, or controlled by, a for-profit individual or organization.

The highest-ranking non-profit application will be considered a part of the non-profit set-aside. Other non-profit applications more than the set-aside must compete with eligible "for-profit" applications.

- B. **Native American Set-Aside:** Agency shall award the highest-scoring qualified application in the first application round located within North Dakota Indian reservations or on tribal land (either held in trust or fee-simple), subject to the [Maximum Credit Limit](#).
- C. **New Development/Renovation Parity:** For purposes of this section there are two development types:
1. New Development is the creation of new housing units (including adaptive reuse).
  2. Renovation is the substantial rehabilitation or same-site replacement of existing occupied housing.

Applicants may contact the Agency with any uncertainty as to a proposed project's construction type.

Following the project(s) [selected for credits](#) under the set-asides, the highest-scoring [projects](#) will be eligible for a conditional commitment of LIHTCs. [If the project\(s\) awarded under the set asides were all New Development, the highest scoring Renovation projects will be the next eligible project to receive a conditional commitment of LIHTCs. If the project\(s\) awarded under the set asides were all Renovation, the highest scoring New Development projects will be the next eligible project to receive a conditional commitment of LIHTCs. After at least one New Development and one Renovation project has been selected for a conditional commitment of LIHTCs, all New Development and Renovation projects are eligible to receive a conditional commitment of LIHTCs.](#)

## SECTION 9: CREDIT AWARD PROCESS

Agency will review applications and make awards. Thereafter, the following definitions shall apply:

**Conditional Commitment:** Agency commitment to reserve LIHTCs for the Applicant conditioned upon the Agency's receipt of required items and documentation within an allotted timeframe.

**Reservation:** Agency commitment that LIHTCs have been reserved for the Applicant.

**Carryover Allocation:** Agency's allocation of LIHTCs to the Applicant. Agency shall file an IRS Form 8610.

**Final Allocation:** Agency's final verification of Applicant's compliance to the Plan's requirements, completion of the development of the Project, and all building(s) have been Placed-in-Service. Agency shall prepare & execute for

Owner, IRS Form(s) 8609.

- A. Conditional Commitment:** Agency will determine the amount of LIHTCs to be conditionally committed, which may not equal the amount requested in the application and issue a Conditional Commitment which shall expire on a date identified within the Conditional Commitment and shall not be less than 60 days.

Agency will underwrite applications to determine compliance with federal requirements and the policies in this Plan after an Application Cycle's Closing Date.

*4% Tax Credit Applications with Tax-Exempt Bond Financing*

Upon satisfactory review of the application, the Agency will issue a letter in accordance with Internal Revenue Code Section 42(m)(2)(D) stating the preliminary amount of 4% LIHTCs Conditionally Committed to the project.

- B. Project Progress Reports:** Owners must regularly submit progress reports (at least quarterly for a Project which has not yet received a Carryover Allocation, monthly for a Project which has completed its equity closing) describing the Applicant's actual progress in comparison to the project development timeline and schedule.

Owners must disclose project development costs which have increased above the contingency provided in the application during the development and construction/rehabilitation of the project along with an explanation of how the gap has been or will be filled.

- C. Reservation:** Projects which have provided the items identified within the Conditional Commitment, and any subsequent documentation or information identified by the Agency to issue a Reservation (Reservation Package), shall be eligible to have the agreed upon number of LIHTCs reserved to the Project. Applications containing material changes must be reunderwritten and may be ineligible.

Agency shall receive a fully completed Reservation Package prior to the date indicated within the Conditional Commitment. A 10-day late submission window is available for Applicants to submit any missing items, however a late fee of \$200 per calendar day, up to a maximum of \$2,000, will be assessed and must be received by the Agency prior to the Reservation of the Applicant's credits by the Agency. If all required items are not received prior to the expiration of the 10-day late submission window, the Conditional Commitment will expire.

Late fees will not be allowed as an eligible cost in basis and are in addition to the Allocation Fee.

Prior to equity closing, all approved Projects Applicant must prove of the that Agency's listing as an -is listed as an additional insured on the any builder's risk policy (ies) for the construction of the project. as well as on the property's hazard and liability insurance policy. The Agency's insurance clause must be as follows: In lieu of "##", please use the Project's identification number as assigned by Agency:

North Dakota Housing Finance Agency, ISAOA

TC-##-##[Project ID]

PO Box 1535

Bismarck, ND 58502

- D. Carryover Allocation:** Projects not able to have all 8609(s) issued prior to December 15<sup>th</sup> of the tax credit year shall submit a Carryover Package which shall include:

1. Updated-to-current Exhibit A in Excel format.
2. Signed Owner Certification of Costs (Exhibit A "LIHTC 10% Test" tab).
3. If Carryover is to be completed using Incurred Basis, an Independent Accountant's Report (NDHFA-approved model letter is available upon request) verifying the results of the CPA's Examination and/or Agreed Upon Procedures (AUP) of the Owner's Actual Basis Incurred shall be provided.
4. If Carryover is to be completed using Anticipated Basis, the Owner will have 12 months from the

Allocation Date to provide an Independent Accountant's Report verifying either:

- a. The results of the CPA's Examination and/or AUP of the Owner's Actual Basis Incurred verifying at least 10% of the Project's Reasonably Expected Basis has been Incurred by the Owner.
- b. The results of the CPA's Audit Examination of Actual Costs and Eligible Basis of the Final Cost Certification.

5. Receipt of Allocation Fee Installment 2: Carryover by the Agency.

Upon receipt and acceptable review of the Carryover Package, the Agency shall prepare for execution a Carryover Allocation Agreement and once fully executed, file IRS Form 8610.

Agency shall receive a fully complete Carryover Package no later than the close of the credit allocation year's December 15<sup>th</sup> business day. A late submission window is available for Applicants to submit any missing items, however a late fee of \$500 plus \$200 per calendar day, up to a maximum of \$3,500, will be assessed and must be received by the Agency prior to the last business day of the calendar year. If all required items are not received by the Agency on or prior to the last business day of the calendar year, the Conditional Commitment or Reservation will be allowed to expire, and all credits shall return to the Agency.

Late fees will not be allowed as an eligible cost in basis and are in addition to the Allocation Fee.

E. **Final Allocation:** Agency shall receive all items necessary to prepare all 8609(s) for the Project (Final Allocation Package) which shall include:

1. Updated-to-final Exhibit A in Excel format.
2. Owner's Final Cost Certification in PDF format (Exhibit A "Development Budget" tab).
3. An Independent Accountant's Report verifying the results of the CPA's Audit Examination of Actual Costs and Eligible Basis of the Final Cost Certification.

4. Receipt of Allocation Fee Installment 3: Final Allocation by the Agency.

5. Proof of sufficient property and liability insurance coverage listing Agency as a Certificate Holder (Acord 25 and Acord 27 or 28).

The Agency's insurance clause must be as follows:

North Dakota Housing Finance Agency, ISAOA  
[Project ID]  
PO Box 1535  
Bismarck, ND 58502

4% LIHTC:

4-6. An Independent Accountant's Report verifying the results of the CPA's determination of the Aggregate Basis financed by Tax-Exempt Bonds.

Upon receipt and acceptable review of the Final Allocation Package, the Agency shall provide the Applicant a copy of each IRS Form 8609. Applicant is responsible for the review and approval of all 8609(s). All information in all Parts of the 8609(s) shall be fully completed and the form(s) returned to the Agency. Agency shall execute and provide all originally executed 8609(s) to the Applicant.

Agency shall receive a fully completed Final Allocation Package no later than 180 calendar days after the last building is Placed-in-Service. Late submission of a fully completed Final Allocation Package will result in the assessment of a late fee of \$200 per calendar day. The Agency shall receive all assessed late fees prior to the issuance of any 8609 for a Project.

For projects intending to Place-in-Service in the year of allocation and do not intend to complete a Carryover Allocation, the Agency shall receive a completed Final Allocation Package on or prior to the end of the

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November 15<sup>th</sup> business day. If the Final Allocation Package is not received by the deadline or if the Final Allocation Package received is insufficient or missing any items required by the Agency to issue all required 8609's, the Applicant shall be required to complete a Carryover Allocation. If, for any reason, the Agency is not able to issue all 8609(s) required for the Project prior to December 15<sup>th</sup>, the Applicant shall be required to complete a Carryover Allocation.

If the Agency is asked to reissue an 8609 after a fully executed copy has been provided to the Applicant, the Agency may assess a processing fee of \$50 per reissued 8609.

- F. Credit Return or Cancellation:** If, at any time after issuance of a Reservation of credits, an Applicant is unable to complete the project within the LIHTC Program's requirements, the Applicant shall voluntarily return all credits.
- G. Additional Credits:** If an Applicant is awarded additional credits from a subsequent allocation year for the same Project, it is the Agency's preference for the Applicant to voluntarily return all credits Conditionally Committed, Reserved, or Allocated for the Project in exchange for a new Conditional Commitment, Reservation, or Allocation, whichever milestone the returning credits have obtained, of credits from the subsequent allocation year. The new Conditional Commitment, Reservation, or Allocation shall not be less than the sum of the credits returned plus the additionally awarded credits. Fees for the new allocation will follow the same fee structure outlined in Section 6. All fees previously paid are non-refundable and forfeited.

## SECTION 10: RESPONSIBILITY OF APPLICANT

The Applicant has the responsibility to abide by the representations made in the LIHTC application and in the LURA. Failure to abide by these representations may result in sanctions against the Applicant, including but not limited to, the inability to apply for LIHTCs in the future and participate in other Agency administered programs.

## SECTION 11: RESPONSIBILITY OF AGENCY

Agency review of documents submitted in connection with the allocation is for its own purpose. The Agency makes no representations to the Applicant or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing LIHTCs.

No member, officer, agent, or employee of the Agency shall be personally liable concerning any matters arising out of, or in relation to, the allocation of the LIHTCs.

Projects awarded LIHTCs will be subject to compliance monitoring by the Agency for the duration of the period of affordability plus the extended use period.

## SECTION 12: MODIFICATION TO THE QUALIFIED ALLOCATION PLAN

To the extent necessary to facilitate the award of LIHTCs, Agency may modify this Plan from time to time, including minor modifications necessary to facilitate the administration of the LIHTC Program or to address unforeseen circumstances and waiving any conditions not mandated by the Code. For example, in the event of a major natural disaster, the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response. Agency will document any waivers from the established priorities and selection criteria of the Plan and will make this documentation available to the public upon request.

To the extent that anything contained in this Plan does not meet the minimum requirements of federal law or regulation, such law or regulation shall take precedence over this Plan.

Low Income Housing Tax Credit Allocation Plan

**North Dakota Housing Finance Agency**

2624 Vermont Avenue  
PO Box 1535  
Bismarck, ND 58502-1535

800/292-8621 or 701/328-8072  
800/366-6888 (TTY)

[www.ndhfa.org](http://www.ndhfa.org) · [hfainfo@nd.gov](mailto:hfainfo@nd.gov)

**STATE OF NORTH DAKOTA**

**2026 Low Income Housing Tax Credit  
Qualified Allocation Plan**

**I, Kelly Armstrong, Governor of the State of North Dakota, do hereby accept and approve the attached 2026 Low Income Housing Tax Credit Qualified Allocation Plan (“Plan”).**

**The Plan was presented at a duly called Public Hearing held March 5, 2025 and other procedures completed in accordance with the United States Internal Revenue Code, Section 42.**

\_\_\_\_\_  
**Kelly Armstrong**  
**Governor**

**Date** \_\_\_\_\_



**March 25, 2025**

**TO: Industrial Commission**

**FR: David Flohr, Executive Director**

**RE: 2025 Housing Incentive Fund Allocation Plan Approval**

The NDHFA Advisory Board recommends the Industrial Commission **approve the 2025 Housing Incentive Fund Allocation Plan as presented:**

Annually the agency is responsible for developing a Housing Incentive Fund Allocation Plan (the Plan). The plan identifies the process for which eligible applicants must apply for HIF funding including the scoring criteria that will be used to rank, score, and select successful applications for multifamily projects. The 2025 Plan made available public comment February 14-March 3, 2025. A public hearing was held on March 5<sup>th</sup>, 2025 at NDHFA's office and via Microsoft Teams.

The 69<sup>th</sup> Legislative Assembly is in session and the final HIF appropriation is yet to be determined. It is anticipated that a portion of the HIF appropriation will be made available for HIF Single Family and a separate allocation plan will be made available for public input at that time. Current HIF appropriation proposed is \$25 million and \$10 million of ND Homeless Grant to be transferred to HIF to be used for homeless activities.

Attached is a copy of the draft 2025 HIF multifamily allocation plan with a summary of the substantial changes proposed and public comments received below.

**Section 7: Scoring Criteria**  
**Universal Design (page 11)**

Lowered the percentage range of units necessary to receive points in each scoring range. This is to align with the LIHTC QAP.

Comments and recommendations were reviewed in LIHTC QAP memo.

**Other Comments**

**Section 3.04 Maximum Award (page 4)**

Written comments were received requesting the agency consider increasing the amount available to a 9% LIHTC award from \$400,000 to \$1 million. Commenters indicated that LIHTC credit pricing, interest rates, and increased construction costs continue to contribute to larger gaps for affordable developments.

Staff recommended increasing the maximum award for 9% credits from \$400,000 to \$1 million.

**Section 3.06 Recognizable Costs (page 4-5)**

Written comments were received requesting that the 5% HIF origination fee and developer fees not be included in the maximum award calculation and instead those amounts awarded in addition to the 50% award.

Staff recommended no additional changes to the total development cost calculation.

**Section 4 Application Process (page 5)**

Comments were received suggesting the agency hold back a portion of the HIF funds to be available for the secondary application round. Other commentors disagreed with the request indicating that it could be a detriment for projects that are shovel ready and able to accept a commitment.

Staff is proposing to continue to fund ready to proceed projects if the funding is available.

**Section 7 Scoring Criteria G. Additional Leverage (page 11)**

Comments were received requesting the agency to consider adding language to allow other forms of leverage such as a PILOT to be valued as committed leverage. As the scoring category reads now only leverage that reduces debt is allowed and a PILOT, for example, reduces operating expenses and is valuable to a project.

Staff is recommending including sources that reduce operating expenses as an allowable leverage source. The language was updated to include allowing a present value calculation of those sources.



## 2025 ALLOCATION PLAN

### Housing Incentive Fund



Community Housing and Grants Management Division  
2624 Vermont Ave. | PO Box 1535 | Bismarck, ND 58502-1535  
800-292-8621 or 701-328-8080 | 800-435-8590 (Spanish) | 711 (TTY)  
[www.ndhfa.org](http://www.ndhfa.org) | [hfainfo@nd.gov](mailto:hfainfo@nd.gov)

Una traducción al español de este documento está disponible solicitándola en [ndhfa.org](http://ndhfa.org)



This recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Accommodations: Individuals who require accommodations including translated documents, an alternate format, or to request a copy of the plan may contact:

504 Coordinator:  
Jennifer Henderson  
North Dakota Housing Finance Agency  
2624 Vermont Avenue  
Bismarck ND 58504  
800-292-8621 or 701-328-8080  
800-435-8590 (Spanish)  
711 (Voice or TTY)

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## SECTION 1: DEFINITIONS

**Affordability Period:** A specific starting and ending date range, communicated to the awardees of HIF program funds after a project's completion, during which the project is to comply with program rent and income restrictions.

**Agency:** North Dakota Housing Finance Agency.

**Area Median Income (AMI):** The midpoint of a county's income distribution. Half of families in a county earn more than the median and half earn less than the median. The Agency publishes Income Limits, based on household size, annually and from time-to-time as necessary.

**BND:** Bank of North Dakota.

**Broadband Infrastructure:** Cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.

**Developing Community:** An incorporated city with a population less than 20,000 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau.

**Developing Rural Community:** An incorporated city with a population less than 5,000 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau.

**Eligible Applicants:** Units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers. Individuals are not eligible to receive direct assistance from HIF.

**Extremely Low Income: Households** with incomes of not more than thirty percent (30%) of AMI.

**HIF:** Housing Incentive Fund.

**HIF Assisted Unit Calculation:** HIF Assisted Units is calculated as a percentage of a project's Gross HIF Award in relation to the project's certified Total Development Costs. This percentage multiplied by the total number of units within the project (rounded-up to the nearest whole number) is the number of HIF Assisted Units within that project.

**Income Limit(s):** Agency published maximum annual household income limits, published annually and from time-to-time as necessary. HIF income limits are calculated using data published by the U.S. Department of Housing and Urban Development and U.S. Department of Health and Human Services.

**Income Restricted:** A household or unit which is subject to a specified annual household Income Limit. Household income is calculated using the rules and guidelines of the U.S. Department of Housing and Urban Development's Part 5 Income Determination.

**Low Income:** Households with incomes of not more than eighty percent (80%) of AMI.

**Moderate Income:** Households with incomes of not more than one-hundred forty percent (140%) of AMI.

**Multifamily Project/Property:** Any building or group of buildings totaling four (4) or more permanent residential rental units operated as a single rental housing project.

**Plan:** This current HIF Allocation Plan, when not preceded by a year. When preceded by a year or biennial year range, refers to that year's HIF Allocation Plan.

**Rent Limit(s):** Agency published maximum gross monthly rent limits, published annually and from time-to-time as necessary. HIF Rent limits are calculated using an average occupancy per unit, the jointly-published Income Limits, and/or current Fair Market Rents as published from the U.S. Department of Housing and Urban Development.

**Rent Restricted:** A maximum allowable gross monthly rent able to be charged/collected from a HIF restricted unit's tenant(s). Maximum monthly rents are published by the Agency annually, and from time-to-time as necessary, and are calculated as the sum of all tenant-paid rent, any applicable utility allowances, and all tenant-based rental assistance.

**Restricted Unit:** A housing unit subject to income and/or rent restrictions enforced through the HIF Land Use Restrictive Agreement. The number of Restricted Units will always be equal-to, or greater-than, the HIF Assisted Unit Calculation.

**Single-Family Project/Property:** Any singular building containing four (4) or less permanent residential units.

**Total Development Cost:** The all-in cost of developing a rental housing project including pre-development, acquisition, hard and soft construction, hard and soft rehabilitation, and financing costs, as well as developer fees, and reserve accounts capitalization. Costs associated with commercial construction shall not be included.

**Very Low Income:** Households with incomes of not more than fifty percent (50%) of AMI.

## SECTION 2: INTRODUCTION

The North Dakota Housing Finance Agency (Agency) is responsible for the administration of the Housing Incentive Fund program (HIF) for the State of North Dakota.

The program was established by the sixty-second (62nd) Legislative Assembly under chapter 54-17 of the North Dakota Century Code (NDCC).

The Agency is responsible for developing guidelines for the use of HIF. These guidelines were developed with input from Agency partners, stakeholders, and finalized through a formal public hearing process.

Available Housing Incentive Fund State Tax Credit

This Plan does not include an allocation of Housing Incentive Fund State Tax Credits. The Agency is not currently authorized to accept North Dakota State Taxpayer contributions to HIF.

Housing Incentive Fund State Tax Credit availability is contingent on legislative authority.

Chapter 57-38 and Section 57-35.3-05 of NDCC allow for a credit against state income taxes and financial institution taxes equal to a contribution to HIF.

The 2011 special legislative session amended NDCC, allowing a taxpayer to claim a credit equal to the amount contributed into the fund in the year of the contribution. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried forward to each of the ten (10) succeeding taxable years.

Within thirty (30) days of the taxpayer contribution to HIF, the Agency will issue a Tax Credit Certificate to the taxpayer and a copy to the State Tax Commissioner.

Contributions into the fund may be made on a project-specific basis or on a general pool basis to be used to fund projects statewide. Once a Tax Credit Certificate has been issued, the contribution is irrevocable and non-transferable.

The contributor identified on the documentation required to be submitted with a contribution shall be the taxpayer to whom the Tax Credit Certificate shall be issued. Once a Tax Credit Certificate has been issued, the contribution is irrevocable and non-transferable. Potential contributors are advised to consult with their tax counsel and/or accountant prior to making a contribution to HIF.

## SECTION 3: GENERAL PROVISIONS

### 3.01 Eligible Uses

The Agency will evaluate the financial feasibility of each project to ensure assistance provided does not exceed an amount necessary to qualify for lending using generally acceptable underwriting standards.

Eligible uses of assistance from HIF are limited to:

- A. Multifamily Project:
  - 1. Costs associated to on-site development, construction, rehabilitation, acquisition, renovation, accessibility improvements, and/or adaptive reuse of a Multifamily Project.
  - 2. Development and/or construction cost gap assistance.
  - 3. Retirement of market rate debt.
- B. Single-Family Project:
  - 1. New construction, rehabilitation, preservation, and/or acquisition of a single-family housing project in a Developing Community or a Community Land Trust.
- C. Homelessness Prevention:
  - 1. Rental Assistance, emergency assistance, barrier mitigation, or services designated to prevent or end homelessness.

Single-Family and Homelessness Prevention uses will be strictly interpreted by the Agency. Applicants considering these uses should contact the Agency and refer to the applicable HIF Homeless or HIF Single-family Program Addendums for application information.

### 3.02 Eligible Projects

HIF proceeds may be used for expenses related to any of the following:

- A. New construction of multifamily rental housing units.
- B. Rehabilitation of an existing multifamily building(s) containing one or more uninhabitable rental unit(s).
- C. Acquisition, rehabilitation, and/or preservation of Rent Restricted housing at risk of becoming uninhabitable or obsolete.
- D. Acquisition, rehabilitation and/or preservation of an existing affordable housing project which is subject to and will continue receiving project-based rental assistance payments from a federal affordable housing program.
- E. Adaptive reuse of existing non-residential building(s).
- F. Retirement of market rate debt and conversion of non-Restricted Units to Restricted Units or conversion of current Restricted Units to Income and Rent limits which allow financial feasibility.
- G. The purchase of existing publicly owned housing, resulting in divestiture by the public entity.

Eligible Projects F and G will be strictly interpreted by the Agency. Applicants considering these projects are advised to contact the Agency well in advance of submitting an application.

### 3.03 Ineligible Projects

Projects under construction or renovation which has an existing funding commitment from the Agency or other similar funding source are not eligible unless at least one of the following are present:

- A. The applicant adequately demonstrates the newly requested funding from HIF's effect on presently proposed rents which improve rent affordability to households at or below Moderate Income.

- B. The applicant adequately demonstrates a change in circumstance such that the newly requested funding from HIF is now needed to ensure the project's financial feasibility.

### 3.04 Maximum Award

Award allocations from HIF for any single Multifamily Project will be limited to the lesser of:

- A. An amount required to secure project financing and make the project financially feasible.
- B. If the project is located entirely within a Developing Rural Community, fifty percent (50%) of the project's Development Costs. For all other ~~project's~~ projects, thirty percent (30%) of the project's Total Development Costs.
- ~~C. If the project is applying for or has been awarded nine percent (9%) tax credits from the federal Low Income Housing Tax Credit program;~~
- ~~1-C. \$400,000~~ 1,000,000.
- ~~2. If the project is located within a Developing Community, \$800,000~~
- ~~3. If the project is located within a Developing Rural Community, \$1,600,000~~
- D. \$3,000,000

Exceptions to these maximums may be made on a case-by-case basis, at the sole discretion of the Agency, to accomplish overall program goals.

### 3.05 Set-Aside(s)

**Developing Community:** On a biennial basis, a minimum of ten percent (10%) of HIF's legislatively authorized funds will be used to assist Developing Communities to address an unmet housing need or alleviate a housing shortage.

**Homelessness Prevention:** On a biennial basis, ten percent (10%) of HIF's legislatively authorized funds will be used for Rental Assistance, emergency assistance, barrier mitigation, or targeted supportive services designated to prevent homelessness. A separate allocation plan will be developed to address this set aside.

#### Substantial Rehabilitation

Projects involving the acquisition of an existing building, rehabilitation or adaptive reuse must, upon completion, comply with the Agency's published Minimum Rehabilitation and Property Standards (Property Standards), which are hereby incorporated into this Plan by reference. Rehabilitation projects, including adaptive reuse, must address, at minimum, all deficiencies identified in Section XV of the Property Standards as part of the project's scope of work so that, upon completion, all such deficiencies are cured. For projects which include acquisition and/or rehabilitation of occupied housing, any life-threatening health and safety deficiencies, as defined in the Property Standards, must be addressed and corrected immediately. The Property Standards Minimum Rehabilitation and Property Standards Manual can be found on our website.

### 3.06 Recognizable Costs

The Agency reserves the right to decline any application in which projected Total Development Costs exceed \$300,000 per unit. Upon the applicant's request and acceptable explanation, the Agency, in its sole discretion, may waive this limit.

Builder/General Contractor fees may not exceed a combined fourteen percent (14%) of the project's hard construction costs. These costs must be separately identified within the HIF Application: Exhibit A.

- Builder/General Contractor's Profit
- Builder/General Contractor's Overhead
- General Requirements

The combined sum of Developer Fees, fees of all parties with an Identity of Interest with the Developer, and fees paid to consultants, may not exceed fifteen percent (15%) of Total Development Cost net of those same fees.

If the project developer and builder/contractor are the same entity or, at the sole discretion of the Agency, are closely enough related, in addition to the aforementioned fee limits, the combined sum of developer fees, fees of all parties with an identity of interest with the developer, and fees paid to consultants, builder/contractor profit, builder/contractor overhead, and general requirements may not exceed twenty percent (20%) of the project's Total Development Cost, net of those same fees.

3.07 Reserves

**Replacement Reserves:** The project will be required to fund a Replacement Reserve account, accounted-for separately from the project's operational funds, in a federally insured financial institution or BND, to be adequately funded for the entirety of the project's Affordability Period.

The Replacement Reserve account shall be funded in regular increments, monthly is recommended, not less than annually. At or prior to the end of the project's first fiscal year in which the project is subject to its Affordability Period an amount equal-to, or greater-than, the sum of four hundred dollars (\$400) per unit shall be contributed to the project's Replacement Reserve Account. Each subsequent minimum annual contribution to the Replacement Reserve account shall increase at a rate of three percent (3%) per year in which the project is subject to its Affordability Period.

Replacement Reserves shall not be used for operations, routine maintenance, or upkeep expenses. It is to be used for the replacement of short-lived capital assets including, but not limited to, the replacement of a roof, window(s), heating system, parking surfaces, and/or similar capital assets. Approval must be received from the Agency prior to any decrease in the fiscal year-end's Replacement Reserve account's minimum balance.

**Operating Reserve:** At or prior to the issuance of any held-back funds, as described in Section VIII Access to HIF Funds, the project shall fully fund an Operating Reserve account, set aside in a federally insured financial institution or BND, to be adequately funded for the entirety of the project's Affordability Period. The initial funding balance of this account shall be an amount equal-to, or greater-than, the sum of two (2) months of each, project's reasonable annual operating expenses and annual hard debt-service as determined by the Multifamily Application Exhibit A executed in conjunction with the HIF Loan's closing. Operating Reserve funds are encouraged to be accounted for separately from other project operational funds.

SECTION 4: APPLICATION PROCESS

Agency forms must be used to apply. The following application cycles have been set for the next calendar years. Funds available will be determined following the [2023-2025](#) Legislative Session. Total funds available will be announced in May. Additional application rounds shall be published at the sole discretion of the Agency.

Application Round	Application Closing Date	Amount of HIF Available to Award
1	September 30, <a href="#">20232025</a>	Up to \$ <del>12,000,000</del> <a href="#">TBD</a>
2	September 30, <a href="#">20242026</a>	Remaining funding

Program income, repayments and recaptured funds received by the Agency will be available for reallocation. After Application Round 1 the Agency will entertain, on an as-needed basis, applications for projects located in a Developing Community until application round 2. A fully executed and complete Multifamily Application, including all required application attachments, must be received by the Agency by 5:00 p.m., CT, on the Application Closing Date of any Application Round to be eligible for consideration in that Application Round.

Applications selected for funding will be given a Conditional Commitment which will detail specific requirements needing to be satisfied to receive a Financial Award and proceed to closing.

#### 4.01 Fees

**Application Processing Fee:** Remittance of a nonrefundable Application Processing Fee, payable to “North Dakota Housing Finance Agency,” shall be received by the Agency prior to 5:00 p.m., CT, on any Application Closing Date for its corresponding application to be reviewed for eligibility and/or considered for funding within any competitive funding round.

- For an application in which HIF is the only NDHFA-funded program being applied for in the Application Round, the Application Processing Fee shall be \$500.
- For an application in which more than one NDHFA-funded program is being applied for in the Application Round, the Application Processing Fee shall \$500 for the primary program and an additional \$250 for any subsequent NDHFA-funded program being sought by the Applicant for the Project in the Application Round.

**HIF Origination Fee:** Five percent (5%) of the project’s gross HIF Award. This HIF Origination Fee is due at the time the first draw on the HIF Award is processed by the Agency.

## SECTION 5: THRESHOLD REQUIREMENTS

When an application is received and its corresponding Application Processing Fee has been verified as collected by the Agency, the application shall be issued an application number and reviewed for eligibility to be scored. To be eligible for scoring, an application must be fully executed, fully completed, and satisfy each Threshold Requirement detailed within this section.

An applicant may request an exemption to the requirement of attaching a CNA to the application if there are other funding sources for the project which would, due to the timing, require additional costs or multiple reports. Any such exemption must be received from NDHFA prior to and included within the project’s application. If granted such an exemption(s), the application will not be subject to a scoring deduction for the exempted requirement(s); however, the report(s) are required prior to the issuance of a Financial Award to the applicant.

- Application:** NDHFA’s currently published Multifamily Application must be fully completed and executed. All applicable Exhibits to the application must be fully completed and submitted.
- Demonstrated Site Control:** Applicant must provide evidence that the Applicant, or Applicant’s affiliate, currently has, and is contractually able to maintain throughout the entirety of the application period, site control for the entirety of the project’s anticipated scope. An as-developed site plan must accompany the application.
- Zoning, Codes, and Ordinances:** Applicant must provide evidence of current appropriate zoning for the entire scope of the proposed project. If current zoning does not comply, verification must be provided from the jurisdiction-having municipal office verifying, at a minimum, a preliminary review of the project’s plans and proposed land use complies with the zoning type being sought.

Upon completion, the project must meet all applicable State and local codes, ordinances, and requirements as applicable, or, in the absence of a State or local building code, the International Residential Code, International Building Code (as applicable to the type of structure), or the International Existing Building Code (for rehabilitation projects) of the International Code Council.

- Infrastructure and Utility Availability:** Evidence must be provided that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas, Broadband Infrastructure, etc.) are in-place, or are able to be put in-place, and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official.

Projects must install Broadband Infrastructure to all units and common area community rooms. A letter from the project architect confirming the inclusion of Broadband Infrastructure is within the project's plans shall be included.

Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent and integral infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download and 3 Mbps upload.

If all required infrastructure is not currently, or will not be, available on the proposed site(s), or on land directly adjacent to the proposed site(s), as of the Application Closing Date, a letter from the local jurisdiction must accompany the application confirming that no adequate infill opportunities exist within the community.

- E. **Development Team:** Application must demonstrate, to the satisfaction of the Agency, all members of the team have the experience, ability, and financial capacity, in their respective roles, to develop, construct, own, operate, manage the project, and are familiar, and prepared to fully comply, with this program's requirements.

9% or 4% LIHTC:

1. Applicants new to LIHTCs must partner with a developer, sponsor, and/or consultant included in a development team which received a LIHTC allocation from a federally approved allocator for a specific project and has placed that project in-service within the prior five years.
2. An Applicant, or closely related party of the Applicant, who has not yet placed a LIHTC project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

HOME or HTF:

3. Application including the use of HOME and/or HTF funding shall include a copy of the Applicant's current Active Registration on Sam.gov.
4. Application should demonstrate the proposed team's experience with, or working knowledge of, all federal cross-cutting requirements including, but not limited to, Section 3, Women-owned and Minority-owned Business Enterprise contracting practices, Davis-Bacon and related acts, environmental review, Section 504 and ADA requirements, lead-based paint mitigation, Uniform Relocation Act, and property condition requirements.
5. An Applicant, or closely related party of the Applicant, who has not yet completed a HOME or HTF project in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

Applications including any of the development team with limited experience in the development, construction, ownership, and/or management of an affordable Multifamily Project are encouraged to partner with an experienced developer, party, and/or sponsor. Agency may require the Applicant to provide historical financial statements as deemed necessary.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for or have pleaded guilty, including a plea of nolo contendere, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification, or destruction of records are ineligible. Applicants who have been debarred from any North Dakota program, other state program or any federal program are ineligible. Agency may determine Applicants having an Identity of Interest with any debarred entity are ineligible.

Agency may inquire to other state allocating agencies about the Applicant's or Developer's performance history. Negative performance may result in the application being ineligible.

- F. **Ownership:** The Applicant must be either the owner or developer of the project. If the Applicant intends to

sell or transfer the project within five (5) years from the application date, the Applicant must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of those who will purchase or receive the project. Failure to provide this information may result in forfeiture of any Conditionally Committed or Reserved LIHTCs.

Credits are allocated to the proposed project's Owner. A sale or transfer of a controlling ownership interest of the Owner prior to issuance of the Final Allocation requires an amended application, Agency approval and payment of a nonrefundable transfer fee of \$2,500, or 1% of the annual credit amount currently allocated to the Owner for the proposed project, whichever is greater. Payment of this fee does not oblige the Agency to approve the transfer.

- G. **Financial Projections:** NDHFA's currently published Multifamily Application Exhibit A, must be submitted in Excel format. All applicable tabs must be fully completed.

The reasonableness of development costs and operating expenses, in relation to other similar developments, will be assessed when the Agency evaluates a project's financial feasibility.

The Agency reserves the right to decline any application if, during underwriting, the project is determined to have a Hard-Debt-Service Coverage Ratio, or Expense Coverage Ratio for a project which proposed no hard-debt, less than 1.10.

- H. **Subsidies:** The application package must include a signed certification as to the full extent of all federal, state, and local subsidies expected to apply to the project.

- I. **Public Housing Waiting List:** The application package must include a copy of a written communication from the Applicant to the applicable public housing authority (PHA) describing the proposed project. The Applicant's communication shall include a commitment to communicate project completion and work directly with the PHA during the proposed project's lease-up in an attempt to house households on PHA waitlist(s) and granting waitlisted households' priority in obtaining occupancy within the project.

- J. **Housing Need:** Applications must include a comprehensive market study of the housing needs of low-income individuals in the market area to be served by the project. The market study should be completed at the Developer's, or affiliate of the Developer, expense by an acceptable disinterested party to the Agency.

The market study must demonstrate there is sufficient sustained demand in the market area to support the proposed development, and that the development of any additional affordable units will not have an adverse impact on the existing affordable units in the market area. The market study must have been completed within six (6) months of Application Close Date and must contain the National Council of Housing Market Analysts' (NCHMA) current model content standards unless the Agency authorizes deviation from these standards.

- K. **Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation, adaptive reuse, or acquisition of an existing building which will, in-whole or in-part, remain an asset of the project.

The CNA must be completed by a competent, independent third party acceptable to the Agency, such as a licensed architect and/or engineer. The assessment must include a site visit and a physical inspection of the interior and exterior of all units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies.

The assessment must consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment must include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than fifty percent (50%) of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful

life is less than the Affordability Period, the application package must provide a practical way to finance the future replacement.

The assessment must also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:

1. Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utilities and their lines.
2. Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage.
3. Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors.
4. Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection, and elevators.

Application packages involving the demolition and new construction replacement of existing housing units must demonstrate the benefit of such activity over rehabilitation, including an opinion of cost of rehabilitation to assist Agency to determine the cost savings and/or other benefits.

- L. **USDA Financing:** An application proposing the inclusion of new or existing USDA debt must include written confirmation from the regional USDA officer which verifies any progress made on an initial transfer request and/or the approval of any proposed debt additional to the existing USDA debt, and any associated lien to the debt, proposed.
- M. **Self-Scoring:** The Applicant must provide a self-scoring narrative indicating the number of points being sought in each scoring category. The narrative should be brief but also explain the Applicant's justification(s) for the points being sought.

## SECTION 6: SCORING DEDUCTIONS

Applications not meeting a minimum amount of Additional Leverage (Scoring Criteria G) will be subject to a point reduction.

Applications failing to satisfy a Threshold Requirement as of the application deadline will be a 5-point scoring deduction for EACH unsatisfied Threshold Requirement and be given a reasonable amount of time to submit any missing items required to satisfy the Threshold Requirement(s).

## SECTION 7: SCORING CRITERIA

Applications meeting Threshold Requirements will be reviewed and assigned points based on Scoring Criteria expounded upon below. Representations made within successful applications will be bound by those representations within a Loan Agreement and/or a recorded Land Use Restrictive Agreement.

Applications must achieve a minimum score of one hundred twenty (120) points to be considered for funding.

Successful applications for a Project located within a Developing Rural Community will be bound to Rent Restrictions but will not be bound to Income Restrictions represented and awarded points under Scoring Criteria A, B, and C.

The most restrictive Income and Rent Limits for all anticipated project funding sources will be used to evaluate points awarded under Scoring Criteria A, B, and C. Projects are able to receive points under only one Restricted Unit type (Scoring Criteria A, B, or C).

The Agency, at its sole discretion, shall determine the amount of funds to award. The award may not equal the amount requested in the application. All applicants will be notified of their respective project(s) approval or denial.

In the event of a scoring point tie between two (2) or more projects during a competitive application round when insufficient program funds remain to adequately fund each project, the first tiebreaker will be for the project(s) which satisfies any applicable Set-Aside(s) within this HIF Allocation Plan which has not yet been satisfied by other approved applications; the second tiebreaker will be the project with the highest score under Category F, Readiness to Proceed.

**A. Serves Extremely Low-Income Households**

**5 points**

Points awarded based on the percentage of total project units which are Restricted Units which are Income Restricted and Rent Restricted at, or below, thirty percent (30%) AMI. Projects are able to receive points for a unit under only one Restricted Unit type (Scoring Criteria A, B, or C).

1. 10% to 50% of total project units serve Extremely Low-Income Households .....5 points

For 30% AMI Restricted Units only: Gross monthly rent collected is allowed to exceed the Agency published thirty percent (30%) AMI rent limit so long as the unit is receiving a project-based rental assistance payment. This exception does not apply for any Tenant-Based rental assistance source.

**B. Serves Low Income Households**

**Up to 40 points**

Points awarded based on the percentage of total project's Restricted Units which are Income Restricted at, or below, eighty percent (80%) AMI and Rent Restricted at, or below, fifty percent (50%) AMI. Projects are able to receive points for a unit under only one Restricted Unit type (Scoring Criteria A, B, or C).

1. 20% of total project units serve Low Income Households .....10 points
2. 40% of total project units serve Low Income Households .....25 points
3. 60% of total project units serve Low Income Households .....40 points

**C. Serves Moderate Income Households**

**Up to 15 points**

Points awarded based on the percentage of total project units which are Restricted Units which are Income Restricted at, or below, one hundred forty percent (140%) AMI and Rents Restricted at, or below, eighty percent (80%) AMI. Projects are able to receive points for a unit under only one Restricted Unit type (Scoring Criteria A, B, or C).

1. 10% of total project units serve Moderate Income Households .....5 points
2. 25% of total project units serve Moderate Income Households .....10 points
3. 50% of total project units serve Moderate Income Households .....15 points

**D. Serves a Developing Community**

**Up to 25 points**

Points awarded when the proposed project is located in an incorporated city with a population meeting the definition of a Developing Community or Developing Rural Community.

1. Located within a Developing Community .....15 points
2. Located within a Developing Rural Community .....25 points

**E. Need for HIF Funds**

**Up to 30 points**

The applicant must demonstrate the proposed project would not be financially feasible without the applied-for HIF award. Financial evaluation will include, but is not limited to, any construction or permanent financing gap(s), and the project's projected ability to maintain an even-trending debt-service coverage.

**F. Readiness to Proceed**

**Up to 25 points**

Applicants must provide a timeline for completion of the project. Points awarded in this category are based

on earliest achievable completion of the activity. Such things as letters of interest or commitment for all sources of project financing; ownership of the land; and availability of infrastructure will be considered in the award of points. Points will be awarded at the sole discretion of NDHFA in comparison to other projects competing in the application round.

#### G. Additional Leverage

**Up to 50 points**

Points awarded for applications which include additional funding source(s), identified within the Multifamily Housing Application Exhibit A, that reduce the project's need to carry debt which has a reasonable expectation of repayment or are an operating subsidy which substantively reduces the project's operating expenses (such as a PILOT).

For purposes of scoring in this category, funds which reasonable expectation of repayment, are temporary in nature, or do not exist for at least the first 15-years of the project's HIF Affordability Period are not eligible.

Only the present value of an operating budget's reduction which will be realized for the guaranteed term of the subsidy is eligible. If using an operating budget reduction, it is highly recommended you contact the agency to correctly calculate that reduction's value for this scoring category.

1. Combined value less than 20% of Total Development Costs .....20 point reduction
2. Combined value of at least 20% of Total Development Costs.....20 points

Applications proposing to utilize and have submitted a North Dakota 4% LIHTC application at or prior to this application round will receive an additional 30 points. A 42m letter is not required to have been issued.

#### H. Rehabilitation

**Up to 30 points**

Points awarded for applications which propose to rehabilitate existing structure(s) that are currently, or at-risk of becoming, uninhabitable or obsolete.

1. \$15,000 per unit in hard construction costs .....10 points
2. \$30,000 per unit in hard construction costs .....20 points
3. \$45,000 per unit in hard construction costs .....30 points

For purposes of scoring within this category: Proposals in which an appropriate project-specific level of due diligence (which shall be included within the application package) has led to the development team's determination that demolition and replacement of existing structure(s) is a more appropriate and/or cost-effective development approach than rehabilitating the existing structure(s) shall qualify for scoring within this category. While one-for-one unit replacement is not a requirement, the agency encourages applicants to seek this replacement ratio whenever able.

#### I. Universal Design

**Up to 20-14 points**

Applicants seeking Project Standards points are required to provide a written statement from the project's architect, verifying the architect has fully reviewed NDHFA's current Universal Design Standards and that 100% of the Project Standards will be implemented within the design of the proposed project.

1. All Project Standards implemented.....~~5-1~~ points

Applicants seeking Unit Standards points are required to provide a written statement from the project's architect, verifying the architect has fully reviewed NDHFA's current Universal Design Standards and that 100% of the Unit Standards will be implemented within specific units the proposed project. The Applicant and architect shall specify which units are proposed to be these Universal Design Units.

2. Greater-than ~~or equal to 10.000.00%~~ but less than ~~15.005.00%~~ of the project's total units .....~~4-1~~ points
3. Greater-than or equal to ~~15.005.00%~~ but less than ~~20.0010.00%~~ of the project's total units ....~~8-3~~ points
4. Greater-than or equal to ~~20.0010.00%~~ but less than 25.00% of the project's total units .....~~12-6~~ points
5. One point for each Universal Design Unit which is two-bedroom or larger ..... Up to 3 points

**J. Impact of HIF Award****Up to 10 points**

Applications will receive 0.50 points for each Restricted Unit in the project.

**SECTION 8: AWARD PROCESS**

Proposals received by the due date will be reviewed and ranked within an approximate 60-day timeframe. Successful proposals will be issued a conditional commitment of financial assistance from HIF. Applicants will be required to reach certain benchmarks during this timeframe identified in the Agency's conditional commitment letter. An extension of the conditional commitment period may be granted, at the sole discretion of the Agency. Upon satisfactory review of these items, a Financial Award will be issued.

**Progress reports from Conditional Commitment to Financial Award.**

To ensure HIF funding is conditionally committed to projects which are proceeding according to the schedule presented in the application, each applicant receiving a conditional commitment will be required to submit monthly progress reports. The report must describe the Applicant's actual progress to date together with an estimated timeline for future project activity.

**Progress reports from Financial Award to Stabilized Occupancy.**

Upon the Agency's issuance of a Financial Award to the project, the borrower must submit quarterly progress reports until the project has reached stabilized occupancy. The report must describe actual development progress to-date, identify changes to the development budget or scope of the project, and contain an estimated timeline for future activity and lease-up. Development costs which increase above the contingency listed in the HIF application must be disclosed in the progress reports along with an explanation as to how the gap is being filled. At the Agency's discretion, information submitted with draw requests, such as site reports, may serve to satisfy the quarterly reporting requirement.

**SECTION 9: ACCESS TO HIF FUNDS**

Draws against a Financial Award can be made for costs incurred upon firm commitment of all other funding sources such as construction financing. For Multifamily Project, a mortgage with recapture provisions, deed restriction, loan agreement, and promissory note must be executed prior to release of any HIF funds.

The borrower may request one or more draws of available HIF proceeds for payment or reimbursement of costs incurred toward the development of the project. Draws are requested by submitting to Agency a completed HIF Draw Request form together with an electronic transfer authorization, documentation supporting the expenses claimed, general contractor's sworn construction statement, and architect's inspection or trip report. All disbursements are made by electronic funds transfer to the borrower's authorized account or designated escrow agent.

Disbursement of up to ninety-five percent (95%) of the HIF proceeds may be made during construction of the project. A hold-back amount of five percent (5%) of the HIF proceeds will be retained until project completion. Disbursement of the hold-back amount will be made upon satisfaction of all conditions identified on the Borrower's Post-Closing Requirements document signed at closing including but not limited to final sworn total development cost certification, certificate of occupancy, completion certification, final lien waivers, and executed loan or grant agreements for all other permanent funding sources.

**SECTION 10: REPAYMENT OR RECAPTURE OF FUNDS**

All HIF awards will be structured as a forgivable zero-interest loan, unless an associated interest rate is requested from the awardee, with repayment terms determined on a project specific basis as necessary to achieve project feasibility. The term of the HIF loan shall be, at a minimum, fifteen (15) years, but no less than the term of the affordability period of any other affordable housing program funding provided to the project by or through the

Agency. Annual repayment of HIF funds may be calculated as all, or a percentage of, the project's net cash flow above a 1.30 hard-debt-service coverage ratio remaining after payment of reasonable operating expenses, cash-flow dependent (soft) debt service, and HIF-required reserve capitalization.

Income targeting and/or rent restriction requirements will remain with the project for the duration of the Affordability Period and will be enforced through a deed restriction on the land. In the event of a prepayment of the loan, the deed restriction will ensure the Income and Rent Restrictions remain in place for the remainder of the Affordability Period, unless waived by the Agency.

If a project can demonstrate to the Agency's satisfaction that it is not able to maintain occupancy in a Restricted Unit by income-eligible households, and there exists a threat of chronic vacancy of the Restricted Unit, the vacant unit may, with the prior express written consent of the Agency, be granted a temporary exception to certain aspects of the deed restriction.

A recapture of the HIF funds from the borrower will occur at any time during the term of the loan if the borrower fails to abide by the representations made in the application, unless waived by the Agency. In the event of recapture of the HIF funds, the deed restriction will remain in place for the remainder of the original term of the HIF loan.

## SECTION 11: COMPLIANCE MONITORING

Owners of HIF-assisted properties must remain in compliance with program guidelines throughout the term of the HIF agreement. Agency will monitor all properties for compliance with HIF program requirements including those related to income and rent limits, cash flow, reserve accounts, insurance coverage, and property condition. Annual compliance monitoring will consist of a desk review of information provided by the project owner and/or a property inspection and review of documentation at the project location. A copy of the HIF Ongoing Compliance Monitoring Manual is provided to all HIF award recipients and is also available on the Agency website at [www.ndhfa.org](http://www.ndhfa.org).

On a quarterly basis, owners of HIF-assisted properties must provide the Agency the following:

- HIF Quarterly Vacancy Report, provided to the Owner and/or Property Management by the Agency.

On an annual basis, owners of HIF-assisted properties must provide the following to Agency, at a minimum:

- Annual Rental Compliance Report (SFN 60046).
- Documentation supporting the current utility allowance(s) being used (i.e. a copy of the current utility allowance table from the local public housing authority).
- Property Expense Statement (SFN 61073) and attach a copy of any financial document(s) used to complete this document (i.e. Year-over-Year Balance Sheet, Income Statement, Statement Cash Flows).
- Reserve account statements, if not already documented within the Balance Sheet.
- Proof of sufficient property and liability insurance coverage listing Agency as mortgagee (Acord 25 and Acord 27 or 28)

Agency will charge each HIF-assisted property an annual fee to cover expenses incurred during normal and routine monitoring activities. The fee is currently set at \$50 per property, plus \$40 per Restricted Unit. Agency reserves the right to adjust the annual fee as necessary. Additional fees may be assessed to properties determined to be in substantial noncompliance in order to cover the expense of additional monitoring. The HIF compliance monitoring fee should be included in the operating budget of applications for HIF assistance.

Developments which are subject to annual compliance monitoring fees for other programs administered by the Agency may be eligible for a reduction in their HIF compliance monitoring fee at the sole discretion of the Agency.

## SECTION 12: DISCLAIMER OF AGENCY LIABILITY

Agency seeks to allocate sufficient HIF assistance to a project to make the project economically feasible. Such decision shall be made solely at the discretion of Agency but in no way represents or warrants to any Applicant, investor, lender, or others that the property is feasible, viable, or of investment quality.

No member, officer, agent, or employee of Agency shall be personally liable concerning any matters arising out of, or in relation to, the allocation of HIF assistance.

## SECTION 13: MODIFICATION TO THE ALLOCATION PLAN

The Agency Executive Director may make minor modifications deemed necessary to facilitate the administration of HIF or to address unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions on a case-by-case basis for good cause shown. As a matter of practice, the Agency will document any waivers from the established priorities and selection criteria of the Plan and will make this documentation available to the public, upon request.



**March 25, 2025**

**TO: Industrial Commission**

**FR: David Flohr, Executive Director**

**RE: Report 2025 HOME Investment Partnership Program Allocation Plan and 2025 National Housing Trust Fund Allocation Plan**

**2025 HOME Investment Partnership Program**

The HOME Investment Partnership Program (HOME) is a permanent federal program, established under Title II of the Cranston-Gonzalez National Affordable Housing Act and codified under 24 CFR part 92. Unlike Housing Trust Fund, HOME eligible activities include more than affordable multifamily production and rehabilitation such as rehabilitation of homeowner housing, homebuyer assistance, and tenant based rental assistance. Distribution of HOME funds must be consistent with the goals identified in the State Consolidated Plan and Annual Action Plan (AAP). North Dakota receives the small state minimum allocation of \$3 million annually.

As drafted the 2025 HOME Allocation plan (Plan) makes available a total of \$3,143,222 in funds set aside as follows: \$840,000 to single family homeowner rehabilitation programs, \$500,000 for homebuyer downpayment assistance, allowable administration and planning funds, and the remainder for multifamily rental production and rehabilitation.

The Plan was published for public comment February 14 - March 3, with a public hearing held March 5, 2025. The Plan will now be incorporated into the development of the 2025-2029 Consolidated plan and the 2025 State Annual Action Plan (AAP) and a 30-day public comment period is planned in April. Following the comment period, the AAP will be submitted to HUD for approval. HUD has 45 days to review the plan and provide feedback or it becomes final. Comments may be received for any part of the AAP including the HOME allocation plan.

There were no substantial changes made to the Homeowner Rehabilitation program or the Homebuyer Down Payment Assistance program except updating language for the resale and recapture provisions used by the CLT.

**Rental Production and Rehabilitation**

There were no substantial changes to the rental production and rehabilitation section of the allocation plan.

Comments were received requesting the agency to consider reducing the single family and homebuyer downpayment assistance program set asides and increase the rental production set aside.

The HOME allocation plan is already designed to reallocate any uncommitted funds from the prior program year to rental production and rehabilitation program and the end of the program fiscal year. Staff recommend no change to the set aside.

## **2025 National Housing Trust Fund**

The National Housing Trust Fund (HTF) is a permanent federal program, established as part of the Housing and Economic Recovery Act of 2008 and codified in the Code of Federal Regulations, Title 24, Parts 91 and 93. The primary purpose of the HTF is to provide grants to state governments to increase and preserve the supply of affordable rental housing for extremely low income (ELI) households, defined as those earning less than 30% of the area median income (AMI), including homeless families. The HTF is funded by an assessment of the percentage of new business booked by Fannie Mae and Freddie Mac. North Dakota receives the small state minimum allocation of \$3 million annually.

The HTF allocation plan compliments the Federal Low Income Housing Tax Credit Qualified Allocation Plan (LIHTC QAP). The plan was published on February 14, 2025 opening a 15-day public comment period. The public input hearing was held on March 5, 2025.

HTF plan will be incorporated into the 2025 State Annual Action Plan as part of the 2025-2029 State Consolidated plan. A 30-day public comment period for action plan and consolidated plan begins April 12<sup>th</sup>. Following completion, the plan will be submitted to HUD for approval. HUD has 45 days to review the plan and provide feedback or it becomes final. Comments may be received for any part of the Annual Action Plan including the HTF plan. The redline draft plan is attached for review.

## **Section 5: Application Process and Scoring**

Proposed scoring changes align with the proposed changes in the LIHTC QAP.

### **Service Coordinator (page 12)**

Changed the scoring category to Service Coordinator and added descriptions of core functions required. These changes were adapted from HUD's multifamily service coordinator toolkit, which references best practices of the role. Removed the additional points for contracting with a Medicaid Service Provider to provide supportive services to eligible Medicaid tenants.

The role of a Service Coordinator is to be able to identify and refer individuals to appropriate services including Medicaid eligible services such as Home and Community Based Services and 1915i tenant supports.

Contracting with a Medicaid provider upfront adds excess operating costs, an unintentional consequence of the scoring criteria. The focus of this scoring criteria was to have staff onsite who can help tenants identify and access supports they may need.

### **Universal Design (page 14)**

Lowered the percentage range of units necessary to receive points in each scoring range. Developers and architects throughout the past year have commented on the excessive costs associated with units that meet the universal design standards and indicated challenges in filling the units.

## **Additional Comments**

### **Project-Based Rental Assistance (page 12)**

Comments were received requesting consideration to award points for a portion of the housing trust fund units that receive project based rental assistance. Currently points are awarded for those who receive commitments for project based rental assistance on all extremely low income/housing trust fund units.

Staff is recommending the following scoring tiers to implement the comments received.

- 1. 100% of the HTF-Assisted units will have PBVs .....5 points
- 2. At least 90% of the HTF-Assisted units will have PBVs .....4 points
- 3. At least 80% of the HTF-Assisted units will have PBVs .....3 points
- 4. At least 70% of the HTF-Assisted units will have PBVs .....2 points
- 5. At least 60% of the HTF-Assisted units will have PBVs ..... 1 point



## 2025 ALLOCATION PLAN

### HOME Investment Partnerships Program

*DRAFT Pending HUD Approval*



Community Housing and Grants Management Division  
2624 Vermont Ave. | PO Box 1535 | Bismarck, ND 58502-1535  
800-292-8621 or 701-328-8080 | 800-435-8590 (Spanish) | 711 (TTY)  
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Una traducción al español de este documento está disponible solicitándola en [ndhfa.org](http://ndhfa.org)



**DRAFT Pending HUD Approval**

The HOME program contained herein is contingent upon HUD's allocation of formula grant amounts to the State of North Dakota as well as HUD's acceptance and approval of this Allocation Plan. Any approvals to and from the program are subject to such acceptance, approval, and allocation by HUD.

This recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Accommodations: Individuals who require accommodations including translated documents, an alternate format, or to request a copy of the plan may contact:

504 Coordinator:

Jennifer Henderson

North Dakota Housing Finance Agency

2624 Vermont Avenue

Bismarck ND 58504

800-292-8621 or 701-328-8080

800-435-8590 (Spanish)

711 (Voice or TTY)

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## SECTION 1: INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD) has designated the State of North Dakota as a Participating Jurisdiction (PJ) and as such it may apply for and distribute HOME Investment Partnerships Program (HOME) funds. The state agency responsible for administration of HOME is the North Dakota Housing Finance Agency (NDHFA).

NDHFA will distribute the State's FY2024 HOME funds and administer the program according to the goals identified in North Dakota's Consolidated Plan (CP). Accordingly, the State will use its HOME funds to help address the following identified housing needs:

- Rehabilitation of Owner-Occupied and Rental Property
- Acquisition, New Construction, Site Improvements or Demolition Linked to a Project
- Homebuyer Assistance
- Administrative Costs

## SECTION 2: GENERAL PROVISIONS

The 2013 HOME Final Rule revised several commitment and completion deadlines and imposed new occupancy deadlines:

- A. HOME projects must be completed within 4 years of commitment. Any HOME awards received by a project that is not completed in a timely manner will be terminated and PJs will be required to repay HOME funds drawn as described in 24 CFR § 92.205(e)(2).
- B. HOME-assisted rental units must be occupied by income-eligible households within 18 months of project completion. If not, PJs must repay HOME funds for the vacant units. (Note: for units that remain vacant for 6 months following completion, the PJ must identify and develop an enhanced marketing plan and report this information to HUD per 24 CFR § 92.252.
- C. A homebuyer unit must have a ratified sales contract within 9 months of construction completion. The PJ and Subrecipients must either convert the unit to a HOME rental property or repay the full HOME investment as described in 24 CFR § 92.254(a)(3).
- D. The Consolidated Appropriations Act of 2019 (PL 116-6) temporarily suspended the Community Development Housing Organization (CHDO) 24-month commitment requirement for set-aside funds to specific projects (Section 231(b)). The suspension applies to 2018-2021 CHDO funds.
  - This appropriation act also continues the temporary suspension of the regular HOME funds 24-month commitment requirement to specific projects for 2016-2021 funds. The Consolidated Appropriations Act of 2020 (PL 116-94) added 2022 to the years covered by the suspension.
  - Both commitment requirements are suspended through Dec. 31, 2022.
- E. CHDO Fund Set-Aside
  - PJs shall reserve not less than 15% of the grant for projects to be developed, sponsored, or owned by CHDOs.
  - If after 24 months those funds are not committed, PJs may elect to use the funds for any HOME project and are no longer restricted to CHDO projects.
  - Uncommitted CHDO set-aside funds at the end of the 24-month period may be reprogrammed to other eligible HOME activities, subject to procedures established by HUD.
- F. The PJ may not "reserve" CHDO funds for future projects identified "at a later date" per 24 CFR § 92.2 Commitment and § 92.300(a)(1).

#### HOME Allocation Plan

G. HOME funds have a period of 9 fiscal years until expiration. This period is based on 4 fiscal years during which HUD may obligate funds to the PJ (i.e., period of availability in the appropriation act) plus the 5-year expenditure deadline beginning after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Agreement for a specific fiscal year allocation. Any funds that are not expended before this deadline will be deobligated by HUD. This 9-year period is determined annually by Congress, which generally begins when Congress appropriates funds to HUD per 24 CFR § 92.500(d)(1)(A) and (C) and § 92.500(d)(2).

#### H. Property Standards

All activities funded with HOME funds must meet minimum property standards as outlined in the [Minimum Rehabilitation and Property Standards](#). NDHFA is aware that HUD intends the Uniform Physical Inspection Condition Standards (UPCS) to be replaced by NSPIRE during the 2025 program year. The Minimum Rehabilitation and Property Standards manual will be updated when NSPIRE is finalized. More information on NSPIRE standards is available on the HUD Exchange.

### SECTION 3: DISTRIBUTION PLAN

The State will administer its program through Subrecipients, non-profit and for-profits, and CHDOs. HOME funds will be allocated to Subrecipients through a non-competitive set-aside. The non-profit and for-profit and CHDO categories will be competitive and receive awards based on scoring criteria. If CHDO funds remain, NDHFA may open a second round of CHDO applications, at its discretion, accepted from CHDOs only.

Applicants new to HOME are required to partner with an experienced developer, sponsor, or consultant (i.e., someone with completed projects and operating successfully).

A CHDO must have a history of serving the community in which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show 1 year of serving the community before HOME funds are reserved for the organization and have demonstrated capacity for carrying out housing projects assisted with HOME funds as described in 24 CFR § 92.2.

The State may reallocate funds based on high demand, a natural disaster, or other determinations where performance-based measures have not been met. If during the preparation of the next program year Annual Action Plan there are project funds set-aside for Single-family Rehabilitation or Homebuyer Down Payment Assistance that have not been applied for or committed, the State may reallocate those funds to the Rental Production and Rehabilitation General Pool. Uncommitted CHDO set-aside funds at the end of the 24-month period may be reprogrammed to other eligible HOME activities, subject to procedures established by HUD.

State Program Income, Repayments and Recaptured Funds receipted by NDHFA will be allocated, at the agency's sole discretion, to any Project completing an Eligible Activity in the proceeding program year and shall be committed to Project(s) prior to any newly allocated HOME funds are drawn from the Treasury account, except for funds in the Treasury account which are required to be reserved, in accordance with the HUD Interim Final Rule for the HOME program published on Dec. 2, 2016 and 24 CFR § 92.503.

#### 3.01 HOME Projects and Eligible Activities

The HOME Program focuses on three major housing needs:

- Single-family Homeowner Rehabilitation

#### HOME Allocation Plan

- Rental Production and Rehabilitation
- Homebuyer Down Payment Assistance

Each of these housing needs is considered a high or medium priority need for the use of HOME funds. These needs are addressed and prioritized locally by set-aside(s), determined by NDHFA, to their Recipients and Subrecipients. Each Subrecipient delivers HOME in their respective geographic jurisdiction. Each year, the State will review the needs and completed goals to determine if goals will be updated based on the new developments which create changing housing needs around the state.

### 3.02 HOME Performance Measures

Recipients and Subrecipients are required to report performance data for all activities. Performance data reporting consists of entering one of three objectives for the program:

- Create a Suitable Living Environment
- Provide Decent Affordable Housing
- Create Economic Opportunities

In addition, the following appropriate outcomes are also required: Availability/Accessibility and Affordability or Sustainability. Based on the objectives and outcomes selected, the system will populate the specific output indicators for each activity. NDHFA will then enter this information on HUD's Integrated Disbursement and Information System (IDIS).

### 3.03 HOME Summary of Funding Estimate

<b>2025 Summary of Funding ESTIMATE*</b> *Funding levels are subject to receipt of a HUD Allocation Notice and any Program Income Received prior to July 1, 2025. Any additional funds received will be allocated to the Rental Production and Rehabilitation Project Funding. 2024 Uncommitted funds will be reallocated for the Rental Production and Rehabilitation 2025 Activity.		
Annual HUD Allocation	\$3,000,000.00	
Prior Year's Program Income	\$141,337.42	
Recaptured Funds	\$1,884.76	
Prior Years Project Funds Unobligated	\$0.00	
Total Available	\$3,143,222.18	
Administration	\$300,000.00	
Projects	\$2,843,222.18	
	<b>Projects</b>	<b>Administration</b>
CHDO Set-Aside	\$450,000.00	
CHDO Operating	\$50,000.00	
Single-family Homeowner Rehabilitation	\$840,000.00	\$60,000.00
Rental Production and Rehabilitation	\$1,003,222.18	
Homebuyer Down Payment Assistance	\$500,000.00	\$0.00
State PJ Administration	\$0.00	\$240,000.00
<b>TOTAL</b>	<b>\$2,843,222.18</b>	<b>\$300,000.00</b>

## SECTION 4: ELIGIBLE USES

All Recipients are expected to locally meet the HOME match requirement of 25% unless specifically waived by NDHFA. All estimated matches must be reported at project application and finalized before final draw.

Only HOME assistance forms listed in 24 CFR § 92.205(b) will be allowed. Applicants should use Community Development Block Grant, Federal Home Loan Bank, Low Income Housing Tax Credit, National Housing Trust Fund, North Dakota Housing Incentive Fund, U.S. Department of Energy, USDA Rural Development, and any other grant/loan programs or private funds to help leverage HOME activities.

Additional match sources not identified by close-out in IDIS must be reported throughout the period of affordability. **Match source data must be submitted to NDHFA no later than July 15 of each year.**

### Administration

NDHFA is allowed to receive HOME funds for administrative expenses. These costs may not exceed 10% of the State's Annual Allocation.

### Subrecipient Definition

A Subrecipient is defined as a public agency or non-profit organization selected by NDHFA to administer all or a portion of the HOME program. A public agency or non-profit organization which receives HOME funds solely as a developer or owner of a housing project is not a Subrecipient. NDHFA's selection of a Subrecipient is not subject to the procurement procedures and requirements. Single-family Homeowner Rehabilitation and Homebuyer Down Payment Assistance programs will be delivered through Subrecipients.

### CHDO Operating

Up to \$50,000 in CHDO operating grant funds will be available for certified CHDOs that are receiving set-aside funds for an activity or activities or expected to receive set-aside funds within 24 months of the date of the CHDO Operating grant agreement. These funds may be used for operating expenses that are reasonable and necessary costs of operation of the CHDO. A CHDO requesting a CHDO operating grant will need to apply for a CHDO operating expense grant. Applications will be accepted on a first come first serve basis. The grant is limited to \$50,000 per certified CHDO.

### Single-family Homeowner Rehabilitation

HOME funds will be set aside for Community Action Agencies (CAA) which have fully expended and closed out all HOME funding from previous 2016-2022 funding years.

- A complete HOME Annual Application Plan must be submitted to NDHFA.
- Applications may be submitted beginning Aug. 1, 2025, and will be accepted until fully awarded.

Financial Awards will be provided for each approved CAA application. Funds from one award may not be used for any other activity than what was approved.

Eligible activities can include all necessary rehabilitation required to bring an existing owner-occupied home up to the HOME property standards as defined in 24 CFR § 92.251(b) and the North Dakota State Building Code (or locally amended North Dakota State Building Code). Rehabilitation work must meet all applicable state and local code requirements. When rehabilitation is selected as a regional priority,

# HOME Allocation Plan

neither the estimated value of the house prior to rehabilitation nor the after-rehab value of the housing shall exceed the annually published HOME Homeownership Value Limits for the county in which the property is located. Each homeowner will be required to sign a Housing Rehabilitation Program Homeowner Agreement and a Declaration of Lien Interest prior to work beginning.

**No choice-limiting action may be taken, and no construction activity may begin until the environmental review has been completed, the homeowner agreement has been signed, and an authorization to proceed has been issued.**

The period of affordability is as follows:

HOME Assistance Per Unit	Minimum Period of Affordability
Single-Family Homeowner Rehabilitation	5 years

The amount subject to recapture is the amount of direct subsidy received. The terms of the agreement for repayment may allow for a pro-rata reduction of the recapture amount in monthly increments. If the property that is subject to recapture is sold, the maximum amount of the recoverable grant is limited to the net proceeds of the sale of the property. Below is an example of a five-year plan:

Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture
1	100%	13	80.0%	25	60.0%	37	40.0%	49	20.0%
2	98.3%	14	78.3%	26	58.3%	38	38.3%	50	18.3%
3	96.6%	15	76.6%	27	56.6%	39	36.6%	51	16.6%
4	95.0%	16	75.0%	28	55.0%	40	35.0%	52	15.0%
5	93.3%	17	73.3%	29	53.3%	41	33.3%	53	13.3%
6	91.6%	18	71.6%	30	51.6%	42	31.6%	54	11.6%
7	90.0%	19	70.0%	31	50.0%	43	30.0%	55	10.0%
8	88.3%	20	68.3%	32	48.3%	44	28.3%	56	8.3%
9	86.6%	21	66.6%	33	46.6%	45	26.6%	57	6.6%
10	85.0%	22	65.0%	34	45.0%	46	25.0%	58	5.0%
11	83.3%	23	63.3%	35	43.3%	47	23.3%	59	3.3%
12	81.6%	24	61.6%	36	41.6%	48	21.6%	60	1.6%

When housing rehabilitation is selected, each CAA must develop Homeowner Rehabilitation Policies and Procedures. The Policies and Procedures must be submitted with the CAA's Annual Application and contain the following:

1. The criteria used to determine applicant eligibility based on income as defined by either Part 5/Section 8 annual income or adjusted gross income as defined for reporting on IRS Form 1040, assets, ownership, occupancy, and location. Any priorities which are used to select households for assistance (e.g., households with income less than 50% of area median income) along with how the income information will be verified.
2. The CAA Affirmative Marketing requirements and procedures (24 CFR § 92.351).

#### HOME Allocation Plan

3. The types of property or properties eligible for assistance (e.g., a single-family dwelling, condominium, cooperative unit, or manufactured housing. Manufactured housing must be located on permanent foundation and private lot).
4. A description of any type of homeowner contribution required (e.g., cash, labor or materials).
5. A description of how you will inspect for HOME property standards as defined in 24 § 92.251(b). Assurance that all work complies with the North Dakota State Building Code (or a locally amended North Dakota State Building Code) and Agency Minimum Housing Rehabilitation and Property Standards. Also include how your agency will ensure that newly constructed housing meets the current edition of the Model Energy Code, Uniform Building Code, and Uniform Mechanical Code.
6. A definition of how you will meet the lead-based paint regulations of 24 CFR § 92.355 and § 35.
7. A description of the minimum and maximum amount of assistance allowed along with the terms of the assistance. Indicate what will happen if a house cannot be brought up to HOME property standards with the maximum investment.
8. A description of how you will ensure that no more than the necessary amounts of HOME Program funds are invested in any one project (i.e., Layering).
9. A specification of the form of financial assistance in which HOME funds are provided (e.g., grant or deferred-payment loan).
10. The special requirements for reconstruction or rehabilitation of manufactured housing units as set forth in 24 CFR § 92.251(e).
11. A description of the process for written construction documents and cost estimates as required by 24 CFR § 92.251(b)(2), contractor selection to ensure cost reasonableness, and inspections and approvals of work as required by 24 CFR § 92.251(b)(3).
12. A definition of the staff, owner, and contractor roles and responsibilities. Include a grievance procedure for applicants and disputes between an owner and a contractor.
13. A statement that outlines your conflict-of-interest policy in Section II, HOME Statement of Assurances.
14. A description of the homeowner counseling services that are available to each client.

#### Uncommitted Funds

If by January 1, 2026, there remains uncommitted set-aside funds under the single-family rehabilitation project, CAAs who have expended and drawn down 75% of any outstanding grant award(s) may apply for remaining funds. Eligible awardees may request an amendment to their existing award at any date after January 2 of the calendar year following the current award's issuance. Any uncommitted HOME Funds as of the end of the Program Year (June 30<sup>th</sup>) will be reallocated to Rental Production and Rehabilitation.

#### Recaptured Funds

The recaptured funds must be returned to NDHFA to be used to carry out HOME-Eligible Activities.

#### Homebuyer Down Payment Assistance

When funds are made available a non-profit Community Land Trust (CLT), registered with the North Dakota Secretary of State which operates within the State of North Dakota, may apply for funding under this program. The CLT must demonstrate community support and capacity to undertake activities including but not limited to experience and financial stability.

1. Assistance may only be provided to homebuyers whose income (i.e., Section 8 definition) does not exceed 80% of the median for the area.
2. Assisted housing may be either a single-family dwelling, condominium, cooperative unit or manufactured housing.

HOME Allocation Plan

3. The Subrecipient must demonstrate compliance with NDHFA homebuyer guidelines and perform sound underwriting of the homebuyer's ability to afford and sustain homeownership.
4. All homebuyers assisted under the HOME program must receive housing counseling that is performed by a certified housing counselor who has passed the HUD certification examination and is employed by a HUD-approved housing counseling agency prior to receiving homebuyer assistance as required at 24 CFR 254(a)(3).
5. NDHFA will determine which level of environmental review (CEST or CENST) and procedures that will be required for the homebuyer project according to 24 CFR Part 58 definitions and the procedures and in 24 CFR 92.352.
  - Homebuyer acquisition providing only down payment assistance is Categorically Excluded but Not Subject to Other Federal Laws and Authorities (CENST) as long as the project meets one of the following criteria:
    - Activities to assist homebuyers to purchase an existing dwelling unit or dwelling units under construction, including closing costs and down payment assistance. \*These units must be constructed or under construction at the time of application.
  - The ONLY activities that can be initiated prior to NDHFA releasing funds are costs associated with program administration, project delivery cost necessary to determine eligibility and underwrite the household, contracting for preliminary architectural/engineering fees, and costs associated with the environmental review process.
    - For all other activities, Subrecipients cannot obligate or incur costs or draw down funds until the environmental review requirements are satisfied and NDHFA has released funds to the project.
6. If only acquisition assistance (i.e., down payment assistance) is provided, the property must meet the Uniform Physical Condition Standards (UPCS) and all applicable state and local housing quality standards, habitability standards, and code requirements at the time of initial occupancy as required at 24 CFR § 92.251(c)(3). \*It is anticipated that UPCS will be replaced by NSPIRE standards during the 2025 program year. Policies and procedures will be updated and subrecipients will be provided with training when more information is available. For more information review [HUD NSPIRE Training](#).
7. If the project includes acquisition assistance and rehabilitation, the property must be free from health or safety hazards before occupancy and within 6 months of the transfer of ownership and meet all applicable state and local housing quality standards and code requirements. The housing must not contain the specific deficiencies prohibited by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (i.e., UPCS) issued pursuant to 24 CFR § 5.705.
8. The housing must comply with HUD's Lead Safe Housing Regulations. All lead-based paint hazards must be identified and subsequently addressed (i.e., reduced) per the regulations of 24 CFR § 92.355 and § 35.
9. The Subrecipient must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet these standards, or it cannot be acquired with HOME funds. New construction must conform to all local building code requirements.
10. A certified appraisal is required prior to acquisition to determine the initial purchase price. Neither the purchase price nor the appraised value of a HOME-assisted property may exceed the annually published HOME and Housing Trust Fund Homeownership Value Limits for the county in which property is located.
11. The minimum HOME assistance is \$1,000 per unit.

#### HOME Allocation Plan

12. Period of Affordability (POA). This period is based on the amount of direct HOME subsidy to the buyer, as follows:

HOME Down Payment Assistance to Homebuyer	Minimum Period of Affordability
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years

13. Property must be occupied as a principal residence by the homebuyer and subsequent low-income buyers throughout the POA. No subleasing is allowed. The Subrecipient must monitor and verify primary residency of the homebuyer on an annual basis for the affordability period. The most current utility statement, proof of paid taxes, and homeowner's insurance are acceptable documentation.
14. During grant monitoring of the Subrecipient, NDHFA will review deed restrictions, covenants attached to the land, mortgages, or other similar mechanisms placed on the HOME-assisted property to ensure the provisions being used are in accordance with those stated in the written agreement with the Subrecipient.

#### Resale & Recapture Provisions

Resale will be required for CLT properties that are subject to ground lease controls. (Note: The HOME Final Rule also requires Resale restrictions to be used when there is no buyer assistance, which would only occur in development projects and not in a DPA-only program)

#### Resale Provisions

The HOME resale requirements are established in the HOME rule at 24 CFR § 92.254(a)(5)(i). Under HOME resale provisions, the PJ (and Program Administrator) is required to ensure that, when a HOME-assisted homebuyer sells a property voluntarily or involuntarily during the affordability period that:

- The property is sold to another low-income homebuyer who will use the property as his or her principal residence.
- The original homeowner(s) receives a "fair return" on their investment, (i.e., the homeowner's share of the value of the property, including the value of capital improvements made to the house).
- The property is sold at a price that is "affordable to a reasonable range of low-income buyers."

Under resale, 24 CFR § 92.254(a)(5)(i) of the HOME rule states that the POA is based on the total amount of HOME funds invested in the housing. In a DPA-only program, this would include the assistance directly provided to the buyer plus any project delivery costs that are charged as project costs rather than as administrative costs.

HOME Project Funds	Minimum Period of Affordability
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years

### Calculation of Resale Price and Fair Return

When the homeowner sells, the following procedures and calculations will be used to determine the Fair Return to the seller as required by the HOME Final Rule:

1. Homeowner's Initial Ownership Interest – the homeowner's ownership interest at time of original purchase is the percentage of the Initial Appraised Value that the homeowner provided, as defined and calculated below.
  - a. Homeowner's Base Price: the price paid by the homeowner upon the execution of the Program Administrator Ground Lease. (Homeowner's Base Price equals the Homeowner's Ownership Interest at time of purchase.)
  - b. Initial Appraised Value of Home and Leased Land: the fee simple value of the home and the leased land based on an independent appraisal at time of original purchase.
  - c. Homeowner's Initial Ownership Interest (%): the Homeowner's Initial Ownership interest is the ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage.
2. Homeowner's Ownership Interest at Resale – the ownership interest at time of resale is determined through appraisal to include the value of homeowner capital improvements and the homeowner's share of the appraised value of the property at resale.
  - a. Appraised Value at Resale: an independent appraisal determines the appraised value of Home and Leased Land at resale.
  - b. Value of Homeowner's Capital Improvements (if applicable): if the homeowner has submitted Capital Improvements, the appraised value of the improvements will be identified in the appraisal, and the homeowner will be credited with 100% of the appraised value of the Improvements.
  - c. Appraised Value of Homeowner's Ownership Interest at Resale - the Appraised Value of the Homeowner's Ownership Interest is calculated by adding:
    - i. The Appraised Value of Homeowner's Capital Improvements.
    - ii. The "net" Appraised Value at Resale (with Value of Capital Improvements subtracted) multiplied by the Homeowner's Initial Ownership Interest percentage.
3. Formula Resale Price – the resale price at time of resale is defined and calculated below.
  - a. Appraised Value of Increased Homeowner's Ownership Interest at Resale includes:
    - i. The Value of Homeowner's Capital Improvements, if any.
    - ii. The Homeowner's Share of the Increase in Appraised Value, which is the "net" increase in Appraised Value multiplied by 40%.
  - b. Maximum (Formula) Resale Price – the maximum price at which the home can be resold is determined by Formula Resale Price, calculated by adding:
    - i. The Homeowner's Base Price.
    - ii. The Appraised Value of Increased Homeowner's Ownership Interest at resale (which includes 100% of the Value of Homeowner's Capital Improvements plus the Homeowner's Share of the Increase in Appraised Value.)
4. Purchase Option Price – The Purchase Option Price will be used if the Program Administrator elects to exercise the Purchase Option. If elected, the Purchase Option Price is the lesser of:
  - a. The Appraised Value of Homeowner's Ownership Interest at Resale (calculated in 2c above).
  - b. The Formula Resale Price as defined in 3b above.

### Capital Improvements

When a homeowner completes an eligible capital improvement to their community land trust home post-purchase, they are eligible for 100 percent of the improvement value and appreciation deemed attributable to improvement. Eligible Improvements include the following:

- Increase in legal bedroom size.
- Increase in legal bathroom size.
- Addition of or substantial rehabilitation to garage.
- Other substantial modifications approved by the Program Administrator, which are anticipated to increase value by a minimum \$2,500 and increase functionality of the home. Improvements made solely for cosmetic purposes or considered routine maintenance will not be considered.

Improvements must comply with the ground lease and documentation of completion must be submitted. Upon refinancing or resale, the homeowner must submit a request for capital improvements calculation. The Appraisal will indicate a monetary value of improvements and the Formula Resale Price calculation will be modified to incorporate the capital improvements calculation.

### Purchase Option Price and Formula Price Example

The following are examples of the calculations specified above, one for an appreciating value and one for declining value:

Calculation Step	Appreciating Value - Sample Calculation
1.a. Homeowner's Base Price	\$150,000
1.b. Initial Appraised Value	\$200,000
1.c. Homeowner's Initial Ownership Interest	$\$150,000 / \$200,000 = 75\%$
2.a. Appraised Value at Resale	\$240,000
2.b. Appraised Value of Capital Improvements	\$10,000
2.c. Value of Homeowner's Interest at Resale	$\$10,000 + (\$240,000 - \$10,000) * 75\% = \$182,500$
3.a. Value of Homeowner's Increased Interest at Resale	$\$10,000 + (\$172,500 - \$150,000) * 40\% = \$19,000$
3.c. Maximum (Formula) Resale Price	$\$150,000 + \$19,000 = \$169,000$
4. Purchase Option Price	Lesser of \$182,500 & \$169,000 = \$169,000

Calculation Step	Declining Value - Sample Calculation
1.a. Homeowner's Base Price	\$150,000
1.b. Initial Appraised Value	\$200,000
1.c. Homeowner's Initial Ownership Interest	$\$150,000 / \$200,000 = 75\%$
2.a. Appraised Value at Resale	\$180,000
2.b. Appraised Value of Capital Improvements	\$8,000
2.c. Value of Homeowner's Interest at Resale	$\$8,000 + (\$180,000 - \$10,000) * 75\% = \$135,500$
3.a. Value of Homeowner's Increased Interest at Resale	$\$8,000 + (\$135,500 - \$150,000) * 40\% = \$2,000$
3.c. Maximum (Formula) Resale Price	$\$150,000 + \$2,000 = \$152,000$
4. Purchase Option Price	Lesser of \$135,500 & \$152,000 = \$135,500

### Resale Requirements

During the period of affordability, the home must be resold to another Low-Income (LI) buyer approved by the Program Administrator. The Program Administrator may repurchase the home and convey it to an eligible LI buyer using the Purchase Option or permit the homeowner to find an eligible buyer, as described below.

Upon notice by the homeowner of intent to sell, the Program Administrator shall have the option to purchase the home at the Purchase Option Price as defined above in step 4.

If the Program Administrator elects to purchase the home, it may exercise the purchase option by either proceeding to purchase the home directly or assigning the Purchase Option to a HOME-eligible low-income person.

If the purchase (by Program Administrator or its assignee) is not completed within 120 days as stated in the executed Program Administrator Ground Lease, the homeowner may sell the home and homeowner's rights to the leased land for a price no greater than the then applicable Purchase Option Price, to any party if that party is a HOME-eligible low-income person.

If the Program Administrator does not exercise its option and complete the purchase of the homeowner's property as described above, and if the homeowner (a) is not then residing in the home and (b) continues to hold the homeowner's property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Notice of Intent to Sell, then the Program Administrator may appoint its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purpose of the Program Administrator Ground Lease, sell the property, and pay to the homeowner the proceeds of the sale, minus the Program Administrator's costs of sale and any other sums owed to the Program Administrator by the homeowner.

### Resale Provisions- Minot Area Community Land Trust

The purchase option price equals the lesser of the appraised value or the homeownership interest or the formula price.

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In no event may the home be sold for a price that exceeds the Purchase Option Price.

The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale as calculated in line "d" of Section 10.10 below or (b) the Formula Price calculated in accordance the formula below.

If CLT does not choose to commission an appraisal to determine the appraised value of Homeowner's Ownership Interest, then the Purchase Option Price shall be the Formula Price.

If CLT believes that the value of Homeowner's Ownership Interest at Resale may be less than the Formula Price, CLT may, within ten (10) days of receiving Homeowner's Notice of Intent to Sell, commission a market valuation of the Leased Land and the Home to be performed by a duly licensed appraiser acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

### Formula Price Calculation

The Formula Price shall be equal to the amount of Homeowner's Base Price plus interest at a rate of two-and-one-half percent (2.5%) compounded annually.

#### **Subsequent Sale of Home to an Income Eligible Homebuyer**

The HOME Final Rule at 24 CFR § 92.254(a)(5)(ii) permits PJs to allow the subsequent homebuyer to assume the HOME assistance if:

- The homebuyer is low-income.
- No additional HOME assistance is provided.
- The new buyer agrees to be subject to the HOME requirements for the remainder of the original period of affordability.

This option is authorized for this DPA program. If the Program Administrator determines through underwriting that the subsequent Low-Income homebuyer needs additional HOME assistance beyond the amount of the original HOME assistance, additional HOME homebuyer assistance may be provided and will be combined with their assumption amount of the existing note to determine the new POA and execute a new (i.e., replacement) written agreement and declaration of lien interest for the total assistance.

## **SECTION 5 RENTAL PRODUCTION AND REHABILITATION**

### **Definitions**

**Affordability Period:** See Period of Affordability.

**Agency:** North Dakota Housing Finance Agency or NDHFA.

**Area Median Income (AMI):** The midpoint of a county's income distribution. Half of families in a county earn more than the median and half earn less than the median. NDHFA publishes Income Limits, based on household size, annually and from time-to-time as necessary.

**Broadband Infrastructure:** Cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.

**Commitment Date:** The Effective Date of the HOME Loan Agreement. Often referred to as the closing date.

**Developing Community:** An incorporated city with a population less than 20,000 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau.

**Developing Rural Community:** An incorporated city with a population less than 5,000 per the most recently available Annual Estimate of Residential Population for Incorporated Places provided by U.S. Census Bureau.

#### HOME Allocation Plan

**Eligible Applicants:** Units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers. Individuals are not eligible to receive direct assistance from HOME.

**HOME-Assisted Units Rule:** If a project has five (5) or more HOME-Assisted Units, a minimum of 20% of the HOME-Assisted Units must be restricted to HOME's 50% AMI limit with Low-HOME Rent for the entirety of the Period of Affordability.

**Initial Occupancy Rule:** HOME-Assisted Units restricted to HOME's 80% AMI limit shall be initially occupied by tenants with total household income at or below 60% AMI, subsequent occupants will then be subject to household income limit at or below 80% AMI.

**Match:** All awardees of HOME funds are expected to meet the HOME Program match requirement of 25 percent (25%), unless specifically waived by NDHFA.

Only the forms of HOME assistance listed in Part 92.205(b) are allowed. Applicants should also use private funds, tax credits, Rural Development, Federal Home Loan Bank, CDBG, North Dakota Housing Incentive Fund, Department of Energy, Housing Trust Fund, or other grant/loan programs to help leverage HOME activities.

**Minimum HOME-Assisted Units:** The minimum number and configuration of units required to be income and rent restricted by the HOME Program as determined by the applicant's selected HOME Cost Allocation Method within the Application Exhibit A.

**Multifamily Project/Property:** Any building or group of buildings totaling four (4) or more permanent residential rental units operated as a single rental housing project.

**Period of Affordability:** A specific starting and ending date range, communicated to the awardees after a project's completion, at which the project is to comply with program rent and income restrictions.

**Proposed HOME-Assisted Units:** The number and configuration of units the applicant proposes to be income and rent restricted by the HOME Program. This number may never be less than the number and configuration of units as determined by the Minimum Home-Assisted Units.

**Total Development Cost:** The all-in cost of developing a rental housing project including pre-development, acquisition, hard and soft construction, hard and soft rehabilitation, and financing costs, as well as developer fees, and reserve accounts capitalization. Costs associated with commercial construction shall not be included.

### Eligible Applicants

#### A. Owner

Rental housing is considered "owned" if the housing organization is the owner in fee simple absolute of multifamily, or single-family housing (or has a long-term ground lease) for rental to low-income families in accordance with 24 CFR § 92.252. If the housing is to be rehabilitated or constructed, the housing organization must prove internal capacity or hire and oversee the developer that rehabilitates or constructs the housing. At minimum, the housing organization must hire or contract with an experienced project manager to oversee all aspects of the development, including: 1) obtaining zoning, 2) securing non-HOME financing, 3) selecting a developer or general contractor, 4) overseeing the progress of the work, and 5) determining reasonable costs. The housing organization must own the rental housing during development and for a period at least equal to the period of affordability in 24 CFR § 92.252. If the housing organization acquires housing that meets the property standards in 24 CFR § 92.251, the

organization must own the rental housing for a period at least equal to the period of affordability in 24 CFR § 92.252.

#### **B. Developer**

Rental housing is “developed” by a housing organization if: 1) the housing development organization is the owner of multifamily or single-family housing in fee simple absolute (or has a long-term ground lease) and 2) the housing developer of new housing that will be constructed, or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with 24 CFR § 92.252. To be the “housing developer,” the housing organization must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers, and general contractors, overseeing progress of the work, and determining reasonable costs. At a minimum, the housing development organization must own the housing during development, and for a period at least equal to the period of affordability in 24 CFR § 92.252.

#### **C. Sponsor (CHDO only)**

Rental housing is “sponsored” by a CHDO if the CHDO “developed” the rental housing project and agrees to convey details of the project to an identified, private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing is subject to the following requirements:

- The private non-profit organization may not be created by a governmental entity.
- The HOME funds must be provided to the entity that owns the project.
- The HOME funds must be invested in the project that is owned by the CHDO.
- Before commitment of HOME funds, the CHDO sponsor must select the private non-profit organization that will obtain ownership of the property.
- The private non-profit organization assumes the CHDO’s HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development.
- If the housing is not transferred to the private non-profit organization, the CHDO organization sponsor remains responsible for the HOME assistance and the HOME project.

#### **D. Community Housing Development Organization (CHDO)**

Eligible applicants include community-based non-profit 501(c)(3), 501(c)(4), or 905 (subordinate organization of a 501(c)) organizations with the mission statement that identifies decent, affordable housing to low- and moderate-income persons.

NDHFA will certify non-profit organizations that meet defined criteria as CHDOs in the HOME Final Rule Subpart A, 24 CFR § 92.2. CHDOs must be certified annually by completing and submitting a certification application by April 1 of each year. To apply for funding, a CHDO must have an updated certification.

In addition, CHDOs must meet and satisfactorily demonstrate the prescribed requirements. NDHFA will be using the HUD guidance on CHDO qualifications. CHDOs are also eligible to participate in CHDO Operating activities. A CHDO requesting operating grant funds will need to submit an application for a CHDO operating expense grant. The grant is limited to \$50,000 per certified CHDO. CHDOs must demonstrate to NDHFA that their certification status is maintained during each year of the POA of a rental development project.

Up to 10% of the CHDO set-aside may be used for pre-development loans to assist specific projects at the discretion of NDHFA. Per 92.301 these loans can be used for technical assistance and site control, and seed money loans. The CHDO must repay the loan to the PJ from construction loan proceeds or

other project income, or the loan may be combined with the subsequent CHDO project funding. The PJ may waive repayment of the loan, in part or in whole, if there are impediments to project development that the PJ determines are reasonably beyond the control of the borrower. Pre-development loan repayments must be sent to NDHFA. The repaid funds will be added to the next FY allocation.

**CHDO Definition** - A non-profit organization that:

1. Is organized under state or local laws.
2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual.
3. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A CHDO may be sponsored or created by a for-profit entity, but:
  - a. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
  - b. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members.
  - c. The CHDO must be free to contract for goods and services from vendors of its own choosing.
  - d. The officers and employees of the for-profit entity may not be officers or employees of the CHDO.
4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1)), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private non-profit organization is a wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of "CHDO."
5. Is not a governmental entity (including the PJ, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a CHDO; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of a governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a CHDO.
6. Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems."
7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions, or by-laws.
8. Maintains accountability to low-income community residents by:
  - a. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire state).

- b. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing.
9. Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience, who will work on projects assisted with HOME funds. For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of 24 CFR § 92.300(a)(2). A non-profit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization.
10. Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least one year of serving the community.

#### **Non-Profit and For-Profit Developers**

**Note:** Non-profit and for-profits are not required to be designated CHDOs to apply for HOME funding, but funding for such projects will not utilize funds reserved for a CHDO.

Non-profit and for-profits can participate in the HOME Program as owners or developers of multifamily housing. The non-profits and for-profits must not be disqualified from any program administered by NDHFA or under debarment, proposed debarment or suspension by a federal agency.

The non-profits and for-profits must be able to demonstrate technical expertise of staff and other project partners in housing production and management and meet the following criteria:

- The non-profits and for-profits have successfully administered, following all the cross-cutting requirements (e.g., Davis Bacon, Section 3, and Contract Compliance) at least 1 HOME, CDBG or NSP funded development of similar nature and scope.
- Has a proven track record in affordable housing development and project management for a minimum period of 5 years prior to the application submission date.
- Documented capacity to carry out the long-term rental compliance responsibilities associated with the development through the period of affordability.

## **SECTION 6: RENTAL PRODUCTION AND REHABILITATION APPLICATION PROCESS**

**Applications for HOME Rental and Development are due by the last business day in September, each year.**

The approval of applications for CHDOs and non-profit and for-profit developers will be a competitive process in which applications that meet threshold requirements will be ranked and scored. Applications will be awarded a conditional commitment in order of the highest score. NDHFA's Multifamily Housing Programs Application can be found online: <https://www.ndhfa.org/>

### **6.01 Underwriting Standards**

The following HOME Program Underwriting standards are incorporated within the Application Exhibit A.

#### HOME Allocation Plan

Affordability Period: project type of New Construction and Acquisition of New Construction projects shall have a 20-year Affordability Period. Project types of Acquisition, Rehabilitation, or Acquisition & Rehabilitation shall have an Affordability Period determined by the amount of HOME Funds per HOME-Assisted Unit using the following chart:

HOME Funds per HOME-Assisted Unit	Affordability Period
Less than \$15,000.00	5 years
\$15,000.00 to \$40,000.00	10 years
Greater than \$40,000.00	15 years

Fixed or Floating Units: applicant shall make an election of the HOME-Assisted Units being fixed to specific units or floating throughout the entirety of the Project's total units.

Rent Floor Election: the currently published rent limits in effect as of the project's Commitment Date shall be used to determine the lowest monthly gross rents required to meet throughout the Period of Affordability.

Utility Allowance(s): HUD Utility Schedule Model ("HUSM") or other Project-specific methodology which meets the HOME regulatory requirements shall be used. See [HOMEfires – Vol. 13 No. 2](#) for further information on HUSM or other acceptable methodologies.

Vacancy Factor: agency utilizes a minimum vacancy factor of 7.00% for projecting Effective Gross Income. For Projects in which one vacant unit would exceed 7.00% of the Project's total units, the percentage derived from one vacant unit shall be the minimum vacancy factor when projecting Effective Gross Income.

HOME Cost Allocation: prior to a Conditional Commitment, issuance of a Financial Award, the Project's Closing, and Final Cost Certification NDHFA shall review the HOME Cost Allocation within the Exhibit A for determination of the proposed or awarded HOME Funds Award not exceeding the Maximum Project Subsidy determined by the selected Cost Allocation Method. All necessary information, data, and elections must be entered into Exhibit A to determine the Cost Allocation Method(s) which are acceptable to use. While more than one Cost Allocation Method may be acceptable to use, only one method should be completed per project.

#### 6.02 Maximum Award

Award Allocations from HOME for any single Multifamily Project will be limited to the lesser of:

- The Maximum Project Subsidy determined from the selected HOME Cost Allocation Method; or
- An amount required to secure project financing and make the project financially feasible; or
- 70% of the project's proposed HOME eligible costs.

Exceptions to these maximums may be made on a case-by-case basis, at the sole discretion of NDHFA, to accomplish overall program goals.

HOME funds may only be expended on the actual costs, up to the maximum per-unit subsidy limits current as of execution of the Project's Written Agreement. Upon HUD's publication of updated per-unit subsidy limits, NDHFA shall immediately implement the updated limits within an updated Exhibit A.

### 6.03 Fees

**Application Processing Fee:** Remittance of a nonrefundable Application Processing Fee, payable to “North Dakota Housing Finance Agency,” shall be received by the Agency prior to 5:00 p.m., CT, on any Application Closing Date for its corresponding application to be reviewed for eligibility and/or considered for funding within any competitive funding round.

- For an application in which HOME is the only NDHFA-funded program being applied for in the Application Round, the Application Processing Fee shall be \$500.
- For an application in which more than one NDHFA-funded program is being applied for in the Application Round, the Application Processing Fee shall be \$500 for the primary program and an additional \$250 for any subsequent NDHFA-funded program being sought by the Applicant for the Project in the Application Round.

### 6.04 Threshold Requirements

When an application is received and its corresponding Application Processing Fee has been verified as collected by the Agency, the application shall be issued an application number and reviewed for eligibility to be scored. To be eligible for scoring, an application must be fully executed, fully completed, and satisfy each Threshold Requirement detailed within this section.

An applicant may request an exemption to the requirement of attaching a CNA to the application if there are other funding sources for the project which would, due to the timing, require additional costs or multiple reports. Any such exemption must be received from NDHFA prior to and included within the project’s application. If granted such an exemption(s), the application will not be subject to a scoring deduction for the exempted requirement(s); however, the report(s) are required prior to the issuance of a Financial Award to the applicant.

- Application:** NDHFA’s currently published Multifamily Application must be fully completed and executed. All applicable Exhibits to the application must be fully completed and submitted.
- Demonstrated Site Control:** Applicant must provide evidence that the Applicant, or Applicant’s affiliate, currently has, and is contractually able to maintain throughout the entirety of the application period, site control for the entirety of the project’s anticipated scope. An as-developed site plan must accompany the application.
- Zoning, Codes, and Ordinances:** Applicant must provide evidence of current appropriate zoning for the entire scope of the proposed project. If current zoning does not comply, verification must be provided from the jurisdiction-having municipal office verifying, at a minimum, a preliminary review of the project’s plans and proposed land use complies with the zoning type being sought.

Upon completion, the project must meet all applicable State and local codes, ordinances, and requirements as applicable, or, in the absence of a State or local building code, the International Residential Code, International Building Code (as applicable to the type of structure), or the International Existing Building Code (for rehabilitation projects) of the International Code Council.

- Infrastructure and Utility Availability:** Evidence must be provided that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas, Broadband Infrastructure, etc.) are in-place, or are able to be put in-place, and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official.

#### HOME Allocation Plan

Projects must install Broadband Infrastructure to all units and common area community rooms. A letter from the project architect confirming the inclusion of Broadband Infrastructure is within the project's plans shall be included.

Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent and integral infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download and 3 Mbps upload.

If all required infrastructure is not currently, or will not be, available on the proposed site(s), or on land directly adjacent to the proposed site(s), as of the Application Closing Date, a letter from the local jurisdiction must accompany the application confirming that no adequate infill opportunities exist within the community.

- E. **Development Team:** Application must demonstrate, to the satisfaction of the Agency, all members of the team have the experience, ability, and financial capacity, in their respective roles, to develop, construct, own, operate, manage the project, and are familiar, and prepared to fully comply, with this program's requirements.

9% or 4% LIHTC:

1. Applicants new to LIHTCs must partner with a developer, sponsor, and/or consultant included in a development team which received a LIHTC allocation from a federally approved allocator for a specific project and has placed that project in-service within the prior five years.
2. An Applicant, or closely related party of the Applicant, who has not yet placed a LIHTC project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

HOME or HTF:

3. Application including the use of HOME and/or HTF funding shall include a copy of the Applicant's current Active Registration on Sam.gov.
4. Application should demonstrate the proposed team's experience with, or working knowledge of, all federal cross-cutting requirements including, but not limited to, Section 3, Women-owned and Minority-owned Business Enterprise contracting practices, Davis-Bacon and related acts, environmental review, Section 504 and ADA requirements, lead-based paint mitigation, Uniform Relocation Act, and property condition requirements.
5. An Applicant, or closely related party of the Applicant, who has not yet completed a HOME or HTF project in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

Applications including any of the development team with limited experience in the development, construction, ownership, and/or management of an affordable Multifamily Project are encouraged to partner with an experienced developer, party, and/or sponsor. Agency may require the Applicant to provide historical financial statements as deemed necessary.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for or have pleaded guilty, including a plea of nolo contendere, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification, or destruction of records are ineligible. Applicants who have been debarred

from any North Dakota program, other state program or any federal program are ineligible. Agency may determine Applicants having an Identity of Interest with any debarred entity are ineligible.

Agency may inquire to other state allocating agencies about the Applicant's or Developer's performance history. Negative performance may result in the application being ineligible.

- F. **Ownership:** The Applicant must be either the owner or developer of the project. If the Applicant intends to sell or transfer the project within five (5) years from the application date, the Applicant must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of those who will purchase or receive the project. Failure to provide this information may result in forfeiture of any Conditionally Committed or Reserved LIHTCs.

Credits are allocated to the proposed project's Owner. A sale or transfer of a controlling ownership interest of the Owner prior to issuance of the Final Allocation requires an amended application, Agency approval and payment of a nonrefundable transfer fee of \$2,500, or 1% of the annual credit amount currently allocated to the Owner for the proposed project, whichever is greater. Payment of this fee does not oblige the Agency to approve the transfer.

- G. **Financial Projections:** NDHFA's currently published Multifamily Application Exhibit A, must be submitted in Excel format. All applicable tabs must be fully completed.

The reasonableness of development costs and operating expenses, in relation to other similar developments, will be assessed when the Agency evaluates a project's financial feasibility.

The Agency reserves the right to decline any application if, during underwriting, the project is determined to have a Hard-Debt-Service Coverage Ratio, or Expense Coverage Ratio for a project which proposed no hard-debt, less than 1.10.

- H. **Subsidies:** The application package must include a signed certification as to the full extent of all federal, state, and local subsidies expected to apply to the project.

- I. **Public Housing Waiting List:** The application package must include a copy of a written communication from the Applicant to the applicable public housing authority (PHA) describing the proposed project. The Applicant's communication shall include a commitment to communicate project completion and work directly with the PHA during the proposed project's lease-up in an attempt to house households on PHA waitlist(s) and granting waitlisted households' priority in obtaining occupancy within the project.

- J. **Housing Need:** Applications must include a comprehensive market study of the housing needs of low-income individuals in the market area to be served by the project. The market study should be completed at the Developer's, or affiliate of the Developer, expense by an acceptable disinterested party to the Agency.

The market study must demonstrate there is sufficient sustained demand in the market area to support the proposed development, and that the development of any additional affordable units will not have an adverse impact on the existing affordable units in the market area. The market study must have been completed within six (6) months of Application Close Date and must contain the National Council of Housing Market Analysts' (NCHMA) current model content standards unless the Agency authorizes deviation from these standards.

- K. **Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation, adaptive reuse, or acquisition of an existing building which will, in whole or in-part, remain an asset of the project.

The CNA must be completed by a competent, independent third party acceptable to the Agency, such as a licensed architect and/or engineer. The assessment must include a site visit and a physical inspection of the interior and exterior of all units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies.

The assessment must consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment must include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than fifty percent (50%) of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life is less than the Affordability Period, the application package must provide a practical way to finance the future replacement.

The assessment must also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:

1. Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utilities and their lines.
2. Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage.
3. Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors.
4. Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection, and elevators.

Application packages involving the demolition and new construction replacement of existing housing units must demonstrate the benefit of such activity over rehabilitation, including an opinion of cost of rehabilitation to assist Agency to determine the cost savings and/or other benefits.

- L. **USDA Financing:** An application proposing the inclusion of new or existing USDA debt must include written confirmation from the regional USDA officer which verifies any progress made on an initial transfer request and/or the approval of any proposed debt additional to the existing USDA debt, and any associated lien to the debt, proposed.
- M. **Self-Scoring:** The Applicant must provide a self-scoring narrative indicating the number of points being sought in each scoring category. The narrative should be brief but also explain the Applicant's justification(s) for the points being sought.

#### 6.05: Project Ratings

##### A. Cross-Cutting Exclusion

There are several broad federal rules which must be adhered to while administering the program. While NDHFA is responsible for implementing these rules, applicants and all the transaction's related entities must also be aware and actively ensure the Project complies.

#### HOME Allocation Plan

Any applicant or proposed related party to a Project with substantial noncompliance, unresolved issues, or who have had substantial findings related to other federal funds from NDHFA including these federal cross-cutting requirements within the last 4 years are not eligible to apply.

- 24 CFR § 92.350 – Federal requirements set forth in 24 CFR part 5, subpart A: nondiscrimination, fair housing, and equal opportunity; disclosure requirements, debarred, suspended or ineligible contractors; drug-free work; and housing counseling
- 24 CFR § 92.351 – Employment and Contracting; Affirmative marketing; minority outreach program; Section 3
- 24 CFR § 92.352 – Environmental review
- 24 CFR § 92.253 – Displacement, relocation, and acquisition
- 24 CFR § 92.354 – Labor
- 24 CFR § 92.355 – Lead-based Paint
- 24 CFR § 92.356 – Conflict of interest
- 24 CFR § 92.357 – Executive order 12372
- 24 CFR § 92.358 – Consultant activities
- 24 CFR § 92.359 – VAWA requirements

#### B. Scoring Deductions

Applications not meeting a minimum amount of HOME Matching Contribution (Scoring Criteria 3) will be subject to a point reduction.

Applications failing to satisfy a Threshold Requirement as of the application deadline will receive a 5-point scoring deduction for EACH unsatisfied Threshold Requirement and be given a reasonable amount of time to submit any missing items required to satisfy the Threshold Requirement(s).

#### C. Scoring Criteria

Each application meeting the threshold requirements will be reviewed and assigned points according to the following selection criteria.

Applications must achieve a **minimum score of 90 points** to be eligible for funding.

Applicants may request no more than 70 percent of the Project's proposed hard construction costs from HOME.

- 1. HOME Assisted Units** **Up to 30 points**  
Points awarded based on the minimum number of HOME-Assisted Units, as determined by the applicant's selected HOME Cost Allocation, and the applicant's Proposed number of HOME-Assisted Units.
  - Minimum HOME-Assisted Units is equal-to or less-than eleven (11) ..... 20 points
  - Proposed HOME-Assisted Units equals Minimum HOME-Assisted Units ..... 10 points
- 2. Serves Developing Communities** **Up to 25 points**  
Points awarded when the proposed project is located in an incorporated city with a population meeting the definition of a Developing Community or Developing Rural Community.
  - Located within a Developing Community ..... 15 points
  - Located within a Developing Rural Community ..... 25 points
- 3. HOME Matching Contribution** **Up to 25 points**

#### HOME Allocation Plan

Points awarded for applications which include funding source(s), identified within Exhibit A, and with a firm commitment from an eligible HOME matching contribution, see 24 CFR 92.220. Projects located within another HOME Participating Jurisdiction's (PJ) service area must provide written verification from the other PJ(s) of the Agency's sole right to claim the HOME match source. If not provided, the match source is not eligible for consideration within this scoring criteria.

- Combined value less than 25% of HOME Funds Requested .....20-point reduction
- Combined value of at least 25% of HOME Funds Requested..... 25 points

#### 4. Readiness to Proceed

**Up to 25 points**

Applicants must provide a timeline for completion of the project. Points awarded in this category are based on the earliest achievable completion of the activity. Such things as letters of interest or commitment for all sources of project financing; ownership of the land; and availability of infrastructure will be considered in the award of points. Points will be awarded at the sole discretion of the Agency in comparison to other projects competing in the application round.

#### 5. New Construction

**Up to 20 points**

Points awarded for applications which primarily propose to create new structure(s) which will contain rental housing. An application is eligible for points under Scoring Category 5 or Scoring Category 6, not both.

- $\geq \$110,000 < \$145,000$  HOME Funds per HOME-Assisted Unit ..... 10 points
- $\geq \$145,000 < \$175,000$  HOME Funds per HOME-Assisted Unit ..... 15 points
- $\geq \$175,000$  HOME Funds per HOME-Assisted Unit ..... 20 points

#### 6. Rehabilitation

**Up to 30 points**

Points awarded for applications which primarily propose to rehabilitate existing structure(s) that are currently, or at-risk of becoming, uninhabitable or obsolete. An application is eligible for points under Scoring Category 5 or Scoring Category 6, not both.

- $\geq \$75,000 < \$110,000$  HOME Funds per HOME-Assisted Unit ..... 5 points
- $\geq \$110,000 < \$145,000$  HOME Funds per HOME-Assisted Unit ..... 10 points
- $\geq \$145,000 < \$175,000$  HOME Funds per HOME-Assisted Unit ..... 20 points
- $\geq \$175,000$  HOME Funds per HOME-Assisted Unit ..... 30 points

For purposes of scoring within this category: Proposals in which an appropriate project-specific level of due diligence (which shall be included within the application package) has led to the development team's determination that demolition and replacement of existing structure(s) is a more appropriate and/or cost-effective development approach than rehabilitating the existing structure(s) shall qualify for scoring within this category. **One-for-one unit replacement ratio minimum is required.**

#### 7. Preserve Existing Affordability

**Up to 10 points**

It is highly recommended for applicants seeking scoring under this category begin a dialog with the Agency well ahead of application submission to discuss their proposed scenario to help determine what information and documentation NDHFA would expect to be submitted with the application for scoring under this category.

To be eligible for points the Applicant must provide a narrative with sufficient detail for NDHFA to fully understand all aspects of the asset and/or subsidy proposed to be preserved and/or any current affordable housing program(s) associated to the asset which qualify the proposed project

for points under this scoring category. Narrative shall also detail the process and timeline for the loss of any current affordable housing program associated to the asset and/or the process and timeline required to facilitate the proposed transfer of any subsidy.

The applicant shall attach to their narrative all documentation required to support that narrative. NDHFA will need to be able to understand the terms and requirements of any existing affordable housing program assisting the current asset and/or subsidy proposed to be preserved. Applicant should include any documentation which verifies details provided within the narrative.

- Asset Preservation..... 10 points  
A project proposing the acquisition and/or rehabilitation of a multifamily project currently assisted from a State or Federal affordable housing program in which the applicant can adequately demonstrate the project is at-risk of being lost from the state's affordable housing inventory within the next 24-months shall be eligible for up to 10 points. A transfer of an asset between parties with an identity of interest in the proposed project will be eligible for a maximum of 5 points.
- LIHTC with waived EUP Asset Preservation..... 5 points  
A proposed project is an existing LIHTC project past its initial 15-year compliance period and waived its ability to opt out of the Extended Use Period (EUP) will be eligible for a maximum 5 points.
- Subsidy Preservation ..... 10 points  
A Project proposing the preservation of a long-term affordable housing subsidy which the applicant can adequately demonstrate is at-risk of being lost to the State, and the applicant has secured, at least conditionally, a transfer of that long-term assistance to subsidize the proposed project shall be eligible for up to 10 points. A transfer of a subsidy between parties with an identity of interest in the proposed project will be eligible for a maximum of 5 points.

**8. Service Coordinator 5 points**

Projects which commit to providing, either through direct employment or by contract with an experienced third party, a Service Coordinator for the residents of project. The Service Coordinator must be available to residents on-site at least one hour per project unit per month.

The role of a Service Coordinator is to manage and provide access to necessary supportive services in the community, provide proactive case management services as needed and requested, and develop programs and resources that support wellness for the entire resident population.

A Service Coordinator shall fulfill the following core functions:

1. Conducting comprehensive, non-clinical assessments of residents for wellness and social needs; and
2. Helping residents to identify, access, and coordinate services, including monitoring of services provided and follow-up communication with services providers; and
3. Monitoring the receipt and following through of services, including encouraging and motivating residents to engage with providers and participate in their own care/services management; and
4. Proactively developing and arranging educational/preventative health programs and services for residents; and
5. Developing and sustaining partnerships with North Dakota Service Providers (ND Health & Human Services) and other community stakeholders; and
6. Maintaining an up-to-date resource directory with all local Service Providers and making it available to residents' use.

HUD's Service Coordinators in Multifamily Housing (SCMF) Program is the basis for this scoring category. The [SCMF Program Online Learning Tool](#), available on the HUD Exchange website, should be used as a resource for important additional details required to be implemented in order to provide residents with an effective Service Coordinator.

## SECTION 7: STATEMENT OF ASSURANCES APPLICABLE TO ALL HOME ACTIVITIES

### 7.01 Other Federal requirements and nondiscrimination

The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

The nondiscrimination requirements of section 282 of the Act are applicable.

#### Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds as applied by 24 CFR 92.359. VAWA compliance guidance is available at <https://www.ndhfa.org/index.php/compliance/vawa/>.

#### Energy Efficiency

A new construction building less than four (4) stories in height shall be constructed to meet or exceed the standards of the 2021 International Energy Conservation Code (IECC).

A new construction building four (4) or more stories in height shall be constructed to meet or exceed the standards or the 2019 edition of the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) standard 90.1.

#### Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires, in the carrying out of any project assisted under the Act, to the greatest extent feasible, that opportunities for training and employment be given to lower-income persons residing in the Project's Neighborhood Service Area, and contracts for work in connection with the project be awarded to eligible business concerns. The grantee must assure good faith efforts toward compliance with the statutory directive of Section 3. Applicants must read 24 CFR Part 75, as well as NDHFA's Section 3 Guide, for important information regarding Section 3 requirements.

#### Build America, Buy America

The development of housing with HTF assistance is required to follow the requirements of the Build America, Buy America Act (BABA). BABA requires that any Iron and Steel, Manufactured Products, and Construction Materials (as those terms are defined in BABA) consumed in, incorporated into, or permanently affixed to the Project's real property, or improvements to the real property, must be produced in the United States. Applicants should see Title IX of the Infrastructure Investment and Jobs Act for additional details regarding BABA and the NDHFA Build America, Buy America Compliance Plan for requirements.

#### Sam.gov and FFATA

All recipients and underlying controlling entities of HOME funds are required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (FFATA). All applicants for HOME funding, as well as all contractors involved in the project construction, must have a Sam.gov Unique Entity Identification Number (UEI) and maintain an Active Registration within the System for Award

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Management (SAM) until the project has been marked as “Completed” within HUD’s IDIS system. Furthermore, recipients of HOME awards must report the names and compensation of officers in their organization as part of their SAM registration, unless exempt under 2 CFR 170.110(b).

#### **Consultant Activities**

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid for with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

#### **Affirmative Marketing**

- A. Affirmative marketing requirements and procedures apply to all HOME-funded programs, including, but not limited to, TBRA and down payment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If PJ's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with 24 CFR § 92.253(d)(3), the PJ must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.
- B. The affirmative marketing requirements and procedures adopted must include:
  1. Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the PJ's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups).
  2. Requirements and practices each Subrecipient and owner must adhere to in order to carry out the PJ's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster).
  3. Procedures to be used by Subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies).
  4. Records that will be kept describing actions taken by the PJ and by Subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions.
  5. A description of how the PJ will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
- C. A state that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

#### **Affirmative Marketing Guidance**

#### HOME Allocation Plan

NDHFA will take the following actions to provide information to attract eligible persons from all racial, ethnic, and gender groups in the housing market area that is assisted by HOME funding. Affirmative Fair Housing Marketing Plan Guidance is [available online](#).

All correspondence, notices, and advertisements related to the HOME Program must contain the Equal Housing Opportunity logo or slogan.

Participants in the HOME Program will be required to use affirmative fair housing marketing practices in soliciting renters or buyers, determining their eligibility, and concluding all transactions. Any HOME-assisted housing must comply with the following procedures for the required compliance period, depending on the program used:

- A. Owners advertising vacant units must include the equal housing opportunity logo and/or slogan. Wherever a phone number is provided, there must also be a TDD/TTY phone number, or equivalent, provided. The Relay North Dakota TDD number is 800-366-6888, Voice Users 1-800-366-6889, and Spanish Users 1-800-435-8590. This service is free of charge. Recently the number “711” has been approved by the FCC for use in contacting the relay service. This number works for both TTY and voice telephones and while it is applicable in most states, you are still required to list the “800” numbers presented above. Advertising media may include newspapers, radio, televisions, brochures, leaflets, or a sign in a window. In addition, owners will be required to have written communication to Fair Housing organizations.
- B. The owner will be required to solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts. In general, persons who are not of the race or ethnicity of the residents of the neighborhood in which the rehabilitated building is located shall be considered those least likely to apply. Special outreach efforts will include contacts with CAAs, human service centers and county social service offices.
- C. The owner must maintain a file containing all marketing efforts (e.g., copies of newspaper ads, memos of phone calls, copies of letters, etc.) and the records to assess the results of these actions are to be available for inspection by NDHFA.
- D. The owner shall maintain a listing of all tenants residing in each unit from the time of application through the end of the compliance period.

NDHFA will assess the affirmative marketing efforts of the owner by comparing predetermined occupancy goals (based upon the area from which potential tenants will come) to actual occupancy data that the owner is required to maintain. The owner's outreach efforts will also be evaluated by reviewing marketing efforts. NDHFA will assess these efforts by use of a compliance certification or a personal monitoring visit to the project at least annually.

Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions that NDHFA may deem necessary. In addition, owners will be counseled as to affirmative marketing requests. In the event they continue to be in non-compliance, they may not be allowed to receive future HOME funds.

All units of local government that receive HOME funds must submit affirmative marketing procedures they have adopted to NDHFA.

#### Minority Outreach

#### HOME Allocation Plan

- A. A PJ must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, under-writers, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the PJ to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a PJ to assure that minority business enterprises and women business enterprises are used, when possible, in the procurement of property and services.

#### Environmental Review

- A. **General:** The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (TBRA) as a whole, not on the type of the cost paid with HOME funds.
- B. **Responsibility for review**
1. The jurisdiction (e.g., the PJ or State Recipient) or insular area must assume responsibility for environmental review, decision making, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a Recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.
  2. A State PJ must also assume responsibility for approval of requests for release of HOME funds submitted by State Recipients.
  3. HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

Completion of the environmental review process is **MANDATORY** before taking ANY action on a specific site or making a commitment or expenditure of HUD or any other non-HUD project funds for property acquisition or transfer, rehabilitation, conversion, lease, repair, inhabiting a property or construction activities. 24 CFR Part 58.22 describes limitations on activities pending clearance as: **"neither a Subrecipient nor any participant in the development process, including public or private non-profit or for-profit entities, or any of their contractors, may commit HUD or non-HUD assistance under a program listed in 58.1(b) on an activity or project until HUD has approved the Subrecipient's Request Release of Funds (RROF) and NDHFA has issued the certification to use HOME funds to the Subrecipient."** This certification will come in a letter through email addressed to the Subrecipient's contact person. If a violation occurs resulting in adverse environmental impact or limiting the choice of reasonable alternatives during this vital step in the NEPA process, funds will not be able to be utilized for the site that violated NEPA.

- A. A **choice-limiting action** is ANY action done prior to the certification being issued by NDHFA. This is not an all-inclusive list of choice-limiting actions: acquisition, purchase, moving tenants or homebuyers into property, rehabilitation, groundwork, lease, repair, demolition, landscaping, etc.

#### HOME Allocation Plan

The Subrecipient is to use “due diligence” that a violation does not occur during this step of the NEPA process, or the funds will be lost to the project site.

- B. The ONLY activities that can be initiated prior to NDHFA releasing funds are costs associated with program administration, project delivery cost necessary to determine eligibility and underwrite the household, contracting for preliminary architectural/engineering fees, and costs associated with the environmental review process. Keep in mind, even these exempt costs can only occur after the effective date of the contract. No costs incurred or obligated prior to the contract effective date are allowable HOME costs and could result in the loss of the Subrecipient’s HOME award. When a Subrecipient spends money on these exempt costs, they are taking a financial risk because if the environmental review concludes that a site is not eligible, the Subrecipient will not be reimbursed for those costs spent.
- C. **For all other activities, Subrecipients cannot obligate or incur costs or draw down funds until the environmental review requirements are satisfied, and NDHFA has issued a Release of Funds to the Project.**
- D. Each HOME activity or project must have a written record of the environmental review process that documents the steps taken for the project that completed the NEPA process according to rules and authorities. **This is the Environmental Review Record (ERR), which must be available for public review.**

#### 7.02 Uniform Relocation Act and Section 104(d)

Federal Law protects tenants from uncompensated displacement in certain areas.

Subrecipients/Developers (“Recipients”) who accept federal funding for acquisition and/or rehabilitation and reconstruction must minimize displacement of existing residents, advise them of their legal rights, provide relocation counseling and assistance, and compensate tenants in a timely manner for relocation made necessary by such activities.

HOME program Recipients are subject to the Uniform Relocation Assistance and Real Property Policies Act of 1970 (URA) and in instances when funding demolishes a low-income dwelling, converts to a non-residential use, or make it unaffordable to low-income residents is also subject to Section 104 (d) of the Housing and Community Development Act of 1974, as amended (42 USC 5304 (d)) also known as Section 104 (d).

NDHFA and Recipients of HOME funds are required to follow the requirements of the Agency’s URA Policy Guide. General principals include:

- A. The URA applies to all federally assisted acquisition, rehabilitation, and demolition projects (unless exempted like section 18).
- B. Section 104(d) applies to demolition or conversion of housing units to something other than lower-income dwellings in connection with a CDBG or HOME project.
- C. Acquisition rules apply to every acquisition for the project (including most easements), whether or not the acquisition itself is federally funded.
- D. Sellers of real property are to be informed in writing of property values prior to negotiating the purchase (exceptions at 49 CFR 24.101(b)(3)-(5)).
- E. While not required by federal regulation, consider including a clause in any executed purchase agreement that gives the purchaser right to tenant access for notification purposes (to issue General Information Notices (GINs)).
- F. HUD program regulations often expand tenant protections beyond the URA.

#### HOME Allocation Plan

- G. Recipients must follow an anti-displacement plan and take all reasonable steps to minimize displacement. For HOME projects, to the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable decent, safe, sanitary, and affordable dwelling unit in the completed project.
- H. All occupied and vacant-occupiable dwelling units removed from the housing stock through demolition or conversion must be replaced on a 1-for-1 basis.
- I. Project occupancy must be tracked from application to project completion.
- J. Notices are required for all occupants and proof of delivery must be maintained.

### 7.03 Labor

- A. General
  - 1. Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).
  - 2. The contract for construction must contain these wage provisions if HOME funds are used for any project costs in 24 CFR § 92.206, including construction or non-construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.
  - 3. PJs, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. PJs shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, PJ shall:
    - a. Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations.
    - b. Conduct on-site inspections and employee interviews.
    - c. Collect and review certified weekly payroll reports.
    - d. Correct all labor standards violations promptly.
    - e. Maintain documentation of administrative and enforcement activities.
    - f. Require certification as to compliance with the provisions of this section before making any payment under such contracts.
- B. Volunteers: The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee

to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

- C. Sweat equity: The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

#### **7.04 Lead-Based Paint**

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

#### **7.05 Conflict of Interest**

- A. Applicability: In the procurement of property and services by PJ, State Recipients, and Subrecipients, the conflict-of-interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
- B. Conflicts prohibited: No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.
- C. Persons covered: The conflict-of-interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the PJ, State Recipient, or Subrecipient which are receiving HOME funds.
- D. Exceptions: Threshold requirements. Upon the written request of the PJ, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the PJ's program or project. An exception may be considered only after the PJ has provided the following:
  - 1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - 2. An opinion of the PJ's or State Recipient's attorney that the interest for which the exception is sought would not violate state or local law.
- E. Factors to be considered for exceptions: In determining whether to grant a requested exception after the PJ has satisfactorily met the requirements of paragraph (D) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
  - 1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available.
  - 2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.

3. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question.
  4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (C) of this section.
  5. Whether undue hardship will result either to the PJ or the person affected when weighed against the public interest served by avoiding the prohibited conflict.
  6. Any other relevant considerations.
- F. Owners and developers
1. No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a CHDO when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in 24 CFR § 92.252(e) or § 92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
  2. Exceptions: Upon written request of a housing owner or developer, the PJ (or State Recipient, if authorized by the State PJ) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the PJ shall consider the following factors:
    - a. Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.
    - b. Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question.
    - c. Whether the tenant protection requirements of 24 CFR § 92.253 are being observed.
    - d. Whether the affirmative marketing requirements of 24 CFR § 92.351 are being observed and followed.
    - e. Any other factor relevant to the PJ's determination, including the timing of the requested exception.

#### **7.06 Executive Order 12372**

- A. General: Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- B. Applicability: Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

#### **7.07 Civil Rights**

It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d et seq.), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the

grounds of race, color, or national origin, be excluded from participation in, be denied in the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

### 7.08 Equal Opportunity

It will comply with:

- A. Section 109 of the Housing and Community Development Act of 1974 (ACT), as amended, and the regulations issued pursuant thereto (24 CFR 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under the act.
- B. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) The act provides that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.
- C. Section 504 of the Rehabilitation Act of 1973 amended (29 U.S.C. 794). The act provides that no otherwise qualified individual shall, solely, by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.
- D. The grant recipient must complete or update a Self-Evaluation, in accordance with 24 CFR Part B of the Federal Register. An example of a Self-Evaluation guidebook will be provided upon request.
- E. Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 170/u) (24 CFR Part 135). Section 3 of the Housing and Urban Development Act of 1968 requires, in connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, that opportunities for training and employment be given to lower-income persons residing within the unit of local government or the non-metropolitan county in which the project is located, and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part, by persons residing in the project area. The grantee must assure good faith efforts toward compliance with the statutory directive of Section 3.
- F. Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60) prohibit a HOME recipient and subcontractors, if any, from discriminating against any employee or applicant for employment because of race, color, religion, sex or national origin. The grantee and subcontractors, if any, must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action must include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The grantee and subcontractors must post in conspicuous places, available to employees and

applicants for employment, notices to be provided setting for the provisions of this nondiscrimination clause. For contracts over \$10,000, the grantee or subcontractors will send to each applicable labor union a notice of the above requirements, the grantee and subcontractors will comply with relevant rules, regulations and orders of the U.S. Secretary of Labor. The grantee or subcontractors must make their books and records available to state and federal officials for purposes of investigation to ascertain compliance.

- G. Executive Order 13166 eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities.

### 7.09 Fair Housing

It will affirmatively further fair housing and will comply with:

- A. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended. The law states that it is the policy of the United States to provide for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, familial status or disability. HOME grantees must also administer programs and activities relating to housing and community development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.
- B. Executive Order 11063, as amended by Executive Order 12259, requires HOME recipients to take all actions necessary and appropriate to prevent discrimination because of race, color, religion, creed, sex or national origin; in the sale, leasing, rental and other disposition of residential property and related facilities (including land to be developed for residential use); or in the use of occupancy thereof if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants or contributions from the federal government.

## SECTION 8: RESOURCES

- [HUD Exchange - HOME Investment Partnership Program](#)
- [Electronic Code of Federal Regulations – Title 24, Subtitle A, Part 92](#)
- [Suspension of the HOME Commitment and CHDO Reservation Deadline](#)
- [Notice of CPD-18-10: Suspension of the 24-month HOME Commitment Requirement](#)
- [Notice of CPD-20-01: Four-Year Completion Requirement for HOME-Assisted Projects](#)
- [Federal Registrar/Vol. 81, No. 232/December 2, 2016 – Changes to HOME Program Commitment Requirement Interim Final Rule](#)
- [FY2013 HOME Final Rule – Amendment of HOME Program Regulations](#)
- [Title II of the Cranston-Gonzalez National Affordable Housing Act](#)

## SECTION 9: DISCLAIMER OF NDHFA LIABILITY

NDHFA seeks to allocate sufficient HOME assistance to a project to make the project economically feasible. Such decision shall be made solely at the discretion of NDHFA but in no way represents or warrants to any applicant, investor, lender, or others that the property is feasible, viable, or of investment quality.

#### HOME Allocation Plan

No member, officer, agent, or employee of NDHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of HOME assistance.

### **SECTION 10: MODIFICATION TO THE ALLOCATION PLAN**

The Executive Director may make minor modifications deemed necessary to facilitate the administration of HOME or to address unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions not mandated by federal statute or regulation on a case-by-case basis for good cause shown. As a matter of practice, NDHFA will document any waivers from the established priorities and selection criteria of this Allocation Plan and will make this documentation available to the public, upon request.



## 2025 ALLOCATION PLAN

### National Housing Trust Fund

*DRAFT Pending HUD Approval*



Community Housing and Grants Management Division  
2624 Vermont Ave. | PO Box 1535 | Bismarck, ND 58502-1535  
800-292-8621 or 701-328-8080 | 800-435-8590 (Spanish) | 711 (TTY)  
[www.ndhfa.org](http://www.ndhfa.org) | [hfainfo@nd.gov](mailto:hfainfo@nd.gov)

Una traducción al español de este documento está disponible solicitándola en [ndhfa.org](http://ndhfa.org)



**DRAFT Pending HUD Approval**

The Housing Trust Fund program contained herein is contingent upon HUD's allocation of formula grant amounts to the State of North Dakota as well as HUD's acceptance and approval of this Allocation Plan. Any approvals to and from the program are subject to such acceptance, approval, and allocation by HUD.

This recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Accommodations: Individuals who require accommodations including translated documents, an alternate format, or to request a copy of the plan may contact:

504 Coordinator:

Jennifer Henderson

North Dakota Housing Finance Agency

2624 Vermont Avenue

Bismarck ND 58504

800-292-8621 or 701-328-8080

800-435-8590 (Spanish)

711 (Voice or TTY)

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## SECTION 1: INTRODUCTION

North Dakota Housing Finance Agency (NDHFA) is dedicated to maximizing housing opportunities for all North Dakotans and proactively addressing the housing needs of low- and moderate-income households.

The National Housing Trust Fund (HTF) is a permanent federal program, established as part of the Housing and Economic Recovery Act of 2008. The primary purpose of the HTF is to provide grants to state governments to increase and preserve the supply of affordable rental housing for extremely low- income (ELI) households, defined as those earning less than 30 percent of the area median income (AMI), including homeless families. The HTF is funded by an assessment on all business booked by Fannie Mae and Freddie Mac. Parties interested in pursuing HTF funding should refer to the Code of Federal Regulations, Title 24, Part 93 (24 CFR Part 93) for further guidance.

NDHFA is responsible for the administration of the HTF for the State of North Dakota, including the development of an Annual Allocation Plan (the Plan) which defines the process by which HTF funds are distributed to qualifying properties throughout the state. The Plan promotes the selection of those properties which serve to address the most crucial needs of the state within the priorities outlined in the North Dakota Consolidated Plan,<sup>1</sup> as well as the relevant strategies identified in North Dakota's 10-Year Plan to End Long Term Homelessness:<sup>2</sup>

### *North Dakota Consolidated Plan Housing Strategies*

- Preserve and improve the quality and condition of the existing rental and owner-occupied housing stock through the rehabilitation of lower-income, disabled, and elderly households.
- Fund homeownership opportunities for lower-income residents.
- Provide funding to increase the supply of multifamily housing.

### *North Dakota Consolidated Plan Homeless Strategies*

- Support emergency shelters and transitional housing for the homeless.
- Create additional transitional and permanent supportive housing facilities.
- Provide financial support to assist those at imminent risk of homelessness, including rapid rehousing.
- Fund homeless prevention activities, including data collection and prevention services.

### *North Dakota's 10-Year Plan to End Long Term Homelessness: Relevant Strategies*

- Develop permanent supportive housing.
- Improve the ability to pay rent.
- Expand supportive services to wrap around housing.

The Plan was developed with input from our partners and stakeholders, solicited during a public comment period, and finalized through a public hearing process.

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<sup>1</sup> North Dakota Department of Commerce, Division of Community Services, "2020-2024 North Dakota Consolidated Plan" (2020), available at <https://www.communityservices.nd.gov/communitydevelopment/ConsolidatedPlan/>

<sup>2</sup> North Dakota Interagency Council on Homelessness, "Housing the Homeless: North Dakota's 10-Year Plan to End Long Term Homelessness" (2018), available at <https://www.ndhfa.org/wp-content/uploads/2020/07/HomelessPlan2018.pdf>.

## SECTION 2: DEFINITIONS

For purposes of the HTF program, the following definitions shall apply.

**Broadband Infrastructure:** Cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.

**Extremely Low-Income (ELI):** The primary affordability target of the HTF, defined by the United States Department of Housing and Urban Development (HUD) as household income of not more than the greater of 30 percent of area median income (AMI) or the federal poverty line.

**Grantee:** The state entity that prepares the HTF Allocation Plan, receives the HTF dollars from HUD, and administers the HTF in the state. NDHFA is the HTF grantee for the State of North Dakota.

**Grayfield:** Previously developed property.

**HTF-Assisted Unit:** A housing unit which meets the HTF eligibility requirements and benefits from financial assistance from the HTF.

**Multifamily:** Any building or group of buildings totaling four or more permanent residential rental units operated as a single housing project. Initial leases must be for a term of at least six months.

**Period of Affordability:** Also, “affordability period.” Units in projects receiving HTF assistance will be required to maintain affordability to extremely low-income households for a period of at least 30 years.

**Recipient:** An entity which is awarded assistance from the HTF for the development, rehabilitation, or operation of multifamily rental property for the benefit of ELI households.

**Rent Restricted:** Rent that does not exceed the published Maximum HTF Rent Limit, which is based on an assumed 1.5 persons per bedroom (single person in an efficiency). Rental Assistance is allowed, so long as the tenant pays no more than 30 percent of their adjusted income and such tenant-paid portion does not exceed the published HTF rent limit.

**Stabilized Occupancy:** For purposes of the HTF, occupancy of at least 90 percent of the units in the property for a period of at least 90 days.

**Total Development Cost:** The all-in cost of developing the project including acquisition, pre-development costs, hard and soft construction or rehab costs, financing costs, developer fees, and reserve account capitalization.

## SECTION 3: GENERAL PROVISIONS

### Available HTF Funding

North Dakota is expected to receive the small-state allocation from the National Housing Trust Fund. HUD authorizes NDHFA to expend from the HTF up to a maximum of 10 percent of the state allocation for reasonable costs to administer the HTF program. The maximum amount of administrative costs NDHFA may expend from the HTF will be evaluated as to reasonableness each year during allocation plan development.

### Eligible Recipient

The organization or agency that applies to NDHFA for funds to carry out the HTF project must be an eligible recipient. Eligible recipients include units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; nonprofit organizations, and for-profit developers. Individuals are not eligible to receive direct assistance from the HTF.

Eligible recipients must demonstrate their familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs.

### Eligible Uses

All applications for assistance through the HTF must contain a detailed description of the eligible activities to be conducted with HTF funds. Federal statute authorizes HTF funds to be used for the production, preservation, and rehabilitation of the ELI portion of a multifamily rental housing project.

The HTF can pay those development costs, identified in 24 CFR Part 93.201, associated with the new construction, rehabilitation, acquisition, or adaptive reuse of a multifamily housing project. Such development costs include acquisition, site improvements and development hard costs, related soft costs, demolition, financing costs, relocation assistance, and rent-up reserve capital (not to exceed 18 months).

Projects involving rehabilitation must perform a minimum of \$15,000 in rehabilitation per unit. Please refer to the [ND Housing Trust Fund Rehabilitation Standards document](#) on our website at [www.ndhfa.org](http://www.ndhfa.org) for additional requirements of rehabilitation projects. HTF funds may not be used to refinance existing debt.

### Ineligible Projects

Projects under construction are not eligible for consideration. HTF funds cannot be used for development hard costs or acquisition undertaken before the HTF funds are committed to the project in the form of an executed Written Agreement between the borrower and NDHFA.

### Ineligible Uses of HTF Funds

HTF funds may not be used for:

- Laundry and community facilities which are not located in the same building as the housing.
- Providing assistance during the affordability period of a project previously assisted with HTF funds. Additional HTF funds may be committed to a project up to one year after project completion, but the total assistance is subject to the maximum per-unit HTF subsidy limit identified in the Recognizable Costs paragraph of this section.
- Payment of delinquent taxes, fees, or charges on properties to be assisted with HTF funds.
- Payment for political activities, advocacy, lobbying, counseling services, travel expenses (other than those eligible under 24 CFR Part 93.202(b)), or preparing or providing advice on tax returns.
- Payment for any cost not eligible under 24 CFR Parts 93.201 and 93.202.

### Maximum HTF Award

Award Allocations from HTF for any single Multifamily Project will be limited to the lesser of:

- The Maximum Project Subsidy determined from the selected HOME Cost Allocation Method; or
- An amount required to secure project financing and make the project financially feasible.

Exceptions to these maximums may be made on a case-by-case basis, at the sole discretion of NDHFA, to accomplish overall program goals.

HTF funds may only be expended on the actual costs, up to the maximum per-unit subsidy limits current as of execution of the Project's written agreement. Upon NDHFA's publication of updated per-unit subsidy limits, NDHFA shall immediately implement the updated limits within an updated Exhibit A.

Generally, net allocations from the HTF for a single eligible project will be limited to the lesser of a) the equity required to secure necessary project financing and make the project feasible; or b) up to 100 percent of the HTF-assisted units' share of actual development cost, subject to the following Recognizable Cost limits. Exceptions to these maximums may be made on a case-by-case basis at the sole discretion of NDHFA, to accomplish overall program goals, such as meeting the priorities outlined in the North Dakota Consolidated Plan.

### Recognizable Costs

NDHFA has elected subsidy limits which are aligned with the state's HOME Investment Partnerships Program (HOME) limits.

~~Recognizable Costs for determining maximum HTF assistance will be calculated for a project by utilizing a HUD-approved Cost Allocation method.~~

~~The following are HOME Per-Unit Subsidy Limits, effective as of April 07, 2023. Upon HUD's publication of updated per-unit subsidy limits, NDHFA shall immediately implement the updated limits. Applicants will be subject to HUD's current in-effect limits.~~

<b>Unit Type</b>	<b>Greater ND</b>	<b>Fargo</b>
Efficiency/Studio	\$ 181,480.00	\$ 204,174.00
1 Bedroom	\$ 208,048.80	\$ 234,054.90
2 Bedroom	\$ 252,993.60	\$ 284,617.80
3 Bedroom	\$ 327,292.80	\$ 368,204.40
4 Bedroom	\$ 349,263.20	\$ 404,171.10

~~Costs exceeding these limits are not prohibited, however they will not be included in the calculation of maximum HTF assistance. The HTF is prohibited from investing in housing which is considered luxury. NDHFA reserves the right to reject an application if it determines that project costs are excessive.~~

#### **~~Contractor Profit and Developer Fee~~**

~~Combined builder profit, builder overhead, and general requirements may not exceed 14 percent of the hard construction costs. Developer fee may not exceed the LIHTC developer fee. In the absence of LIHTC within the application or project, developer fee will be limited to 15 percent of total development cost net of the developer fee, acquisition, and any permanent financing costs. On acquisition/rehabilitation or adaptive reuse projects, the developer fee for the acquisition portion may be a maximum of five percent. The fees of all parties with an Identity of Interest with the Developer in the property will be taken into consideration when calculating the Developer's maximum fees.~~

~~When the Developer and the Contractor are the same entity, in addition to the fee limits stated above, the combined sum of Developer Fee, Contractor Profit, Contractor Overhead, and General Requirements may not exceed 20 percent of the total development cost, less the Developer Fee, unless the project contains LIHTC and the LIHTC program allows a higher percentage.~~

#### **Reserves**

All properties will be required to maintain a replacement reserve account for the term of the HTF loan. The replacement reserve requirement for new construction properties and substantial rehabilitation properties (i.e. rehab exceeding \$30,000 per unit) designed for seniors will be no less than \$350 per unit per year, inflated at three percent annually. The requirement for all properties designed for general occupancy as well as rehabilitation developments with rehabilitation costs of \$30,000 per unit or less will be no less than \$400 per unit per year, inflated at three percent annually. This account shall not be used for routine maintenance and upkeep expenses or for operating expenses. Project owners shall be required to provide NDHFA with a record of all activity in the replacement reserve account during the prior fiscal year in conjunction with submission of the project's annual compliance monitoring materials. Furthermore, the Limited Partnership Agreement or Operating Agreement must require that the replacement reserves may only be used for the intended purpose of funding capital expenditures or replacement of building and site components and may not be distributed to owners or partners prior to the end of the HTF Loan.

All properties will also be required to establish and maintain, until the property has achieved a minimum of five years of stabilized operations, an operating reserve equal to a minimum of six (6) months of projected operating expenses, must-pay debt service payments, and annually required replacement reserve payments. This

requirement can be met with an up-front cash reserve, a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee, or partnership documents specifying satisfactory establishment of an operating reserve.

Each reserve account identified in this section must be accounted for separately from all other project asset accounts and held at a federally insured financial institution or the Bank of North Dakota.

### **Maximum Tenant Income**

All HTF funding must be used for the benefit of extremely low-income households, as verified through the “Part 5” definition of annual income. The Part 5 definition, found at Subpart F of 24 CFR Part 5, is used by a variety of programs, including LIHTC, HOME Investment Partnership, CDBG, and Section 8, as well as the North Dakota Housing Incentive Fund.

Income determination is performed at initial occupancy. Tenant self-certifications are allowed thereafter, however, income source documents must be verified at least once every six years. PBRA recertification rules prevail and will also be employed for all HTF-assisted units when applicable. The next-available-unit rule applies. ~~HTF-assisted units must be floating, and not fixed to specific project units, to facilitate the next-available-unit rule.~~ Tenants cannot be evicted for being over-income upon recertification.

## **SECTION 4: FEDERAL CROSS-CUTTING REQUIREMENTS**

### **Environmental Review**

The environmental effects of each project carried out with HTF funds must be assessed in accordance with the property standards at 24 CFR Part 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards (including a tanks search as part of the Phase I Environmental Site Assessment), contamination (including radon), noise (utilizing HUD’s online Day/Night Noise Level Calculator), endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers. HTF does not follow NEPA. Applicants must read 24 CFR Part 93.301(f), and [HUD Notice CPD-16-14](#), found on the Housing Trust Fund webpage on [www.ndhfa.org](http://www.ndhfa.org), for important information regarding HTF Environmental Review requirements.

### **Section 3**

Section 3 of the Housing and Urban Development Act of 1968 requires, in the carrying out of any project assisted under the Act, to the greatest extent feasible, that opportunities for training and employment be given to lower-income persons residing in the Project’s Neighborhood Service Area, and contracts for work in connection with the project be awarded to eligible business concerns. The grantee must assure good faith efforts toward compliance with the statutory directive of Section 3. Applicants must read 24 CFR Part 75, as well as NDHFA’s Section 3 Guide, for important information regarding Section 3 requirements.

### **ADA and Section 504**

Housing assisted with HTF funds must meet the accessibility requirements of 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act, implemented at 28 CFR Parts 35 and 36, as applicable. “Covered multifamily dwellings,” as defined at 24 CFR Part 100.201, must also meet the design and construction requirements at 24 CFR Part 100.205, which implements the Fair Housing Act.

**Energy Efficiency**

A new construction building less than four (4) stories in height shall be constructed to meet or exceed the standards of the 2021 International Energy Conservation Code (IECC).

A new construction building four (4) or more stories in height shall be constructed to meet or exceed the standards or the 2019 edition of the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) standard 90.1.

**Uniform Relocation Act**

The development of housing with HTF assistance is required to follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The Act applies to persons both temporarily and permanently relocated as a result of the HTF-assisted project. Applicants should see 24 CFR Part 93.352 for additional detail regarding the Uniform Relocation Act and the NDHFA URA Policy Guide for requirements.

**Lead Based Paint**

Housing assisted with HTF funds is subject to the regulations at 24 CFR Part 35, subparts A, B, J, K, and R.

**Affirmative Marketing**

Each HTF recipient must adopt and follow Affirmative Fair Housing Marketing (AFHM) procedures and requirements for rental projects containing five or more HTF-assisted housing units. AFHM steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If NDHFA's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with 24 CFR Part 93.303(d)(3), the recipient must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project. NDHFA has published, on its website, an Affirmative Fair Housing Marketing Plan Guidance document which provides detailed and step-by-step direction on how to satisfy AFHM under the HTF program. Applicants should also see 24 CFR Part 93.350 for additional detail regarding the AFHM requirements of the HTF program.

**Build America, Buy America**

The development of housing with HTF assistance is required to follow the requirements of the Build America, Buy America Act (BABA). BABA requires that any Iron and Steel, Manufactured Products, and Construction Materials (as those terms are defined in BABA) consumed in, incorporated into, or permanently affixed to the Project's real property, or improvements to the real property, must be produced in the United States. Applicants should see Title IX of the Infrastructure Investment and Jobs Act for additional details regarding BABA and the NDHFA Build America, Buy America Compliance Plan for requirements.

**Minimum Rehabilitation and Property Standards**

HTF projects must follow property standards outlined within the NDHFA published [Minimum Rehabilitation and Property Standards manual](#) (Property Standards) which includes all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures, known as the Uniform Physical Condition Standards (UPCS) prescribed by HUD pursuant to 24 CFR Part 5, subpart G. Rehabilitation projects, including adaptive reuse, must address any and all deficiencies identified Property Standards manual as part of the project's scope of work so that, upon completion, all such deficiencies are cured. For projects which include rehabilitation of occupied housing, any life-threatening health and safety deficiencies, as defined in the Property Standards, must be addressed and corrected immediately. HUD is in the process of replacing UPCS with NSPIRE standards. NDHFA will update policies, procedures and plans accordingly and provide guidance to recipients upon release of further guidance. For more information review [HUD NSPIRE Training](#).

Likewise, all deficiencies identified during annual compliance monitoring site visits of HTF-assisted properties must be cured. NDHFA will monitor property condition standards using the same process and procedures as for the federal Low-Income Housing Tax Credit Program which does not employ a scoring protocol or grade levels of deficiencies; all identified deficiencies must be corrected. Please refer to the Property Standards for further details regarding inspectable areas, inspectable items, and observable deficiencies requiring correction.

**Eminent Domain**

No HTF funds may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, public use shall not be construed to include economic development that primarily benefits any private entity.

**Davis-Bacon**

The Davis-Bacon and Related Acts do not apply to the HTF program.

**Violence Against Women Act (VAWA)**

All housing receiving HTF funds must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Additional information about VAWA 2013 can be found in a document in the HTF section of NDHFA's website entitled, "The Violence Against Women Act of 2013," published by the National Housing Law Project. All rental applicants and tenants should be provided with the following documents, templates which can be found on NDHFA's website: "Notice of Tenant Rights Under VAWA"; "Housing Provider's Emergency Transfer Plan Under VAWA"; "Certification of Domestic Violence"; and "Emergency Transfer Request."

**Sam.gov and FFATA**

All recipients and underlying controlling entities of HTF funds are required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (FFATA). All applicants for HTF funding, as well as all contractors involved in the project construction, must have a Sam.gov Unique Entity Identification Number (UEI) and maintain an Active Registration within the System for Award Management (SAM) until the project has been marked as "Completed" within HUD's IDIS system. Furthermore, recipients of HTF awards must report the names and compensation of officers in their organization as part of their SAM registration, unless exempt under 2 CFR 170.110(b).

All recipients of HTF funds are required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (FFATA). All applicants for HTF funding, as well as all contractors involved in the project construction, must have a Data Universal Number System (DUNS) number and be registered on the System for Award Management (SAM). Refer to <https://fedgov.dnb.com/webform> and [www.sam.gov](http://www.sam.gov) to obtain these DUNS and SAM registrations. Furthermore, recipients of HTF awards must report to NDHFA the names and compensation of the five most highly compensated officers in their organization, unless exempt under 2 CFR 170.110(b).

**SECTION 5: APPLICATION PROCESS**

Applicants must apply using NDHFA forms to receive a conditional commitment of financial assistance from the HTF program. The complete application must be received by 5:00 p.m., Central Time, on the closing date to be eligible for consideration in the funding round. The application rounds will be as follows until all HTF funds have been obligated:

**Maximum Amount of HTF Assistance Available Per Application Closing Date**

Round 1:	September 30, 2025	Up to \$2,700,000
Round 2:	September 30, 2026	Balance of available HTF assistance, if any

**Application Processing Fee**

Remittance of a nonrefundable Application Processing Fee, payable to "North Dakota Housing Finance Agency," shall be received by the Agency prior to 5:00 p.m., CT, on any Application Closing Date for its corresponding application to be reviewed for eligibility and/or considered for funding within any competitive funding round.

- A. For an application in which HTF is the only NDHFA-funded program being applied for in the Application Round, the Application Processing Fee shall be \$500.
- B. For an application in which more than one NDHFA-funded program is being applied for in the Application Round, the Application Processing Fee shall be \$500 for the primary program and an additional \$250 for any subsequent NDHFA-funded program being sought by the Applicant for the Project in the Application Round.

### Threshold Requirements

When an application is received and its corresponding Application Processing Fee has been verified as collected by the Agency, the application shall be issued an application number and reviewed for eligibility to be scored. To be eligible for scoring, an application must be fully executed, fully completed, and satisfy each Threshold Requirement detailed within this section.

An applicant may request an exemption to the requirement of attaching a CNA to the application if there are other funding sources for the project which would, due to the timing, require additional costs or multiple reports. Any such exemption must be received from NDHFA prior to and included within the project's application. If granted such an exemption(s), the application will not be subject to a scoring deduction for the exempted requirement(s); however, the report(s) are required prior to the issuance of a Financial Award to the applicant.

- A. **Application:** NDHFA's currently published Multifamily Application must be fully completed and executed. All applicable Exhibits to the application must be fully completed and submitted.
- B. **Demonstrated Site Control:** Applicant must provide evidence that the Applicant, or Applicant's affiliate, currently has, and is contractually able to maintain throughout the entirety of the application period, site control for the entirety of the project's anticipated scope. An as-developed site plan must accompany the application.
- C. **Zoning, Codes, and Ordinances:** Applicant must provide evidence of current appropriate zoning for the entire scope of the proposed project. If current zoning does not comply, verification must be provided from the jurisdiction-having municipal office verifying, at a minimum, a preliminary review of the project's plans and proposed land use complies with the zoning type being sought.

Upon completion, the project must meet all applicable State and local codes, ordinances, and requirements as applicable, or, in the absence of a State or local building code, the International Residential Code, International Building Code (as applicable to the type of structure), or the International Existing Building Code (for rehabilitation projects) of the International Code Council.

- D. **Infrastructure and Utility Availability:** Evidence must be provided that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas, Broadband Infrastructure, etc.) are in-place, or are able to be put in-place, and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official.

Projects must install Broadband Infrastructure to all units and common area community rooms. A letter from the project architect confirming the inclusion of Broadband Infrastructure is within the project's plans shall be included.

Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent and integral infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download and 3 Mbps upload.

If all required infrastructure is not currently, or will not be, available on the proposed site(s), or on land directly adjacent to the proposed site(s), as of the Application Closing Date, a letter from the local jurisdiction must accompany the application confirming that no adequate infill opportunities exist within the community.

- E. **Development Team:** Application must demonstrate, to the satisfaction of the Agency, all members of the team have the experience, ability, and financial capacity, in their respective roles, to develop, construct, own, operate, manage the project, and are familiar, and prepared to fully comply, with this program's requirements.

9% or 4% LIHTC:

1. Applicants new to LIHTCs must partner with a developer, sponsor, and/or consultant included in a

development team which received a LIHTC allocation from a federally approved allocator for a specific project and has placed that project in-service within the prior five years.

2. An Applicant, or closely related party of the Applicant, who has not yet placed a LIHTC project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

HOME or HTF:

3. Application including the use of HOME and/or HTF funding shall include a copy of the Applicant's current Active Registration on Sam.gov.
4. Application should demonstrate the proposed team's experience with, or working knowledge of, all federal cross-cutting requirements including, but not limited to, Section 3, Women-owned and Minority-owned Business Enterprise contracting practices, Davis-Bacon and related acts, environmental review, Section 504 and ADA requirements, lead-based paint mitigation, Uniform Relocation Act, and property condition requirements.
5. An Applicant, or closely related party of the Applicant, who has not yet completed a HOME or HTF project in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

Applications including any of the development team with limited experience in the development, construction, ownership, and/or management of an affordable Multifamily Project are encouraged to partner with an experienced developer, party, and/or sponsor. Agency may require the Applicant to provide historical financial statements as deemed necessary.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for or have pleaded guilty, including a plea of nolo contendere, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification, or destruction of records are ineligible. Applicants who have been debarred from any North Dakota program, other state program or any federal program are ineligible. Agency may determine Applicants having an Identity of Interest with any debarred entity are ineligible.

Agency may inquire to other state allocating agencies about the Applicant's or Developer's performance history. Negative performance may result in the application being ineligible.

- F. **Ownership:** The Applicant must be either the owner or developer of the project. If the Applicant intends to sell or transfer the project within five (5) years from the application date, the Applicant must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of those who will purchase or receive the project. Failure to provide this information may result in forfeiture of any Conditionally Committed or Reserved LIHTCs.

Credits are allocated to the proposed project's Owner. A sale or transfer of a controlling ownership interest of the Owner prior to issuance of the Final Allocation requires an amended application, Agency approval and payment of a nonrefundable transfer fee of \$2,500, or 1% of the annual credit amount currently allocated to the Owner for the proposed project, whichever is greater. Payment of this fee does not oblige the Agency to approve the transfer.

- G. **Financial Projections:** NDHFA's currently published Multifamily Application Exhibit A, must be submitted in Excel format. All applicable tabs must be fully completed.

The reasonableness of development costs and operating expenses, in relation to other similar developments, will be assessed when the Agency evaluates a project's financial feasibility.

The Agency reserves the right to decline any application if, during underwriting, the project is determined to have a Hard-Debt-Service Coverage Ratio, or Expense Coverage Ratio for a project which proposed no hard-debt, less than 1.10.

- H. **Subsidies:** The application package must include a signed certification as to the full extent of all federal,

state, and local subsidies expected to apply to the project.

- I. **Public Housing Waiting List:** The application package must include a copy of a written communication from the Applicant to the applicable public housing authority (PHA) describing the proposed project. The Applicant's communication shall include a commitment to communicate project completion and work directly with the PHA during the proposed project's lease-up in an attempt to house households on PHA waitlist(s) and granting waitlisted households' priority in obtaining occupancy within the project.
- J. **Housing Need:** Applications must include a comprehensive market study of the housing needs of low-income individuals in the market area to be served by the project. The market study should be completed at the Developer's, or affiliate of the Developer, expense by an acceptable disinterested party to the Agency.

The market study must demonstrate there is sufficient sustained demand in the market area to support the proposed development, and that the development of any additional affordable units will not have an adverse impact on the existing affordable units in the market area. The market study must have been completed within six (6) months of Application Close Date and must contain the National Council of Housing Market Analysts' (NCHMA) current model content standards unless the Agency authorizes deviation from these standards.

- K. **Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation, adaptive reuse, or acquisition of an existing building which will, in-whole or in-part, remain an asset of the project.

The CNA must be completed by a competent, independent third party acceptable to the Agency, such as a licensed architect and/or engineer. The assessment must include a site visit and a physical inspection of the interior and exterior of all units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies.

The assessment must consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment must include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than fifty percent (50%) of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life is less than the Affordability Period, the application package must provide a practical way to finance the future replacement.

The assessment must also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:

1. Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utilities and their lines.
2. Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage.
3. Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors.
4. Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection, and elevators.

Application packages involving the demolition and new construction replacement of existing housing units must demonstrate the benefit of such activity over rehabilitation, including an opinion of cost of rehabilitation to assist Agency to determine the cost savings and/or other benefits.

- L. **USDA Financing:** An application proposing the inclusion of new or existing USDA debt must include written confirmation from the regional USDA officer which verifies any progress made on an initial transfer request and/or the approval of any proposed debt additional to the existing USDA debt, and any associated lien to the debt, proposed.
- M. **Self-Scoring:** The Applicant must provide a self-scoring narrative indicating the number of points being sought in each scoring category. The narrative should be brief but also explain the Applicant's justification(s) for the points being sought.

### Scoring Deductions

Applications with a Project location is within the same city as a Project which has scored higher and/or been selected in the current application round to receive HTF Funds prior to its application (Scoring Criteria L) shall receive a scoring deduction.

Applications failing to satisfy a Threshold Requirement as of the application deadline will be a 5-point scoring deduction for EACH unsatisfied Threshold Requirement and be given a reasonable amount of time to submit any missing items required to satisfy the Threshold Requirement(s).

### Scoring Criteria

Each application meeting the threshold requirements will be reviewed and assigned points according to the following selection criteria. Representations made by applicants for which points are given will be binding and will be monitored through the annual compliance review process. Applications must achieve a minimum score of 85 points to be considered for funding. Based on ranking, projects will be selected for a conditional commitment. Once a property is selected, NDHFA will determine the amount of HTF to be awarded, which may not equal the amount requested in the application.

In the event of a tie between two or more projects when insufficient program funds remain to fund each one, the tie breaker will go to the project which best meets the Housing Strategies outlined in the current North Dakota Consolidated Plan in effect at the time of HTF application.

#### A. **Serves Extremely Low-Income Households** **Up to 50 points**

Awarded to properties with units both income and rent restricted for ELI households. Elections made in this category will be incorporated into the Land Use Restrictive Agreement and will be binding, at a minimum, for the term of the HTF loan.

1. 35% of total unit income and rent restricted at or below ELI.....50 points
2. 30% of total unit income and rent restricted at or below ELI.....40 points
3. 25% of total unit income and rent restricted at or below ELI.....30 points
4. 20% of total unit income and rent restricted at or below ELI.....20 points

For purposes of applying the ELI rent restriction under this category, an exception for exceeding the ELI rent may be granted for project-based rental assistance where it can be shown that additional rents are necessary to make the project feasible and that the tenant-paid portion of the rent will not exceed 30 percent of their household income nor the published HTF rent limit.

#### B. **Use of LIHTCs** **Up to 20 points**

Projects which have received or are applying for federal Low-Income Housing Tax Credits in a pending application round, will receive points under this category. Projects which applied for but are not awarded LIHTCs in the current pending application round are ineligible for points under this category.

1. Projects with an award of 4 percent LIHTCs .....20 points
2. Projects with an award of 9 percent LIHTCs .....10 points

#### C. **Committed Non-Federal Leverage** **Up to 20 points**

An applicant who provides signed, firm commitments for contributions or incentives from state or local

government, private parties and/or philanthropic, religious, or charitable organizations, excluding entities with an identity of interest or those with a significant role in the property (e.g. contractors, accountants, architects, engineers, consultants, etc.), will receive points in this category. Not eligible as sources of leverage under this category are interest bearing loans to the project, LIHTCs, HRTCs, HOME, CDBG, NAHASDA, or any other federal source of funding. Also, not eligible as leverage under this category is project-based rental assistance which earns points in scoring category D.

1. Leverage of at least 50% of total development cost .....20 points
2. Leverage of at least 40% of total development cost .....15 points
3. Leverage of at least 30% of total development cost .....10 points
4. Leverage of at least 20% of total development cost .....5 points

**D. Project-Based Rental Assistance**

**Up to 5 points**

Project has received binding commitments for federal, state, or local project-based rental assistance for all of the extremely low-income units in the project will receive 5 points.

1. 100% of the HTF-Assisted units will have PBVs .....5 points
2. At least 90% of the HTF-Assisted units will have PBVs .....4 points
3. At least 80% of the HTF-Assisted units will have PBVs .....3 points
4. At least 70% of the HTF-Assisted units will have PBVs .....2 points
5. At least 60% of the HTF-Assisted units will have PBVs .....1 point

**~~D~~.E Redevelopment and Revitalization**

**Up to 5 points**

1. The project is located on a site considered by NDHFA, in its sole discretion, to be grayfield in nature.
2. The project is in a city revitalization area established by resolution or other legal action by the city, and the development of the project contributes to a concerted community revitalization plan. For purposes of this Plan, a concerted community revitalization plan is defined as a locally approved revitalization plan targeting specific existing areas or neighborhoods within the community for housing and economic development including the infill new construction or rehabilitation of housing. To qualify, the plan must be officially adopted by the local governing body, identify a specific time period, apply only to a defined geographic area within the community, and specifically call for infill new construction or rehabilitation of affordable housing within the boundaries of the plan. Local housing needs surveys, consolidated housing or economic development plans, short-term work plans, municipal zoning or land use plans, or plans which are so broad as to encompass the entire community or so narrow as to encompass only the project's subject property do not qualify under this definition.
3. The project is located in an Opportunity Zone, as defined in Code Section 1400Z-1.

Adaptive reuse projects are eligible for points under this category. Rehabilitation of existing habitable and occupied housing is not eligible for points under this category.

**F. Service Coordinator**

**5 points**

Projects which commit to providing, either through direct employment or by contract with an experienced third party, a Service Coordinator for the residents of project. The Service Coordinator must be available to residents on-site at least one hour per project unit per month.

The role of a Service Coordinator is to manage and provide access to necessary supportive services in the community, provide proactive case management services as needed and requested, and develop programs and resources that support wellness for the entire resident population.

A Service Coordinator shall fulfill the following core functions:

1. Conducting comprehensive, non-clinical assessments of residents for wellness and social needs; and
2. Helping residents to identify, access, and coordinate services, including monitoring of services provided and follow-up communication with services providers; and
3. Monitoring the receipt and following through of services, including encouraging and motivating residents to engage with providers and participate in their own care/services management; and
4. Proactively developing and arranging educational/preventative health programs and services for residents; and
5. Developing and sustaining partnerships with North Dakota Service Providers (ND Health & Human Services) and other community stakeholders; and
6. Maintaining an up-to-date resource directory with all local Service Providers and making it available to residents' use.

HUD's Service Coordinators in Multifamily Housing (SCMF) Program is the basis for this scoring category. The SCMF Program Online Learning Tool, available on the HUD Exchange website, should be used as a resource for important additional details required to be implemented in order to provide residents with an effective Service Coordinator.

~~1. Tenant Support Coordinator —~~

~~Projects which provide, either through direct employment or by contract with an experienced third party, a dedicated Tenant Support Coordinator (TSC) for at least one hour per project unit per month will receive 5 points. The TSC would be required to develop and maintain working relationships with tenants in the project. The TSC's role is to increase the ability of all tenants to maintain stability and uphold lease obligations through the following: facilitating provision of supportive services by connecting tenants with appropriate providers, identifying needs for assistance, and educating tenants on available resources.~~

~~2. Tenant Support Coordinator and Medicaid-Approved Service Provider —~~

~~Projects which provide the TSC provisions in the preceding paragraph (1) and which also enter into a formal letter of intent with one or more qualified service agencies with demonstrated experience providing housing stability services consistent with the needs of the project's residents will receive 10 points. The service provider(s) must also be able to process for Medicaid reimbursement and provide their Medicaid biller number issued by the State of North Dakota. The letter of intent must be detailed regarding the suite of supports and services to be made available to tenants who need and want them.~~

~~Projects receiving points under this category must include tenant support coordination capable of the following, at a minimum:~~

- ~~• Support the person to understand and maintain income and benefits to retain housing.
 
  - ~~○ Household budgeting and financial management.~~
  - ~~○ Assistance in applying for benefits related to housing affordability.~~
  - ~~○ Establishment of payee/guardian services as needed.~~
  - ~~○ Assistance with the income recertification process.~~
  - ~~○ Wealth and asset building initiatives.~~~~
- ~~• Support the building of natural housing supports and resources in the community.
 
  - ~~○ Encouragement of community activity.~~
  - ~~○ Facilitation of meetings with a tenant support team.~~~~
- ~~• Identify and prevent behaviors that may jeopardize continued housing.~~

- ~~○ Coordination with parole and probation requirements.~~
- ~~○ Collaboration with law enforcement (i.e. the creation of safety plans).~~
- ~~○ Training on lease compliance, household management and best practices of successful tenants.~~
- Promote health and wellbeing that enables tenants to retain housing.
  - ~~○ Connecting tenants with health providers.~~
  - ~~○ Assistance in securing and increasing employment.~~
  - ~~○ Assistance in securing childcare.~~
  - ~~○ Identifying educational opportunities in areas such as nutrition, education, and physical wellness.~~
  - ~~○ Parenting supports.~~
  - ~~○ Life coaching via peer support specialists.~~
  - ~~○ Facilitating connections to Home and Community-Based Care services.~~

~~A tenant selection plan must be provided as part of the initial application for HTF assistance. The tenant selection plan must describe in detail how individuals and/or families with special needs will be identified, affirmatively marketed to, and assisted in renting units at the project.~~

~~Projects which received 10 points under this scoring category F will be required to submit, prior to HTF closing, a formal executed agreement with each provider identified in the letter(s) of intent.~~

~~Compliance monitoring activities will include:~~

- ~~● Confirmation of hiring or contracting with a TSC~~
- ~~● Confirmation of the provision of the services pledged at the time of initial application, if applicable.~~
- ~~● Review of marketing efforts targeted at special needs populations.~~

~~For purposes of this scoring category, tenants with special needs include individuals or families who:~~

- ~~● Suffer from serious or persistent mental illness.~~
- ~~● Suffer from substance use disorders.~~
- ~~● Have disabilities, including intellectual, physical, or developmental.~~
- ~~● Are experiencing long-term homelessness or are at significant risk of long-term homelessness.~~
- ~~● Are justice involved.~~
- ~~● Are frail elderly, defined as those 62 years of age or older, who are unable to perform one or more “activities of daily living” without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities. Assisted living, or projects serving a similar purpose, are not eligible under this Plan.~~

#### **E.G. Universal Design**

**Up to ~~17~~14 points**

Applicants seeking Project Standards points are required to provide a written statement from the project’s architect, verifying the architect has fully reviewed NDHFA’s current Universal Design Standards and that 100% of the Project Standards will be implemented within the design of the proposed project.

1. All Project Standards implemented .....5 points

Applicants seeking Unit Standards points are required to provide a written statement from the project’s architect, verifying the architect has fully reviewed NDHFA’s current Universal Design Standards and that 100% of the Unit Standards will be implemented within specific units the proposed project. The

Applicant and architect shall specify which units are proposed to be these Universal Design Units.

- ~~1.2.~~ ..... G  
reater-than ~~or equal to 10.000.00%~~ but less than ~~15.005.00%~~ of the project's total units ..... ~~3-1~~ points
- ~~2.3.~~ ..... G  
reater-than or equal to ~~15.005.00%~~ but less than ~~20.0010.00%~~ of the project's total units ..... ~~6-3~~ points
- ~~3.4.~~ ..... G  
reater-than or equal to ~~20.0010.00%~~ but less than 25.00% of the project's total units ..... ~~9-6~~ points
- ~~4.5.~~ ..... O  
ne point for each Universal Design Unit which is two-bedroom or larger ..... Up to 3 points

#### ~~F.H.~~ Design Standards

**Up to 10 points**

1. Elevator in each residential building. .... 10 points
  2. A separate outside main entrance for each unit. .... 10 points
- Projects may score points under only one Design Standard. Projects with multiple buildings must include any anticipated Design Standard, in which the applicant is seeking points, in all buildings.

#### ~~G.I.~~ Readiness to Proceed

**Up to 25 points**

Applicants must provide a timeline for completion of the project. Points awarded in this category are based on the earliest achievable completion of the activity. Such things as letters of interest or commitment for all sources of project financing; ownership of the land; and availability of infrastructure will be considered in the award of points. Points will be awarded at the sole discretion of NDHFA in comparison to other projects competing in the application round.

#### ~~H.J.~~ Housing for Families

**Up to 10 points**

Twenty percent (20%) or more of the HTF-assisted units identified in the application are three-bedroom or larger will receive 10 points.

#### ~~I.K.~~ Period of Affordability

**Up to 1 point**

The minimum period of affordability for projects assisted by the HTF is 30 years. Projects which commit to affordability for a period of 31 years or longer will receive one point.

#### ~~J.L.~~ Geographic Diversity

**5-point reduction**

Federal regulation places a priority on the use of HTF funding in a geographically diverse manner. Projects located in the same city as a project which has already been selected in the current HTF application round shall receive a scoring deduction of five points.

## SECTION 6: SET-ASIDE

### Native American Set-Aside

Ten percent (10%) of the state's HTF funding will be set aside for projects located within North Dakota Indian Reservations or on Tribal land, either held in trust or fee simple. If sufficient qualifying proposals on Indian Reservations or Tribal lands are not received by the close of the first application round, the unused set-aside funding will be included in the general pool of funding, eligible to be awarded to non-Native American proposals in accordance with this Plan. The Native American set-aside will only be available in the first application round, and not in subsequent application rounds, of each Plan year.

To be eligible for approval under this set-aside, applications must meet all requirements contained in this Plan, including all general provisions, federal cross-cutting requirements, threshold requirements, and minimum scoring.

## SECTION 7: AWARD PROCESS

Proposals received by the due date will be reviewed, ranked, and communicated following the closing date. Successful proposals will be issued a Conditional Commitment of financial assistance from the HTF. During this timeframe, applicants will be required to reach certain benchmarks identified in NDHFA's conditional commitment letter, including completion of an environmental review. An extension of the conditional commitment period may be granted at the sole discretion of NDHFA. Upon satisfactory review of these items, a Financial Award agreement will be issued. Federal regulation requires that all HTF funds must be committed by NDHFA within 24 months and expended within five years of HUD's agreement with NDHFA.

### **Required monthly progress reports from financial award to HTF loan closing.**

To ensure that HTF funding is conditionally committed to projects which are proceeding according to the schedule presented in the application, each applicant receiving an HTF financial award will be required to submit monthly progress reports until closing of the HTF loan. The report must describe the applicant's actual progress to date together with an estimated timeline for future project activity.

### **Required quarterly progress reports from HTF loan closing to occupancy.**

Commencing with closing of the HTF loan, the borrower must submit quarterly progress reports until the project has reached stabilized occupancy. The report must describe actual development progress to date together with a current development budget and estimated timeline for future activity and lease-up. Development costs which increase above the contingency listed in the HTF application must be disclosed in the progress reports along with an explanation as to how the gap is being filled. At NDHFA's discretion, information submitted with draw requests, such as site reports, may serve to satisfy the quarterly reporting requirement.

## SECTION 8: ACCESS TO HTF FUNDS

Draws against an HTF financial award can be made for eligible costs incurred upon firm commitment of all other funding sources. A mortgage with recapture provisions, deed restriction, loan agreement, and promissory note (collectively, the Loan Documents) must be executed prior to release of any HTF funds. The deed restriction must be in a senior position to any foreclosable loan(s) on the property. The Loan Documents will detail the loan terms and affordability requirements, as well as any additional requirements particular to the project.

The borrower may request one or more draws of available HTF loan proceeds for payment or reimbursement of eligible costs incurred toward the development of the project. Draws are requested by submitting to NDHFA a completed HTF Draw Request form together with an ACH authorization, documentation supporting the expenses claimed, general contractor's sworn construction statement, architect's inspection or trip report, and either (1) conditional lien waivers for any general contractor or major subcontractor payments in the current draw as well as unconditional lien waivers for any general contractor and major subcontractor payments paid by the previous draw or (2) a date-down endorsement showing lien-free title. All federal cross-cutting requirements must be proven as having been met. All disbursements are made by electronic funds transfer to the borrower's account or designated escrow agent.

Disbursement of up to 95 percent (95%) of the HTF loan proceeds may be made during construction of the project. A hold-back amount of five percent (5%) of the HTF loan proceeds will be retained until Project Completion. Disbursement of the hold-back amount will be made upon satisfaction of all post-closing conditions including but not limited to final sworn total development cost certification, certificate of occupancy, completion certification, final lien waivers, and executed loan or grant commitments for all other permanent funding sources.

## SECTION 9: REPAYMENT OR RECAPTURE OF HTF FUNDS

All HTF awards will be structured as loans with a term matching the Applicant's committed-to Period of Affordability. Repayment terms will be based on cash flow and determined on a project-specific basis as necessary to achieve project feasibility. Recapture of HTF funds may occur if final total development costs are such that assistance provided by the HTF exceeds established program limits or exceeded that which was necessary to make the project financially feasible.

Income and rent restriction requirements will remain on the project for the Period of Affordability and will be enforced through a deed restriction on the land. In the event of a prepayment of the loan, the deed restriction will ensure the income and rent restrictions remain in place for the remainder of the HTF Period of Affordability.

A recapture of the HTF funds from the borrower will occur at any time during the term of the loan if the borrower fails to abide by the representations made in the application. In the event of recapture of the HTF funds, the deed restriction will remain in place for the remainder of the original term of the HTF loan.

## SECTION 10: COMPLIANCE MONITORING

Owners of HTF-assisted properties must remain in compliance with program guidelines throughout the Period of Affordability. NDHFA will monitor all properties for compliance with HTF program requirements including those related to income and rent limits, cash flow, reserve accounts, insurance coverage, and property condition. Annual compliance monitoring will consist of a desk review of information provided by the project owner and/or a property inspection and review of documentation at the project location. A copy of the [HOME and HTF Ongoing Compliance Monitoring Manual](#) is available on the NDHFA website at [www.ndhfa.org](http://www.ndhfa.org).

On an annual basis during the Period of Affordability, owners of HTF-assisted properties must provide, at a minimum, the following items to NDHFA:

- Certificates of Liability Insurance (ACORD 25) and Hazard Insurance (ACORD 27 or 28) verifying coverages and NDHFA's interest as Mortgagee. Mortgagee clause MUST list the loan number and read as follows:  
 Loan #  
 North Dakota Housing Finance Agency  
 Its Successors and/or Assigns  
 2624 Vermont Avenue, PO Box 1535  
 Bismarck, ND 58502-1535
- An [HTF Annual Owner's Certification](#) attesting to the owner's continued compliance with all HTF regulatory requirements contained in 24 CFR Part 93.
- Fully completed [Annual Rental Compliance Report](#) together with any Agency-required supporting documentation.
- A Statement of Income and Expenses for owner's operation of the requested Project Fiscal Year
- A Year-over-Year Balance Sheet reflecting Beginning-of-Year and End-of-Year account balances of the requested Project Fiscal Year
- A calculation and certification of the Hard-Debt Service Ratio and/or listing of all cash flow distributions, in order of distribution, for the requested Project Fiscal Year in a form and substance acceptable to the Agency

NDHFA may charge each HTF-assisted property an annual fee to cover expenses incurred during normal and routine monitoring activities. The fee is currently set at \$50 per property, plus \$40 per Restricted Unit. NDHFA reserves the right to adjust the annual fee as necessary. Additional fees may be assessed to properties determined to be in substantial noncompliance to cover the expense of additional monitoring. The HTF compliance monitoring fee should be included in the operating budget of applications for HTF assistance.

Developments which are subject to annual compliance monitoring fees for other programs administered by NDHFA may be eligible for a reduction in their HTF compliance monitoring fee at the sole discretion of NDHFA.

## **SECTION 11: DISCLAIMER OF NDHFA LIABILITY**

NDHFA seeks to allocate sufficient HTF assistance to a project to make the project economically feasible. Such decision shall be made solely at the discretion of NDHFA but in no way represents or warrants to any applicant, investor, lender, or others that the property is feasible, viable, or of investment quality.

No member, officer, agent, or employee of NDHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of HTF assistance.

## **SECTION 12: MODIFICATION TO THE ALLOCATION PLAN**

The Executive Director may make minor modifications deemed necessary to facilitate the administration of the HTF or to address unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions not mandated by federal statute or regulation on a case-by-case basis. As a matter of practice, NDHFA will document any waiver of elements of this Allocation Plan and will make this documentation available to the public, upon request.



**March 25, 2025**

**TO: Industrial Commission**

**FR: David Flohr, Executive Director**

**RE: Report 2025 Allocation Plan Final Draft  
Emergency Solutions Grant and ND Homeless Grant**

The agency serves as the administrator for the Federal Emergency Solutions Grant (ESG) and the state appropriated ND Homeless Grant (NDHG). Similar to the multifamily programs, the funds are allocated to recipients through the allocation plan which details the eligible activities and the selection criteria for each program. The ESG allocation plan is then incorporated into the HUD Annual Action plan for submission to HUD for approval.

### **Emergency Solutions Grant**

#### **PROGRAM OVERVIEW**

Emergency Solutions Grants will be utilized to provide services to homeless and those at risk of becoming homeless in the following eligible activities.

- Street Outreach;
- Emergency Shelter;
- Homelessness Prevention;
- Rapid Re-housing Assistance; and
- Homeless Management Information System- HUD required homeless data repository.

#### **Selection Criteria (page 8-9)**

Applications will be competitively scored based on the following scoring criteria. Highest scoring applications will be first selected.

Minor changes to the scoring criteria were proposed.

1. Demonstrated the need for the funding. (10)

Proposed reducing the reliance on the demonstrated need to fund applicants from 30 to 10 points.

2. Plan for distribution of the funds in an effective, efficient and timely manner. (10)

Reduced the points allotted to the narrative plan for distribution from 15 to 10 points and plan to increase points in performance based measurements itemized in category 7.

3. Collaboration efforts with other targeted homeless services and mainstream resources. (20)

No change

4. The applicant's active involvement in CoC, CARES, and HMIS process, including signed partnership agreements and the use of CARES for housing referrals (if applicable to the funding component). (15)

No change

5. The applicant's plan to involve, to the maximum extent practicable, individuals and families experiencing homelessness in constructing, renovating, maintaining, and operating facilities assisted under the grant, and in providing services for occupants of these facilities. (5)

No change

6. The applicant included how the Housing First model is used within the agency. (10)

No change

7. Spending Performance and Monitoring: FY24 ESG Recipients with 90 percent of their 2024 awards expended, timely reimbursement request history, and no outstanding monitoring findings will receive points for a renewal project. (30)

Increased points from 10 to 30 to reward prior recipients who have promptly expended their funding and have strong performance history.

8. Participation in CoC, ESG, and NDHG required training, including, but not limited to, monthly training and annual in-person HMIS Training. (10)

Increased points from 5 to 10 to reward organizations who participate in ongoing trainings.

### **Comments**

No written comments were received prior to the hearing.

Hearing comments were received indicating concern with providing too many points to renewed projects and that new applications would be unable to get awarded. Staff is recommending no changes to ESG scoring. Federal grant administration is complex and staff recommends new applications start with state funding. If there are under performing ESG recipients then there will be an opportunity for new application to rise to the top.

### **ND Homeless Grant**

#### **Funding Level (page 2)**

For FY 2025 funding has not yet been determined. Currently, NDHFA's budget reflects a \$10 million appropriation for the biennium. NDHFA will allocate half of the appropriation each year. NDHFA will use a portion of the funds available to provide 100 percent of the ESG match liability. This total is approximately \$386,494 subject to the final 2025 ESG allocation from HUD. Match is calculated based on the total ESG allocation minus \$100,000. Additionally a portion of the appropriation will be used for administrative functions.

### **Section 3 Eligible Applicants (page 2)**

Staff is recommending adding tribal entities to the list of eligible applicants.

There were no comments received in opposition to the recommended change.

### **Selection Criteria (page 9)**

Changes to the selection criteria include removing the collaborative project points and alignment with ESG for other points.

There were no collaborative applications received in the last application round.

1. Need for funding. (10)

Reduced from 20 to 10 points.

2. Plan for distribution of the funds in an effective, efficient, and timely manner. (10)

Reduced from 15 to 10 points.

3. Collaboration efforts with other targeted homeless services and mainstream resources. (20)

Added category to align with ESG.

4. The applicant's active involvement in CoC, CARES, and HMIS, including signed partnership agreements and the use of CARES for housing referrals (if applicable to the funding component). (15)

No change

5. The applicant's plan to involve, to the maximum extent practicable, persons with lived experience in constructing, renovating, maintaining, and operating facilities assisted under NDHG, and in providing services for occupants of these facilities. (5)

Reduced from 10 to 5 points.

6. The applicant included how the Housing First model is used within the agency. (10)

Increased from 5 to 10 points.

7. Participation in CoC, NDHG, and ESG required training, including, but not limited to, monthly training and annual in-person HMIS training. (10)

Increased from 5 to 10 points.

8. Spending and performance monitoring FY24 recipients with 90 percent of their 2024 awards expended, timely reimbursement request history, reporting, and no outstanding monitoring findings (30)

Aligned the category with ESG to award significant point to performing recipients.

Comments were received concerned with new applications being unable to obtain points to be awarded.

Staff recommends the following additional language to address the concerns.

Applications will receive a % score based on the number of points received out of the total points available. New applications will not be subject to scoring criteria H. and therefore their % score will be calculated on the total points received out of 80.



## 2024-2025 ALLOCATION PLAN

### Emergency Solutions Grant

*DRAFT Pending HUD Approval*



Planning and Housing Development Division Community Housing and Grants Management Division

2624 Vermont Ave. | PO Box 1535 | Bismarck, ND 58502-1535

800-292-8621 or 701-328-8080 | 800-435-8590 (Spanish) | 711 (TTY)

[www.ndhfa.org](http://www.ndhfa.org) | [hfahomelessprogramsinfo@nd.gov](mailto:hfahomelessprogramsinfo@nd.gov)

Una traducción al español de este documento está disponible solicitándola en [ndhfa.org](http://ndhfa.org)



This recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Accommodations: Individuals who require accommodations including translated documents, an alternate format, or to request a copy of the plan may contact:

504 Coordinator:

Jennifer Henderson

North Dakota Housing Finance Agency

2624 Vermont Avenue

Bismarck ND 58504

800-292-8621 or 701-328-8080

800-435-8590 (Spanish)

711 (Voice or TTY)

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## SECTION 1: PROGRAM OVERVIEW

This document provides a brief overview of the ESG Program and the process to apply for funds from the FY ~~2024~~ 2025 ESG allocation. Applicants should review the ESG Interim Rule found at [24 CFR Parts 91 and 576](#) for complete program information. To the extent that anything contained in this document does not meet the requirements of the final ESG Program rule, to be published at a later date, such final rule or regulation will take precedence over this document.

## SECTION 2: ~~2024-2025~~ FUNDING LEVELS

For FY ~~2024~~2025, an approximate amount of \$486,494 in federal funds will be made available. NDHFA will use ND Homeless Grant funding to provide 100 percent of the match requirement to allocate as State ESG Match funding. For ~~FY2024-FY2025~~ it is estimated that the match liability will be \$386,494. The total required for state match is dependent on the final ~~FY2024-FY2025~~ ESG allocation from HUD. Federal funds allocated to street outreach and shelter operation activities are limited to up to 60% of the federal allocation. The State Match ESG funding may be used for any eligible ESG component and will be allocated to recipients as part of the overall ESG award. Requests for funds from the FY ~~2024-2025~~ ESG allocation are limited to a minimum of \$50,000. Successful applicants may receive less ESG funds than requested based on the Selection Criteria on page 10 and 11.

## SECTION 3: ELIGIBLE APPLICANTS

Applicants must be federally recognized non-profits or units of local government. Governmental organizations such as public housing agencies and local housing finance agencies are not eligible applicants under the ESG Program. Applicants must be in compliance with the [ESG Interim Rule](#) (Final Rule when published), the Written Standards for the CoC and ESG Programs, and applicable state and federal policies and procedures, including compliance with federal and state non-discrimination laws.

By virtue of submitting an application, applicants agree to adopt and consistently apply the Written Standards for the CoC and ESG Programs for the administration of the ESG program; and maintain standard accounting practices including internal controls and fiscal accounting procedures; track agency and program budgets by revenue sources and expenses; and have an available cash flow to effectively operate their program(s) since ESG funding is provided on a reimbursement basis.

Applicants with outstanding monitoring or audit findings issued by the Internal Revenue Service, HUD, or NDHFA are not eligible ESG applicants and will not be eligible to receive an allocation of ESG funding. Applicants are encouraged to contact NDHFA to ensure no unresolved monitoring findings exist or to work to resolve any outstanding items.

Eligible applicants must be able to demonstrate prior experience serving individuals and households at-risk of or experiencing homelessness. Also, applicants must have staff with demonstrated expertise in case management skills.

Applicants will be required to utilize the HMIS and the State-wide Continuum of Care's coordinated entry system. Domestic violence service providers must establish and operate a CoC approved comparable database that collects client level data over time and can generate unduplicated aggregate reports based on the data.

Applicants must be active members of the North Dakota Continuum of Care.

## SECTION 4: STATUTORY DEFINITIONS

Emergency Solutions Grant statutory definitions can be found at [24 CFR Part 576.2](#).

## SECTION 5: PROGRAM COMPONENTS AND ELIGIBLE ACTIVITIES

Emergency Solutions Grants will be utilized to provide services to individuals experiencing homelessness and those at risk of becoming homeless in the following eligible activities. Applicants should refer to [24 CFR Part 576.100-576.109](#) for further clarification on the following eligible activities:

- Street Outreach
- Emergency Shelter
- Homelessness Prevention
- Rapid Re-housing Assistance
- Homeless Management Information System

A. **Street Outreach** ([24 CFR Part 576.101](#)) – Funds may be used for costs of providing essential services to reach out to unsheltered homeless; connect them with emergency shelter, housing, or critical services; and provide urgent non-facility-based care to unsheltered homeless who are unwilling or unable to access emergency shelter, housing or an appropriate health facility. Eligible activities include the following:

1. Engagement Activities
2. Case Management
3. Emergency Health Services
4. Emergency Mental Health Services
5. Transportation
6. Services for Special Populations

B. **Emergency Shelter Component** ([24 CFR Part 576.102](#)) – Funds may be used for costs of providing essential services to individuals and households in emergency shelters, renovating buildings to be used as emergency shelters, and operating emergency shelters. Eligible activities include the following:

1. Essential Services – Essential services provided to individuals and households who are in emergency shelters can include case management, childcare, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, transportation, and services for special populations.
2. Renovation Activities – Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation or conversion of a building into an emergency shelter). The grantee must comply with all sections of the Uniform Relocation Act (URA) contained in 49 CFR Part 24. The emergency shelter must be owned by a government entity or private nonprofit organization.
3. Shelter Operations – Eligible costs are the costs of maintenance (including minor or routine repairs), insurance, utilities, rent, food, furnishing/appliances, and supplies necessary for the operation of the emergency shelter.

C. **Homelessness Prevention Component** ([24 CFR Part 576.103](#)) – Funds may be used to provide relocation and stabilization assistance and rental assistance to prevent an individual or household from becoming homeless. Applicants can assist individuals and households who meet the following qualifications under homelessness prevention:

1. Individuals or households who have an income below 30% of Area Median Income (AMI) as determined by HUD, with adjustments for smaller and larger household size. An individual's or family's annual income must be compared to area income limits posted on the ESG webpage found at: [www.ndhfa.org](http://www.ndhfa.org).
2. Individuals or households who qualify as a homeless or at-risk of becoming homeless as specified in (24 CFR Part 576.103) and 576.2. See Attachments A and B.

D. **Rapid Re-Housing Assistance Component** (24 CFR Part 576.104) – ESG funds may be used to provide relocation and stabilization assistance and rental assistance to help a homeless individual or household move as quickly as possible into permanent housing and achieve stability in that housing. Rapid Re-Housing Assistance may be provided to individuals or families lacking a fixed, regular, and adequate nighttime residence or any individual or family who is fleeing or attempting to flee domestic violence, assault, or other life-threatening conditions that relate to violence.

**Housing Relocation and Stabilization Services** (24 CFR Part 576.104) – Homelessness prevention and rapid re-housing are eligible ESG activities that focus on serving different individuals or families. Homelessness prevention and rapid re-housing provide assistance in accordance with the housing relocation and stabilization services requirements in 24 CFR Part 576.105, the short-term and medium-term rental assistance requirements in 24 CFR Part 576.106 and the written standards and procedures under 24 CFR Part 576.400, which states that ESG funds may be used for payment of the following under both homelessness prevention and rapid re-housing components:

- Rental application fees.
- Security deposits equal to no more than 2 month's rent.
- Last month's rent. If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program.
- Standard utility deposits.
- Utility payment - ESG funds may pay up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears per service. Total utility payment assistance to a program participant cannot exceed 24 months during any 3-year period.
- Moving costs. Truck rental or hiring a moving company. Assistance may also include payment of temporary storage fees for up to 3 months. Payment of temporary storage fees in arrears is not eligible.
- Service costs. Housing search and placement, housing stability case management, mediation activities, legal services necessary to resolve housing issues, and credit repair/counseling services.

**Short-Term and Medium-Term Rental Assistance** (24 CFR Part 576.106)- ESG funds may provide a program participant with up to 24 months of rental assistance during any 3 year period. Applicants may establish their own caps, conditions, and time limits for rental assistance if they do not exceed the following parameters:

- Rental assistance.
  - Short-term – up to 3 months of rental assistance.
  - Medium-term – MORE than 3 months but not more than 24 months.
  - Tenant-based or project-based.
- Rental Arrear Payments. Payment of rental arrears consists of a one-time payment for up to six months of rent in arrears, including any late fees on those arrears.

- Rental assistance cannot be provided to a program participant who is receiving tenant-based or project-based rental assistance through other public sources or receiving replacement housing payments under the Uniform Relocation Act (URA).
- Rental assistance cannot be provided for a unit unless the rent for that unit does not exceed the Fair Market Rent established by HUD, as provided under [24 CFR Part 888](#); and complies with HUD's standard of rent reasonableness, as established under [24 CFR 982.507](#).
- Applicant must enter into a Rental Assistance Agreement with the landlord for each unit receiving ESG rental assistance. Such agreement must meet the requirements of [24 CFR 576.106\(e\)](#).
- Each program participant receiving ESG rental assistance must have a legally binding written lease for the rental unit.
- Use with other subsidies. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period covered by the URA payments.

**Evaluation and documentation of client eligibility for assistance is required to be re-assessed at least every three months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance to ensure that they continue to meet the eligibility criteria, review program and appropriateness standards, and to re-evaluate the need for continued ESG assistance.**

- E. **Homelessness Management Information System (HMIS) Component** [24 CFR 576.107](#)– ESG funds may be used to pay the costs of participating in HMIS. Costs include hardware; software licenses or equipment; obtaining technical support; staff time for completing data entry and analysis; monitoring and reviewing data quality; HUD approved training; reporting; and coordinating and integrating the system. If applicant is a domestic violence service provider, it may use ESG funds to establish and operate a CoC approved comparable database that collects client level data over time and generates unduplicated aggregate reports based on the data.
- F. **Ineligible Activities** – mortgages; early termination fee; damages incurred by the program participant; costs that have been turned over to a collection agency; and payments that occurred outside of the grant year, except for arrears.

## SECTION 6: MATCHING FUNDS

ESG requires that States must match all but \$100,000 of their awards. NDHFA is proposing ~~for~~[for FY2024-2025 to continue](#) that 100 percent of the match requirement will be met using an allocation from the ND Homeless Grant Appropriation. Funds used for the match requirement will be added to the total available ESG funds and awarded to recipients who must use the funds for their ESG program. NDHFA will track which entities receive State ESG Match as part of their ESG financial award and will track how match was expended.

## SECTION 7: PROGRAM REQUIREMENTS

- A. Applicants must coordinate and integrate, to the maximum extent practicable, ESG funded activities with other programs targeted to those experiencing homelessness. Services must be coordinated to provide a strategic, community-wide system to prevent and end homelessness in the area. Examples of targeted homeless services are: CoC programs; PATH programs; HUD-VASH; Programs for Runaway and Homeless Youth, Emergency Food and Shelter Programs and Healthcare for the Homeless, etc.

- B. System and Program Coordination with Mainstream Resources. The applicant must coordinate and integrate, to the maximum extent practicable, ESG funded activities with mainstream housing, health, social services, employment, education, and youth programs for which individuals and households at risk of homelessness and individuals and households experiencing homelessness may be eligible.
- C. Coordinated Entry System (CES). ESG applicants are required to utilize the HMIS and Coordinated Access, Referral, Entry and Stabilization System (CARES) the regional coordinated entry system serving North Dakota and West Central Minnesota. ESG-funded program(s) or project(s) within the Continuum of Care's area must use the CARES. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider must participate in CARES and use a CoC approved alternative database.
- D. Written Standards and Procedures – Applicants shall adopt and consistently apply NDHFA's written standards for providing ESG. See NDHFA Website.
- E. Participation in HMIS. Applicants are required to collect and enter data into HMIS for all individuals and households served with ESG funds. Domestic violence service providers are exempt from participating in the HMIS system but must use a CoC approved alternative database that collects client level data overtime and can generate unduplicated aggregate reports on the data.
- F. Homeless participation –
  1. Unless the recipient is a State, the recipient must provide for the participation of not less than one individual previously or currently experiencing homelessness on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receives funding under ESG.
  2. If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with not less than one individual previously or currently experiencing homelessness in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under ESG. The plan must be included in the annual action plan required under [24 CFR 91.220](#).
  3. To the maximum extent practicable, the recipient or subrecipient must involve individuals and families experiencing homelessness in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.
- G. Faith-based activities
  1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.
  2. Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.
  3. Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization.

Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.
  5. ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).
  6. If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.
- H. Evaluation of Program Participants. Applicants must conduct an initial evaluation to determine the eligibility of each individual or household's eligibility for ESG assistance and the type of assistance necessary to regain stability in permanent housing. These evaluations must be conducted in accordance with the coordinated entry system and NDHFA's written standards.
- I. Case Management. Each program participant receiving **homelessness prevention or rapid re-housing assistance** must be required to meet regularly, not less than once per month, with a case manager (except where prohibited by Victims Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA) and develop an individualized plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area. Consistent with [24 CFR Part 576.401 \(e\)](#), housing stability case management can last no more than 30 days while the program participant seeks permanent housing and no more than 24 months once in permanent housing.
- J. Rent Reasonableness. Applicants must ensure that ESG funds used for rental assistance do not exceed the actual rental cost, which must be in compliance with HUD's standard of "rent reasonableness" and not to exceed the Fair Market Rent. Rent reasonableness means that the total rent charge, including utilities, for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.
- K. Program Accessibility. Applicants must operate each existing program or activity receiving federal financial assistance so that the program or activity, when viewing in its entirety is readily accessible for persons with disabilities.
- L. Housing Standards for Emergency Shelters. Any building for which ESG funds are used for conversion, rehabilitation or renovation, must meet state or local government safety and sanitation standards as applicable. Shelters must be also accessible in accordance with Section 504 of the Rehabilitation Act and

implementing regulations at [24 CFR Part 8](#); Fair Housing Act and implementing regulations at [24 CFR Part 100](#) and [Title II of the Americans with Disabilities Act](#) and [28 CFR Part 35](#); where applicable.

- M. Housing Standards for Permanent Housing. Applicants cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards. Applicants must certify that the unit has passed habitability standards BEFORE any ESG funds may be released. (Habitability Standards Inspection Form).

In addition, both emergency shelters and permanent housing must meet additional housing standards per [24 CFR Part 576.403](#), which includes the following:

1. The building must be structurally sound.
  2. Except where a shelter is intended for day use only, the program participant must be provided with an acceptable place to sleep and adequate space and security for themselves and their belongings.
  3. Each room or space must have a natural or mechanical means of ventilation.
  4. The water supply must be free of contamination.
  5. Individuals and households must have access to sanitary facilities that are in proper operating condition.
  6. Must have necessary heating/cooling facilities in proper operating condition.
  7. Must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety and sufficient electrical sources to permit the safe use of electrical appliances.
  8. Food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner and be inspected by the local public health department.
  9. Housing must be maintained in a sanitary condition.
  10. Working smoke detectors must be located near sleeping areas, located on each occupied level of the unit, and there must be a second means of exiting the building in the event of fire or other emergency. Shelters must have a fire alarm system designed for hearing impaired residents.
- N. Lead-Based Paint Requirements. Lead-Based Paint Poisoning Prevention Act applies to all shelters assisted under ESG program and all housing occupied by program participants. All applicants are required to conduct a Lead-Based Paint inspection on all units receiving assistance under the rapid re-housing AND homelessness prevention components if the unit is built before 1978 and a child under the age of six or a pregnant woman resides in the unit.
- O. Confidentiality. All applicants must develop and implement procedures to ensure the confidentiality of records pertaining to any individual or household provided with ESG assistance.
- P. Termination of Housing Assistance (576.402). Applicants may terminate assistance to a program participant who violates program requirements. Applicants may also resume assistance to a program participant whose assistance was previously terminated. In terminating assistance to a program participant, applicants must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process, at a minimum, must:
1. Recognize individual rights.
  2. Allow termination in only the most severe case.
  3. Provide a written notice to the program participant, with a clear statement of reasons for termination.
  4. Provide a review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision.
  5. Provide a prompt written notice of the final decision to the program participant.

- Q. Recordkeeping. All applicants must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and disability status data) that HUD may require within the timeframe specified.
- R. Sanctions. If NDHFA determines that an applicant is not complying with the requirements of the ESG Plan or other applicable federal or state laws, NDHFA will take appropriate actions, which may include:
1. Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction.
  2. Direct the applicant to cease incurring costs with grant funds.
  3. Require that some or all of the grant amounts be repaid to NDHFA.
  4. Reduce (de-obligate) the level of funds the applicant would otherwise be entitled to receive.
  5. Elect to make the applicant ineligible for future NDHFA funding.

Any ESG funds that become available to NDHFA as a result of a sanction or voluntary return by the applicant, will be made available (as soon as practicable) to other eligible applicants for use within the ESG Program.

- S. Conflicts of Interest. The availability of any type or amount of ESG assistance may not be conditioned on an individual's or household's acceptance or occupancy of emergency shelter or housing owned by the applicant, or a parent or subsidiary of the applicant. No applicant may, with respect to individuals or households occupying housing owned by the applicant, or any parent or subsidiary of the applicant, carry out the initial evaluation required under [24 CFR Part 576.401](#) or administer homelessness prevention assistance under [24 CFR Part 576.103](#).

For procurement of goods and services, the applicant must comply with the codes of conduct and conflict of interest requirements under [2 CFR Part 200.112](#).

- T. Monitoring. NDHFA is responsible for monitoring all ESG activities to ensure program requirements established by HUD and NDHFA are met. Monitoring will consist of site visits to applicant's place of business, review of all reimbursement requests, and review of HMIS information. NDHFA will conduct site visits at least once every two years. NDHFA will also provide support and technical assistance, as needed.

Additional monitoring of applicants may be conducted by HUD's office of Community Planning and Development, HUD's Office of Special Needs Assistance Program, or any other applicable federal agency. These agencies will be monitoring the ESG program nationwide to determine compliance with federal program requirements.

## SECTION 8: SELECTION CRITERIA

Applications which show a concerted effort to coordinate services with other agencies and other funding sources to best serve the individuals and households will be given priority.

Total points allotted equal up to 110 points.

Eligible applicants must be able to demonstrate prior experience serving individuals and households at-risk of or experiencing homelessness. Also, applicants must have staff with demonstrated expertise in case management skills.

Due to the demand for the funds ESG will be awarded based upon the following:

- |    |   |                              |
|----|---|------------------------------|
| A. | Demonstrated the need for the funding. ....   | up to <del>1030</del> points |
| B. | Plan for distribution of the funds in an effective, efficient and timely manner.....  | up to <del>105</del> points  |
| C. | Collaboration efforts with other targeted homeless services and mainstream resources. ....  | up to 20 points              |
| D. | The applicant's active involvement in CoC, CARES, and HMIS process, including signed partnership agreements and the use of CARES for housing referrals (if applicable to the funding component) ..... | up to 15 points              |

- E. The applicant's plan to involve, to the maximum extent practicable, individuals and families experiencing homelessness in constructing, renovating, maintaining, and operating facilities assisted under the grant, and in providing services for occupants of these facilities ..... up to 5 points
- F. The applicant included how the Housing First model is used within the agency..... up to 10 points
- G. ~~FY23~~ Spending Performance and Monitoring. ~~FY24~~ ESG Recipients with 90 percent of their ~~2023-2024~~ awards expended, timely reimbursement request history, reporting, and no outstanding monitoring findings will receive points for a renewal project..... up to ~~3010~~ points
- H. Participation in CoC, ESG, and NDHG required training, including, but not limited to, monthly training and annual in-person HMIS Training ..... up to ~~105~~ points

When making final selections, the NDHFA review committee may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on the demand for grant amounts, the extent to which the respective activities address the needs of the individuals and households, and the reasonableness of the costs proposed. The NDHFA review committee reserves the right to award ESG funds to any applicant or deny ESG funds to any applicant if it determines, in its sole discretion, the project is unacceptable based on, but not limited to the following:

- Information regarding the fact that a particular market is saturated with emergency units and/or services.
- The applicant has not demonstrated capacity to administer the ESG Program.
- The applicant's (including any related party's) insufficient prior administration of NDHFA programs, including ESG, which may have resulted in monitoring findings.

## SECTION 9: GRANT ADMINISTRATION

Upon project selection, an award letter and financial agreement will be forwarded to each applicant detailing a description of the activities funded, and award conditions. Execution of the financial agreement is to be completed by a representative of the applicant and NDHFA.

Grant funds will be considered obligated once the grant agreement has been signed by the applicant. A grant agreement will be sent under separate cover detailing the applicant's requirements and responsibilities, including those required for the environmental review. The applicant will be required to sign and return the grant agreement to NDHFA.

The grant agreement will indicate the activities and the corresponding approved funding amounts by category. An approved Request for Amendment is needed from NDHFA to vary from the funding amounts and categories as specified in the executed grant agreement.

Grant agreements will be for a term not to exceed 12 months. Applicants must expend NDHFA funds for eligible activities within the grant period.

## SECTION 10: METHOD OF PAYMENT

Payment of ESG funds will be completed as a reimbursement, in a chronological order of request for funds number. Requests for payment must be received by NDHFA at least quarterly, following the ESG Drawdown Schedule below or more frequently as needed. Requests must be submitted in a format approved by NDHFA and must include a detailed breakdown of expenses incurred and ESG funds requested. Copies of all expenses and documentation of payment must be submitted for verification purposes. It is preferred that requests for funds are over \$1,000. Lack of documentation or explanation may result in a delay in payment.

If your agency has not met the spending deadlines, NDHFA has the authority to deobligate unused funds. On a case-by-case basis, a request for a waiver must be made to the Director of NDHFA to prevent deobligation of funds.

ESG Drawdown Schedule		
Quarter	Dates	Percentage Drawn
1	July 1 – September 30	Awards Announced
2	October 1 – December 31	50%
3	January 1 – March 31	75%
4	April 1 – June <del>2030</del>	100%

## At Risk of Homelessness



~~03/13/202502/12/202502/03/202501/27/2025~~

**ATTACHMENT B**

## Homeless Definition



# Homeless Definition

<b>CRITERIA FOR DEFINING HOMELESS</b>	<b>Category 1</b>	Literally Homeless	1. Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: <ul style="list-style-type: none"> <li>i. Has a primary nighttime residence that is a public or private place not meant for human habitation;</li> <li>ii. Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); <u>or</u></li> <li>iii. Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.</li> </ul>
	<b>Category 2</b>	Imminent Risk of Homelessness	2. Individual or family who will imminently lose their primary nighttime residence, provided that: <ul style="list-style-type: none"> <li>i. Residence will be lost within 14 days of the date of application for homeless assistance;</li> <li>ii. No subsequent residence has been identified; <u>and</u></li> <li>iii. The individual or family lacks the resources or support networks needed to obtain other permanent housing.</li> </ul>
	<b>Category 3</b>	Homeless under other Federal statutes	3. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: <ul style="list-style-type: none"> <li>i. Are defined as homeless under the other listed federal statutes;</li> <li>ii. Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;</li> <li>iii. Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; and</li> <li>iv. Can be expected to continue in such status for an extended period of time due to special needs or barriers.</li> </ul>

Attachment 4C

## 20254 ALLOCATION PLAN

North Dakota Homeless Grant



~~Planning and Housing Development~~Community Housing and Grants Management Division

2624 Vermont Ave. | PO Box 1535 Bismarck, ND 58502-1535

800-292-8621 or 701-328-8080 | 800-435-8590 (Spanish) | 711 (TTY)

[www.ndhfa.org](http://www.ndhfa.org) | [hfahomelessprogramsinfo@nd.gov](mailto:hfahomelessprogramsinfo@nd.gov)

Una traducción al español de este documento está disponible solicitándola en [ndhfa.org](http://ndhfa.org)



Field Code Changed

This recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Accommodations: Individuals who require accommodations including translated documents, an alternate format, or to request a copy of the plan may contact:

504 Coordinator:  
Jennifer Henderson  
North Dakota Housing Finance Agency  
2624 Vermont Avenue  
Bismarck ND 58504  
800-292-8621 or 701-328-8080  
800-435-8590 (Spanish)  
711 (Voice or TTY)

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## SECTION 1: PROGRAM OVERVIEW

This document provides a brief overview of the North Dakota Homeless Grant (NDHG) Program and the **process to apply for funds from the FY 2025<sup>54</sup> NDHG** allocation. NDHG will follow all Emergency Solutions Grant (ESG) program information along with the following additional activities.

A. **Transportation** – This activity will be included in the Shelter Operations, Homeless Prevention, and Rapid Rehousing components. The transportation costs will cover travel costs for program participants to another state. This will be a one-time payment per program participant. In order to pay for transportation costs to relocate people to a destination outside the state, the program participant must agree to:

1. Provide written documentation that they have housing in place at their destination.
2. Sign NDHG Transportation Activity (SFN 60465) agreeing that this is a one-time assistance and acknowledge that they will not be eligible for the same assistance in the future.
3. Agree to allow the State to keep track of this assistance and to share this information with other homeless service providers in the state.

B. **Rental Assistance** – This activity will be included in the Homeless Prevention and Rapid Re-Housing components. This funding can be used to pay above the Fair Market Rent (FMR) established by the U.S. Department of Housing and Urban Development (HUD), only if all other resources for finding rental assistance at the FMR have been exhausted. Program participants should be encouraged to pay a portion of their rent if possible. Subrecipients **must** complete and file a Rent Reasonableness Checklist and Certification (SFN 59386) for **rental assistance above FMR**.

NOTE: Separate leases must be completed for each tenant if two or more are living together in an apartment and if one or more tenants are eligible for NDHG funding and the other tenants are not eligible for NDHG funding.

C. **Income Limits** – Assistance may be provided to individuals and families who meet the criteria for at risk of homelessness and homeless definition according to the ESG rules and have an annual income below 50% of median family income for the area. This income limit is higher than ESG Rules.

D. **Award Limit** – The minimum award available is \$50,000 per subrecipient per year.

Applicants should review the ESG Interim Rule found at [24 CFR Parts 91 and 576](#) for complete program information. To the extent that anything contained in this document does not meet the requirements of the final ESG Program rule, to be published at a later date, such final rule or regulation will take precedence over this document.

## SECTION 2: 2025<sup>54</sup> FUNDING LEVELS

For FY 2025<sup>54</sup>, an amount of ~~\$1,250,000~~ half of the biennial appropriation ~~in state funding~~ will be available. NDHFA will use a portion of the funds available to provide 100 percent of the ESG match liability. This total is approximately \$386,494 subject to the final FY2025<sup>54</sup> ESG allocation from HUD. Match is calculated based on the total ESG allocation minus \$100,000. ~~Additionally, a total of \$43,200 HIF Homeless funds will be allocated under the NDHG application round.~~

FY 2024 Funding Estimate		
NDHG	\$ <del>1,250,000.00</del> <u>TBD</u>	
ESG Match Liability	(386,494.00)	*Estimated
<del>HIF Homeless</del>	<del>43,200.00</del>	
Total	<del>906,706.00</del> <u>TBD</u>	

Applications will be reviewed and scored based on the selection criteria outlined in the Selection Criteria. The minimum award will be \$50,000, a maximum award level has not been established.

### SECTION 3: ELIGIBLE APPLICANTS

Applicants must be federally recognized non-profits or units of local government or tribal entities. Governmental organizations such as public housing agencies and local housing finance agencies are not eligible applicants under the NDHG Program. Applicants must be in compliance with the ESG Interim Rule (Final Rule when published), the State's Continuum of Care (CoC) and ESG written standards, and applicable state and federal policies and procedures, including compliance with federal and state non-discrimination laws.

By virtue of submitting an application, applicants agree to develop program-specific written standards based on the State's ESG and CoC written standards for the administration of the NDHG program, maintain standard accounting practices including internal controls and fiscal accounting procedures, track agency and program budgets by revenue sources and expenses, and have an available cash flow to effectively operate their programs since NDHG funding is provided on a reimbursement basis.

Applicants with outstanding monitoring or audit findings issued by the Internal Revenue Service, HUD, North Dakota Housing Finance Agency (NDHFA), Department of Commerce Division of Community Services, or under CoC funding are not eligible to apply.

Eligible applicants must be able to demonstrate prior experience serving individuals and households at risk of or experiencing homelessness. Also, applicants must have staff with demonstrated expertise in case management skills.

Applicants will be required to utilize the Homeless Management Information System (HMIS) and the Statewide CoC's coordinated entry system. Domestic violence service providers must establish and operate a CoC-approved comparable database that collects client-level data over time and can generate unduplicated aggregate reports based on the data.

Applicants are required to be active members of the North Dakota CoC.

### SECTION 4: STATUTORY DEFINITIONS

North Dakota Homeless Grant will follow all Emergency Solutions Grant statutory definitions unless specifically identified in this plan. Emergency Solutions Grant statutory definitions can be found at [24 CFR Part 576.2](#) and 24 CFR Part 91.5.

### SECTION 5: ACTIVITIES

The North Dakota Homeless Grant will be utilized to provide services to individuals and families experiencing homelessness and those at risk of becoming homeless in the following eligible activities. It is important for applicants to remember that NDHG funds are to be used for direct assistance, **only when there is no other assistance available for the individual or household**. Applicants should refer to [24 CFR Part 576.100-576.109](#) of the ESG Interim Rule for further clarification on the following eligible activities:

1. Street Outreach
2. Emergency Shelter
3. Homelessness Prevention
4. Rapid Re-housing Assistance
5. Homeless Management Information System

- A. **Street Outreach** ([24 CFR Part 576.101](#)). Funds may be used for costs of providing essential services to reach out to unsheltered individuals and families; connect them with emergency shelter, housing, or critical services; and provide urgent non-facility-based care to unsheltered individuals and families who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. Eligible activities include the following:
1. Engagement Activities
  2. Case Management
  3. Emergency Health Services
  4. Emergency Mental Health Services
  5. Transportation
- A. **Emergency Shelter Component** ([24 CFR Part 576.102](#)). Funds may be used for the costs of providing essential services to individuals and households in emergency shelters, renovating buildings to be used as emergency shelters, and operating emergency shelters. Eligible activities include the following:
1. **Essential Services.** Essential services provided to individuals and households who are in emergency shelters can include case management, childcare, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, transportation, and services for special populations.
  2. **Renovation Activities.** Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization. Note – this is a low funding priority for NDHFA.
  3. **Shelter Operations.** Eligible costs are the costs of maintenance (including minor or routine repairs), insurance, utilities, rent, food, furnishing/appliances, and supplies necessary for the operation of the emergency shelter.
- B. **Homelessness Prevention Component** ([24 CFR Part 576.103](#)). Funds may be used to provide relocation and stabilization assistance and rental assistance to prevent an individual or household from becoming homeless. Applicants can assist individuals and households who meet the following qualifications under homelessness prevention:
1. Individuals or households who have an income **below 50%** of Area Median Income (AMI) (Very Low Income) as determined by HUD, with adjustments for smaller and larger household size. An individual or family's annual income must be compared to area income limits by county published by HUD: <https://www.huduser.gov/portal/datasets/il.html#2022>.
  2. Individuals or households who qualify as homeless or at-risk of becoming homeless as specified in ([24 CFR Part 576.103](#)) and [576.2](#). See Attachments A and B.
- C. **Rapid Re-Housing Assistance Component** ([24 CFR Part 576.104](#)). NDHG funds may be used to provide relocation and stabilization assistance and rental assistance to help an individual or family experiencing homelessness move as quickly as possible into permanent housing and achieve stability in that housing. Rapid Re-Housing Assistance may be provided to individuals and households lacking a fixed, regular, and adequate nighttime residence or any individual or family who is fleeing or attempting to flee domestic violence, assault or other life-threatening conditions that relate to violence. **This component may also be used for individuals who meet the definition of being at risk of homelessness.**
1. **Housing Relocation and Stabilization Services** ([24 CFR Part 576.104](#)). Homelessness prevention and rapid re-housing are eligible NDHG activities that focus on serving different individuals or households.

Homelessness prevention and rapid re-housing provide assistance in accordance with the housing relocation and stabilization services requirements in [24 CFR Part 576.105](#), the short-term (up to 3 months) and medium-term (4-24 months) rental assistance requirements in [24 CFR Part 576.106](#) and the written standards and procedures under [24 CFR Part 576.400](#). **NDHG funds may be used for payment of the following under both homelessness prevention and rapid re-housing components:**

- a. Rental application fees.
  - b. Security deposits equal to no more than 2 month's rent.
  - c. Last month's rent. If necessary to obtain housing for a program participant, the last month's rent may be paid from NDHG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program.
  - d. Standard utility deposits.
  - e. Utility payment. NDHG funds may pay up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears per service. Total utility payment assistance to a program participant cannot exceed 24 months during any 3-year period.
  - f. Moving costs. Truck rental or hiring a moving company. Assistance may also include payment of temporary storage fees for up to 3 months. Payment of temporary storage fees in arrears is not eligible.
  - g. Service costs. Housing search and placement, housing stability case management, mediation activities, legal services necessary to resolve housing issues, and credit repair/counseling services.
  - h. If a program participant receiving short- or medium-term rental assistance under § 576.106 meets the conditions for an emergency transfer under 24 CFR 5.2005(e), ESG funds may be used to pay amounts owed for breaking a lease to effect an emergency transfer. These costs are not subject to the 24-month limit on rental assistance under § 576.106.
2. **Rental Assistance** ([24 CFR Part 576.106](#)) - NDHG funds may provide a program participant with short-term (up to 3 months) or medium-term (4-24 months) of rental assistance. Applicants should base the time of rental assistance provided to households based on the household's needs, as long as they do not exceed the following parameters:
- a. Short-term (up to 3 months) or medium-term (4-24 months) of rental assistance in either a scattered site or site-based unit.
  - b. Rental Arrear Payments. Payment of rental arrears consists of a one-time payment for up to six months of rent in arrears, including any late fees on those arrears.
  - c. Rental assistance cannot be provided to a program participant who is receiving tenant-based or project-based rental assistance through other public sources or receiving replacement housing payments under the Uniform Relocation Act (URA).
  - d. Rental assistance will be included in the Homeless Prevention and Rapid Re-Housing components. This funding can be used to pay above the FMR established by HUD, only if all other resources for finding rental assistance at the FMR have been exhausted. Program participants should be encouraged to pay a portion of their rent if possible or develop a step-down approach to rental assistance with their case manager. Subrecipients **must** complete and file a Rent Reasonableness Checklist and Certification (SFN59386) for rental assistance above FMR.
  - e. Applicant must enter into a Rental Assistance Agreement with the landlord for each unit receiving NDHG rental assistance. Such agreement must meet the requirements of [24 CFR 576.106\(e\)](#).

- f. Each program participant receiving NDHG rental assistance must have a legally binding written lease for the rental unit.
- g. Separate leases must be completed for each tenant if two or more are living together in an apartment and if one or more tenants are eligible for NDHG funding and the other tenants are not eligible for NDHG funding.
- h. Use with other subsidies. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

Evaluation and documentation of client eligibility for assistance is required to be re-assessed at least every three months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance to ensure that they continue to meet the eligibility criteria, review program and appropriateness standards, and to re-evaluate the need for continued NDHG assistance.

- D. **HMIS Component** – NDHG funds may be set aside to be used to administer HMIS. The current HMIS Lead Agency for North Dakota is the Institute for Community Alliances.

**Ineligible Activities** – mortgages, early termination fee (unless an emergency transfer is required), damages incurred by the program participant, costs that have been turned over to a collection agency, and payments that occurred outside of the grant year, except for arrears.

## SECTION 6: NDHG PROGRAM REQUIREMENTS

- A. Applicants must coordinate and integrate, to the maximum extent practicable, NDHG funded activities with other programs targeted to people experiencing homelessness. Services must be coordinated to provide a strategic, community-wide system to prevent and end homelessness in the area. Examples of targeted homeless services are: CoC programs, PATH programs, HUD-VASH, Programs for Runaway and Homeless Youth, Emergency Food and Shelter Programs, Healthcare for the Homeless, etc.
- B. System and Program Coordination with Mainstream Resources. The applicant must coordinate and integrate, to the maximum extent practicable, NDHG funded activities with mainstream housing, health, social services, employment, education, and youth programs for which individuals and households at risk of homelessness and individuals or families experiencing homelessness may be eligible.
- C. Coordinated Access, Referral, Entry, and Stabilization (CARES) System. CARES is the coordinated entry system for the ND CoC. NDHG-funded programs or projects within the Continuum of Care's area must use the CARES system. The recipient and subrecipient must work with the CoC to ensure the screening, assessment, and referral of program participants are consistent with the written standards required by paragraph (4) of this section. A victim service provider may use a CoC approved alternative database.
- D. Written Standards and Procedures. Applicants shall develop program-specific written standards based on ND CoC Written Standards for ESG and CoC Programs for providing NDHG.
- E. Participation in HMIS. Applicants are required to collect and enter data into the HMIS system for all individuals and households served with NDHG funds. Domestic violence service providers are exempt from participating in the HMIS system but must use a CoC approved comparable database that collects client level data overtime and can generate unduplicated aggregate reports on the data.
- F. Person(s) with lived experience participation

1. Unless the recipient is a State, the recipient must provide for the participation of not less than one person with lived experience (either current or within the past seven years) on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under NDHG.
  2. If the recipient is unable to meet the requirement under paragraph (a), it must instead develop and implement a plan to consult with persons with lived experience when considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under NDHG. The plan must be included in the annual action plan required under 24 CFR 91.220.
  3. To the maximum extent practicable, the recipient or subrecipient must involve persons with lived experience in constructing, renovating, maintaining, and operating facilities assisted under NDHG, in providing services assisted under NDHG, and in providing services for occupants of facilities assisted under NDHG. This involvement may include employment or volunteer services.
- G. Faith-based activities:
1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive NDHG funds. Neither the Federal Government nor a State or local government receiving funds under NDHG shall discriminate against an organization on the basis of the organization's religious character or affiliation.
  2. Organizations that are directly funded under NDHG may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under NDHG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under NDHG, and participation must be voluntary for program participants.
  3. Any religious organization that receives NDHG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct NDHG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide NDHG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an NDHG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
  4. An organization that receives NDHG funds shall not, in providing NDHG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.
- H. Evaluation of Program Participants. Applicants must conduct an initial evaluation to determine eligibility of each individual or household's eligibility for NDHG assistance and the type of assistance necessary to regain stability in permanent housing. These evaluations must be conducted in accordance with CARES and ND CoC Written Standards for ESG and CoC Programs.
- I. Case Management. Each program participant receiving homelessness prevention or rapid re- housing assistance must be required to meet regularly, not less than once per month, with a case manager (except where prohibited by Victims Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)) and develop an individualized plan to assist the program participant to retain permanent housing after NDHG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area. Consistent with 24 CFR Part 576.401(e), housing stability case management can last no more than

30 days while the program participant seeks permanent housing and no more than 24 months once in permanent housing.

- J. Rent Reasonableness documentation. Applicants may use NDHG funds to pay over and above the FMR established by HUD only if other resources for finding rental assistance at the FMR have been exhausted. Subrecipients must complete and file a Rent Reasonableness Checklist and Certification (SFN59386) for rental assistance above FMR. Rent reasonableness means that the total rent charge, including utilities, for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units. A complete listing of FMR, by area, is found at: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/index.cfm>. Applicants must ensure that NDHG funds used for rental assistance do not exceed the actual rental cost, which must be in compliance with HUD's standard of "rent reasonableness". Applicants may use NDHG funds to pay over and above the FMR established by HUD, only if all other resources for finding rental assistance at the FMR have been exhausted.
- K. Program Accessibility. Applicants must operate each existing program or activity receiving federal financial assistance so that the program or activity, when viewing in its entirety is readily accessible for persons with disabilities.
- L. Housing Standards for Emergency Shelters. Any building for which NDHG funds are used for conversion, rehabilitation, or renovation, must meet state or local government safety and sanitation standards as applicable. Shelters must be accessible in accordance with Section 504 of the Rehabilitation Act and implementing regulations at [24 CFR Part 8](#); Fair Housing Act and implementing regulations at [24 CFR Part 100](#) and [Title II of the Americans with Disabilities Act](#) and [28 CFR Part 35](#); where applicable.
- M. Housing Standards for Permanent Housing. Applicants cannot use NDHG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards. Applicants must certify that the unit has passed habitability standards BEFORE any NDHG funds may be released (Habitability Standards Inspection Form). In addition, both emergency shelters and permanent housing must meet additional housing standards per [24 CFR Part 576.403](#) which includes the following:
  1. The building must be structurally sound.
  2. Except where a shelter is intended for day use only, the program participant must be provided with an acceptable place to sleep and adequate space and security for themselves and their belongings.
  3. Each room or space must have a natural or mechanical means of ventilation.
  4. The water supply must be free of contamination.
  5. Individuals and households must have access to sanitary facilities that are in proper operating condition.
  6. Must have necessary heating/cooling facilities in proper operating condition.
  7. Must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety and sufficient electrical sources to permit the safe use of electrical appliances.
  8. Food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
  9. Housing must be maintained in a sanitary condition.
  10. Working smoke detectors must be located near sleeping areas, located on each occupied level of the unit, and there must be a second means of exiting the building in the event of fire or other emergency. Shelters must have a fire alarm system designed for hearing impaired residents.
- N. Lead-Based Paint Requirements. The Lead-Based Paint Poisoning Prevention Act applies to all shelters assisted under NDHG program and all housing occupied by program participants. All applicants are required

to conduct a Lead-Based Paint inspection on all units receiving assistance under the rapid re-housing AND homelessness prevention components if the unit is built before 1978 and a child under the age of six or a pregnant woman resides in the unit.

- O. Confidentiality. All applicants must develop and implement procedures to ensure the confidentiality of records pertaining to any individual or household provided with NDHG assistance.
- P. Termination of Housing Assistance (576.402). Applicants may terminate assistance to a program participant who violates program requirements. Applicants may also resume assistance to a program participant whose assistance was previously terminated. In terminating assistance to a program participant, applicants must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process, at a minimum, must:
  - 1. Recognize individual rights.
  - 2. Allow termination in only the most severe case.
  - 3. Provide a written notice to the program participant, with a clear statement of reasons for termination.
  - 4. Provide a review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision.
  - 5. Provide a prompt written notice of the final decision to the program participant.
- Q. Recordkeeping. All applicants must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and disability status data) that HUD may require within the timeframe specified.
- R. Sanctions. If NDHFA determines that an applicant is not complying with the requirements of the NDHG Plan or other applicable federal or state laws, NDHFA will take appropriate actions, which may include:
  - 1. Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction.
  - 2. Direct the applicant to cease incurring costs with grant funds.
  - 3. Require that some or all of the grant amounts be repaid to NDHFA.
  - 4. Reduce (de-obligate) the level of funds the applicant would otherwise be entitled to receive.
  - 5. Elect to make the applicant ineligible for future NDHFA funding.

Any NDHG funds that become available to NDHFA as a result of a sanction or voluntary return by the applicant, will be made available (as soon as practicable) to other eligible applicants for use within the NDHG Program.

- S. Conflicts of Interest. The availability of any type or amount of NDHG assistance may not be conditioned on an individual's or household's acceptance or occupancy of emergency shelter or housing owned by the applicant, or a parent or subsidiary of the applicant. No applicant may, with respect to individuals or households occupying housing owned by the applicant, or any parent or subsidiary of the applicant, carry out the initial evaluation required under [24 CFR Part 576.401](#) or administer homelessness prevention assistance under [24 CFR Part 576.103](#).

For procurement of goods and services, the applicant must comply with the codes of conduct and conflict of interest requirements under [2 CFR Part 200.112](#).

- T. Monitoring. NDHFA is responsible for monitoring all NDHG activities to ensure program requirements established by HUD and NDHFA are met. Monitoring will consist of site visits to applicant's place of business, review of all reimbursement requests, and review of HMIS information. NDHFA will conduct site visits at least once every two years. NDHFA will also provide support and technical assistance, as needed.

## SECTION 7: SELECTION CRITERIA

### Set-aside for HMIS

Funds will be prioritized to fund any financial gap for the approved HMIS Lead organization. The funding level will be determined based on gap financing. The HMIS lead organization should first be funded using available CoC awards and ESG funding, the remaining need from the current approved budget will be supported with NDHG funding.

Applications which show a concerted effort to coordinate services with other agencies and other funding sources to best serve the individuals and households will be given priority. Total points allotted equal up to ~~110~~<sup>100</sup> points.

Due to the demand for the funds, NDHG grants will be awarded based upon the following:

- ~~A. Collaborative projects that incorporate street outreach/shelter, rapid rehousing (housing navigation/rental assistance, and case management/supportive services). ..... Up to 30 points~~  
~~To receive points under this category, the application must provide detailed program plan that includes MOUs or written agreements that support the rapid rehousing component requirements.~~
- ~~B-A. .... N~~  
 need for funding. .... Up to ~~10~~<sup>20</sup> points
- ~~B. Plan for distribution of the funds in an effective, efficient, and timely manner. .... Up to 10~~<sup>15</sup> points
- ~~C. Collaboration efforts with other targeted homeless services and mainstream resources. .... up to 20 points~~
- D. The applicant's active involvement in CoC, CARES, and HMIS, including signed partnership agreements and the use of CARES for housing referrals (if applicable to the funding component). .... Up to 15 points
- E. The applicant's plan to involve, to the maximum extent practicable, persons with lived experience in constructing, renovating, maintaining, and operating facilities assisted under NDHG, and in providing services for occupants of these facilities. .... Up to ~~5~~<sup>10</sup> points
- F. The applicant included how the Housing First model is used within the agency. .... Up to ~~10~~<sup>5</sup> points
- G. Participation in CoC, NDHG, and ESG required training, including, but not limited to, monthly training and annual in-person HMIS training. .... Up to ~~10~~<sup>5</sup> points
- ~~H. Spending and performance monitoring, FY24 recipients with 90 percent of their 2024 awards expended, timely reimbursement request history, reporting, and no outstanding monitoring findings will receive timely expenditure of prior grant funding. .... Up to 30~~<sup>5</sup> points
- ~~Applications will receive a % score based on the number of points received out of the total points available.~~  
~~New applications will not be subject to scoring criteria H. and therefore their % score will be calculated on the total points received out of 80.~~

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When making final selections, the NDHFA review committee may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on the demand for grant amounts, the extent to which the respective activities address the needs of the individuals and households, and the reasonableness of the costs proposed.

The NDHFA review committee reserves the right to award NDHG funds to any applicant or deny NDHG funds for any applicant if it determines, in its sole discretion, the project is unacceptable based on, but not limited to the following:

- A. Information regarding the fact that a particular market is saturated with emergency units and/or services.
- B. The applicant has not demonstrated capacity to administer the NDHG Program.

- C. The applicant's (including any related party's) insufficient prior administration of NDHFA programs, including NDHG, which may have resulted in monitoring findings.

## SECTION 8: GRANT ADMINISTRATION

Upon project selection, an award letter and financial agreement will be forwarded to each applicant detailing a description of the activities funded and award conditions. Execution of the financial agreement is to be completed by a representative of the applicant and NDHFA.

Grant funds will be considered obligated once the grant agreement has been signed by the applicant. A grant agreement will be sent under separate cover detailing the applicant's requirements and responsibilities. The applicant will be required to sign and return the grant agreement to NDHFA.

The grant agreement will indicate the activities and the corresponding approved funding amounts by category. An approved Request for Amendment is needed from NDHFA to vary from the funding amounts and categories as specified in the executed grant agreement.

Grant agreements will be for a term not to exceed 12 months. Applicants must expend NDHG funds for eligible activities within the grant period.

## SECTION 9: METHOD OF PAYMENT

Payment of NDHG funds will be completed as a reimbursement, in a chronological order of request for funds. Requests for payment must be received by NDHFA at least quarterly. Requests must be submitted in a format approved by NDHFA and must include a detailed breakdown of expenses incurred and NDHG funds requested. Copies of all expenses and documentation of payment must be submitted for verification purposes. It is preferred that requests for funds are over \$1,000. Lack of documentation or explanation may result in a delay in payment.

If your agency has not met the spending deadlines, NDHFA has the authority to de-obligate unused funds. On a case-by-case basis, a request for a waiver must be made to the Executive Director of NDHFA to prevent de-obligation of funds.

NDHG Drawdown Schedule		
Quarter	Dates	Percentage Drawn
1	July 1 - September 30	First Draw Required
2	October 1 – December 31	50%
3	January 1 – March 31	75%
4	April 1 – June <del>2030</del>	100%

**ATTACHMENT A**

## At Risk of Homelessness



# At Risk of Homelessness

CRITERIA FOR DEFINING AT RISK OF HOMELESSNESS	Category 1	Individuals and Families	<p>An individual or family who:</p> <p>A. Has an annual income below <u>30%</u> of median family income for the area; <u>AND</u></p> <p>B. Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the “homeless” definition; <u>AND</u></p> <p>C. Meets one of the following conditions:</p> <ol style="list-style-type: none"> <li>1. Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for assistance; <u>OR</u></li> <li>2. Is living in the home of another because of economic hardship; <u>OR</u></li> <li>3. Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; <u>OR</u></li> <li>4. Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; <u>OR</u></li> <li>5. Lives in an SRO or efficiency apartment unit in which there reside more than 2 persons or lives in a larger housing unit in which there reside more than one and a half persons per room; <u>OR</u></li> <li>6. Is exiting a publicly funded institution or system of care; <u>OR</u></li> <li>7. Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved Con Plan.</li> </ol>
	Category 2	Unaccompanied Children and Youth	A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal statute.

NDHG Allocation Plan

	<b>Category 3</b>	Families with Children and Youth	An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.
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**ATTACHMENT B**  
Homeless Definition



# Homeless Definition

<b>CRITERIA FOR DEFINING HOMELESS</b>	<b>Category 1</b>	Literally Homeless	<p>A. Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:</p> <p>A. Has a primary nighttime residence that is a public or private place not meant for human habitation;</p> <p>B. Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); <u>or</u></p> <p>C. Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.</p>
	<b>Category 2</b>	Imminent Risk of Homelessness	<p>B. Individual or family who will imminently lose their primary nighttime residence, provided that:</p> <p>A. Residence will be lost within 14 days of the date of application for homeless assistance;</p> <p>B. No subsequent residence has been identified; <u>and</u></p> <p>C. The individual or family lacks the resources or support networks needed to obtain other permanent housing.</p>
	<b>Category 3</b>	Homeless under other Federal statutes	<p>C. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:</p> <ol style="list-style-type: none"> <li>1. Are defined as homeless under the other listed federal statutes;</li> <li>2. Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;</li> <li>3. Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; and</li> <li>4. Can be expected to continue in such status for an extended period of time due to special needs or barriers.</li> </ol>

**March 25, 2025**

**TO: Industrial Commission**

**FR: David Flohr, Executive Director**

**Report: Authorizing Declarations of Intent to Issue Multifamily Revenue Bonds**

On February 7, 2025, NDHFA issued a Declaration of "Official Intent" to issue Multifamily Revenue Bonds in the amount not to exceed \$5,600,000. The proceeds of the bonds will be used for the acquisition and rehabilitation of Wild Rose Senior housing 48-unit affordable rental project located in Minot, North Dakota. A copy of the declarations is attached.

The issuance of tax-exempt bonds is required for a project to qualify for a non-competitive 4% tax credit allocation. The authority to issue the intent declaration was given by a Resolution Authorizing Declarations of Intent adopted by the Commission on March 24, 2015.

Wild Rose Senior Housing is a acquisition/rehabilitation of an existing 48-unit general occupancy project currently known as Southside Living, formally Guardian Manor. Southside living is a LIHTC project built in 1993 and will finish its original period of affordability on 12/31/2026. The project is in need of significant rehabilitation updates including unit modernization, HVAC replacement, and exterior improvements.

The project is optimal for conversion to senior housing as it is single-level cottage style units with community space and is located in close proximity to grocery and medical facilities.


The developer, American Covenant Senior Housing Foundation from Kalispell, MT, has experience owning and operating senior living communities that offer supportive services as needed. Total development costs of \$8.1 million of which \$3.9 million will be in hard rehabilitation costs. Completion of this project will preserve existing affordable housing for an additional 30 years. Other funding awarded includes \$300,359 4% LIHTCs, and \$2,150,000 HIF.

The issuance of an official intent memo declares the intention to issue multifamily bonds, however does not obligate the Agency to give final approval for the issuance of the bonds. Final approval for issuance of the bonds can only be authorized by independent action of the Industrial Commission. Prior to final bond issuance, the application must meet underwriting conditions and receive an approval for 4% tax credits. Once underwriting conditions are met, the project will then presented to the Commission with a request to approve the issuance of a Resolution Authorizing Revenue Bonds and approve the substantially drafted bond documents.



## MEMORANDUM

TO: WILD ROSE SENIOR HOUSING

FROM: David Flohr, Executive Director 

DATE: FEBRUARY 7, 2025

RE: Declaration of "Official Intent" with respect to Authorizing Declarations of Intent to Issue Multifamily Revenue Bonds

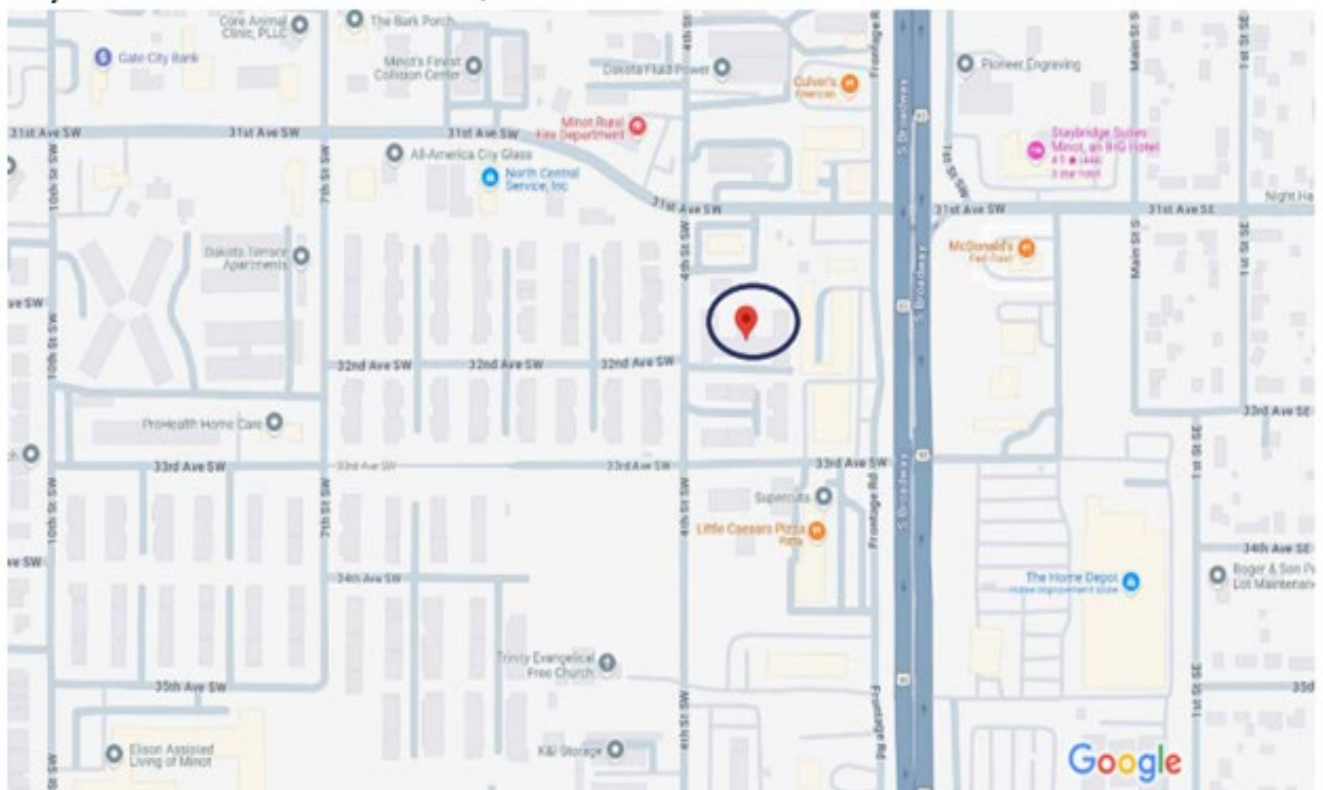
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By the authority granted in a certain resolution entitled "Resolution Authorizing Declarations of Intent to Issue Multifamily Revenue Bonds" and adopted by the Industrial Commission of North Dakota on March 24, 2015, I hereby declare, pursuant to Section 1.150-2 of the Internal Revenue Code Regulations, the Agency's intention to issue bonds in an amount not to exceed \$5,600,000 to provide funds to finance a loan with respect to the Project noted above (a 48 unit senior affordable housing rental project located in Minot, North Dakota), subject to the following:

The declaration of intention stated in the preceding paragraph does not obligate the Agency to give final approval for the issuance of said Bonds. Final approval of the issuance of the Bonds can only be authorized by independent action of the Industrial Commission, which may contain such conditions thereto as the Industrial Commission may deem appropriate. The Industrial Commission in its absolute discretion may refuse to give final approval to authorize the issuance of the Bonds and shall not be liable to any person, including, but not limited to, the developer, the borrower or any other applicant, for its refusal or inability to do so.



Project Location: 3204 4<sup>th</sup> Street SW, Minot ND 58701



March 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its March 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$2,506,000 Clean Water State Revolving Fund Program loan to the City of Hazen.

North Dakota Public Finance Authority  
Advisory Committee

Keith Lund, Chairman  
Linda Svihovec  
John Phillips

Industrial Commission  
of North Dakota

Kelly Armstrong  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



## Memorandum

**To:** Public Finance Authority Advisory Committee  
Miles Silbert, Public Financial Management  
Kylee Merkel, Bank of North Dakota

**From:** DeAnn Ament, Executive Director

**Date:** March 4, 2025

**Re:** City of Hazen  
Clean Water State Revolving Fund Program Loan

**Purpose of the Project:** Reline the sanitary sewer mains and spot repair any that cannot be relined. The manholes will also be rehabilitated.

**Project Amount:**

<b>CWSRF Request</b>	\$2,506,000
<b>Project Total</b>	\$2,506,000

**Population to Benefit from the Project:** 2,279

**Population Served by the System:** 2,279

The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 30 years. The City will issue improvement bonds payable with special assessments. The average annual payment for the improvement bonds will be \$105,049. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City sewer users all pay a monthly base rate of \$6 per connection and \$1 per 1,000 gallons of water billed.

**Sewer Fund:**

	2020	2021	2022	2023
Operating Revenue	\$157,530	\$160,263	\$159,609	\$178,144
Operating Expenses	130,022	127,531	153,269	144,619
Net Operating Revenue	27,508	32,732	6,340	33,524
Depreciation	25,641	23,425	23,428	23,428
Adjusted Net Operating Revenue	\$53,149	\$56,157	\$29,768	\$56,952
Revenue Bond Payments	\$17,693	\$17,243	\$16,793	\$16,343
Net Operating Coverage	300%	326%	177%	348%

**Outstanding Debt December 31, 2024:**

	<b>Original Debt</b>	<b>Outstanding Balance</b>
Improvement Bonds <sup>1</sup>	\$9,403,574	\$7,235,449
Revenue Bonds <sup>1</sup>	276,120	16,000
	<u>\$9,679,694</u>	<u>\$7,251,449</u>

<sup>1</sup> Payments have been made as agreed. The City has two CWSRF loans with total outstanding balances of \$89,000.

The average annual debt payment including the new loan will be approximately \$634,479, which is \$278 per resident. The 685 parcels assessed for the CWSRF project will have an average annual payment of \$153.

The City of Hazen is located in Mercer County 71 miles northwest of Bismarck. Based on the 2020 census, the total population was 2,281; this is a decrease of 130 from the 2010 census. The largest employers in the City are Hazen Hospital Association (medical facility) with 100 employees, West River Telecommunications (telecommunications provider) with 50 employees and Hazen Public Schools which employs 50.

**School Enrollment:**

				Projected
2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
567	560	563	579	570

The City's 2024 taxable valuation was \$8,463,264. This is an increase of \$707,093 from the 2020 taxable valuation.

**Property Taxes Levied & Collected as of February 2, 2025:**

<b>Levy Year</b>	<b>Dollar Amount of Levy</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$565,083	\$431,632	76%
<b>2023</b>	\$565,083	\$522,409	92%
<b>2022</b>	\$538,344	\$522,631	97%

**Special Assessments Levied & Collected as of February 2, 2025:**

<b>Year</b>	<b>Dollar Amount</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$611,750	\$116,398	19%
<b>2023</b>	\$624,039	\$598,708	96%
<b>2022</b>	\$646,951	\$639,356	99%

**City Mill Levy History:**

<b>Year</b>	<b>City</b>	<b>School</b>	<b>Park District</b>	<b>State and County</b>	<b>Fire</b>	<b>Total for Each Year</b>
<b>2024</b>	68.05	85.10	27.02	88.40	5.00	273.57
<b>2023</b>	69.37	84.37	25.93	75.22	7.00	261.89
<b>2022</b>	69.81	80.35	25.12	81.74	7.00	264.02
<b>2021</b>	68.37	74.54	24.58	82.85	7.00	257.34
<b>2020</b>	68.14	68.83	23.42	74.90	7.00	242.29



45 South 7<sup>th</sup> Street  
Suite 2950  
Minneapolis, MN 55402

612.338.3535  
612.338.7264 Fax  
www.pfm.com

## Memorandum

**TO:** DeAnn Ament, Executive Director  
North Dakota Public Finance Authority

**FROM:** PFM Financial Advisors LLC

**DATE:** March 14, 2025

**RE:** Marketplace Analysis - Clean Water State Revolving Fund Program  
City of Hazen

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The City of Hazen (the “City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$2,506,000 loan under the Clean Water State Revolving Fund Program (“CWSRF Program”). The CWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various wastewater treatment projects and landfill projects as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to reline the sanitary sewer mains and spot repair any that cannot be relined and rehabilitate the manholes.

The municipal securities to be acquired by the Authority will be improvement bonds of the City payable from special assessments levied against the benefited property. The proposed term of the loan is 30 years with a subsidized interest rate of 1.50%. The City’s average annual payment under the proposed loan will be approximately \$105,049. The improvement bonds will be a contingent general obligation of the City, which will be required by law to levy a general deficiency tax if the revenues collected from the levy of special assessments are insufficient to make the debt service payments.

As of December 31, 2024, the City has \$7,235,449 of Improvement Bonds and \$16,000 of Revenue Bonds outstanding. The City has two Clean Water SRF loans with outstanding balances of \$89,000. The City is current in its payments for its outstanding Authority loan.

Funding for the construction of the City's projects has been included in a list of approved projects as prepared and updated by the Department. As an authorized participant in the CWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the CWSRF Program.

Memorandum

To: Industrial Commission

From: Kylee Merkel, Business Banker  
Bank of North Dakota

Date: March 5, 2025

RE: City of Hazen  
Clean Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$2,506,000 loan to the City of Hazen under the Clean Water State Revolving Fund (CWSRF). The entire cost of the project is \$2,506,000, with CWSRF financing the entire cost of the project.

The project will reline and repaid the sanitary sewer mains and rehabilitate the manholes, within the City. The requested loan term is 30 years. The City will issue an improvement bond payable with special assessment collections. The annual payment will average \$105,049. The improvement district includes approximately 685 parcels.

**Sewer Fund:**

Sewer Fund	2021	2022	2023
Operating Revenue	160,263	159,609	178,144
Operating Expenses	-127,531	-153,269	-144,619
Net Operating Revenue	32,732	6,340	33,525
Depreciation	23,425	23,428	23,428
Adjusted Net Operating Income	56,157	29,768	56,953
Current Debt Service	17,243	16,793	16,343
Debt Service Coverage	326%	177%	348%

The City currently charges all sewer connections a monthly base rate of \$6.00 and a usage charge of \$1.00 per 1,000 gallons of water billed.


**Outstanding Debt (as of December 31, 2024):**

	<b>Original Amount</b>	<b>Current Balance</b>
Revenue Bonds	276,120	16,400
Improvement Bonds	9,403,574	7,235,449
	9,679,694	7,251,849







Average annual debt service requirements are estimated at \$634,479, which is an average of \$278 per resident.

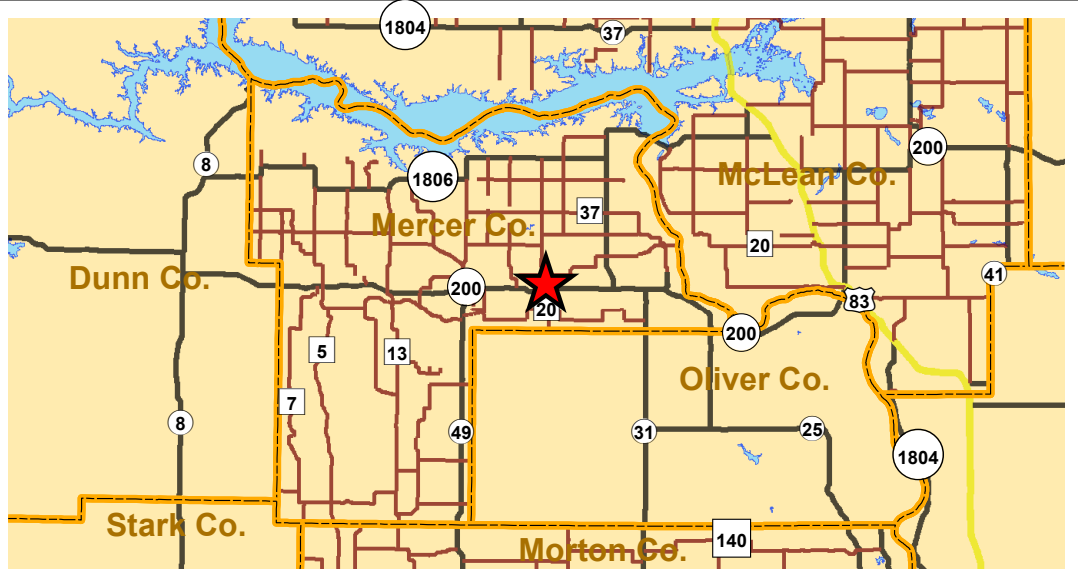
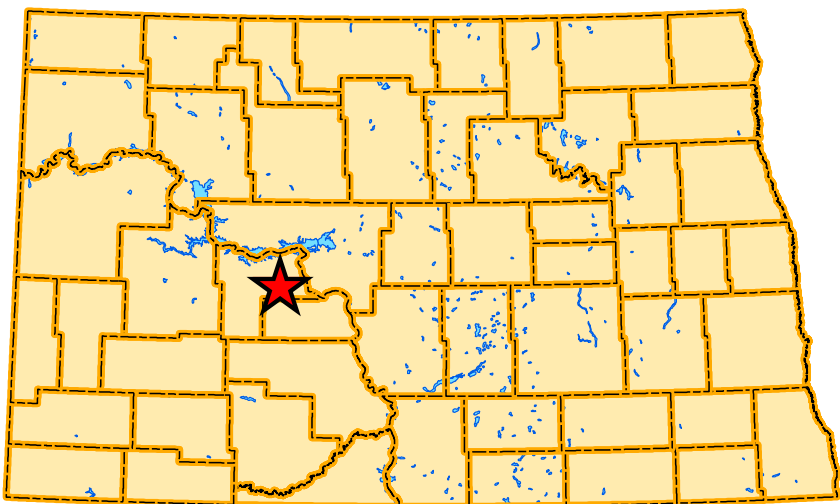
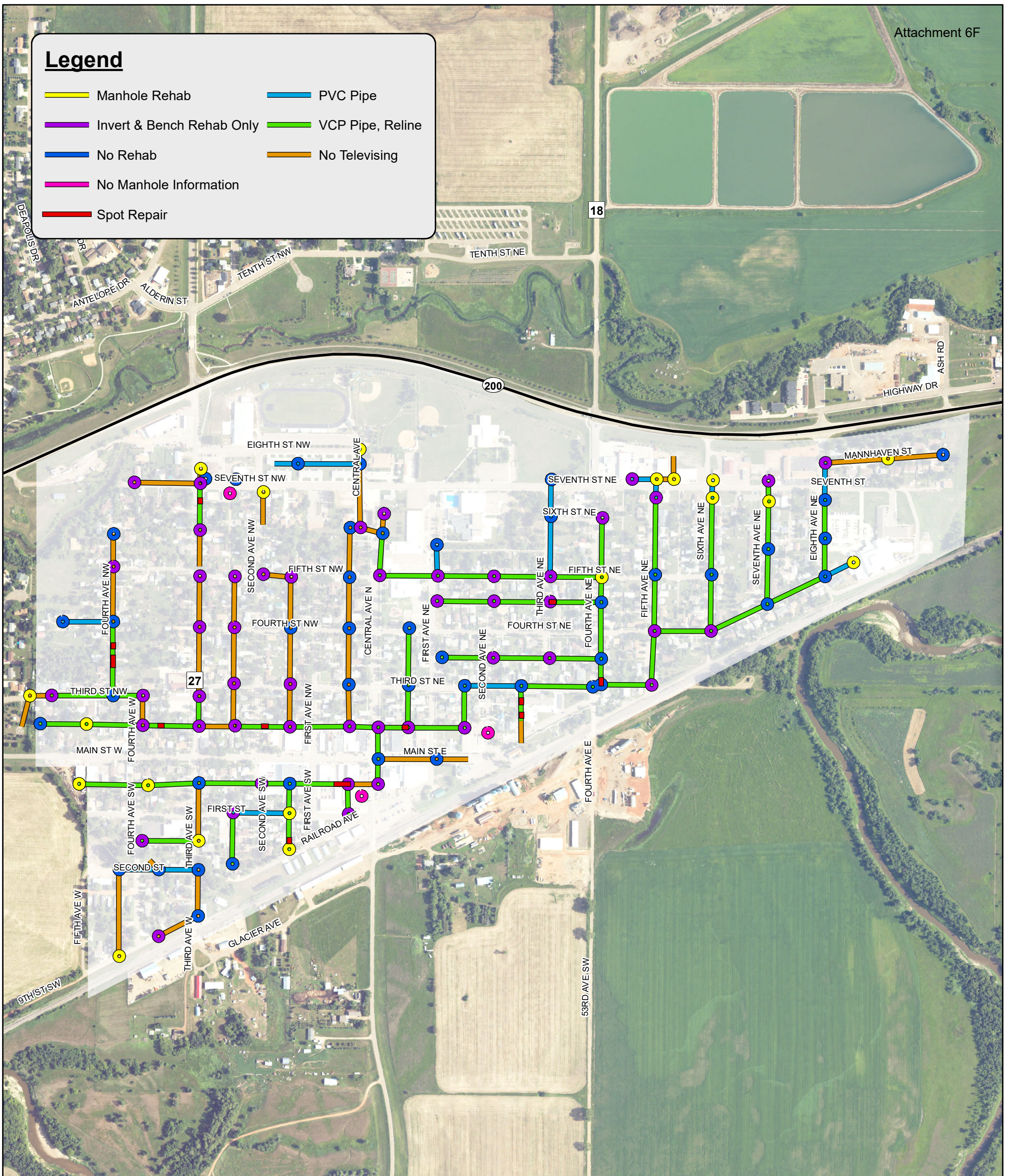
Historical census populations for the City of Hazen were 2,281 in 2020, 2,411 in 2010 and 2,457 in 2000. The largest employers in the City are Hazen Hospital Association, West River Telecommunications and Hazen School District.

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.

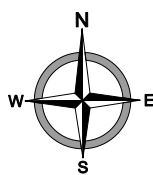
  
\_\_\_\_\_  
Kylee Merkel  
Business Banker



- |   |                           |   |                  |
|---|---------------------------|---|------------------|
|  | Manhole Rehab             |  | PVC Pipe         |
|  | Invert & Bench Rehab Only |  | VCP Pipe, Reline |
|  | No Rehab                  |  | No Televising    |
|  | No Manhole Information    |   |                  |
|  | Spot Repair               |   |                  |



## SANITARY SEWER IMPROVEMENTS HAZEN, NORTH DAKOTA



Created By: KMV Date Created: 12/06/2023 Date Saved: 08/19/24 Date Exported: 08/19/24  
Plotted By: kyle.volk Parcel Date: N/A Aerial Image: 2023 County NAIP SIDS Elevation Data: N/A  
Horizontal Datum: NAD 1983 StatePlane North Dakota North FIPS 3301 Feet Vertical Datum: NAVD1988  
T:\Projects\229001\22992\22992\_DWR\_ProjectMap\_20240819.mxd

March 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its March 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$12,478,000 Clean Water State Revolving Fund Program loan to the City of Mandan.

North Dakota Public Finance Authority  
Advisory Committee

Keith Lund, Chairman  
Linda Svihovec  
John Phillips

Industrial Commission  
of North Dakota  
Kelly Armstrong  
GOVERNOR  
Drew H. Wrigley  
ATTORNEY GENERAL  
Doug Goehring  
AGRICULTURE COMMISSIONER

N O R T H  
**Dakota** | Public Finance Authority  
Be Legendary.

### Memorandum

**To:** Public Finance Authority Advisory Committee  
Miles Silbert, Public Finance Management  
Kylee Merkel, Bank of North Dakota

**From:** DeAnn Ament, Executive Director

**Date:** February 28, 2025

**Re:** City of Mandan  
Clean Water State Revolving Fund Program Loan Application

**Purpose of the Project:** Replacing water main, sanitary and storm sewer and a lift station along Memorial Highway from approximately 32<sup>nd</sup> to 46<sup>th</sup> Avenue. The water main will be relocated to a more accessible location and upsized to provide redundancy of service to the southwest portions of Mandan.

**Project Amount:**

<b>CWSRF Request</b>	\$ 12,478,000
<b>DWSRF Request</b>	6,909,000
<b>DWR Cost Share</b>	8,617,000
<b>ARPA</b>	3,000,000
<b>Project Total</b>	\$ 31,004,000

**Population to Benefit from the Project:** 12,103

**Population Served by the System:** 24,206 plus Missouri West Water System which serves 8,100 people

The requested term for the CWSRF loan is 20 years. Accordingly, the average annual payment loan will be approximately \$721,863. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City currently has 8,615 residential connections that pay a water/wastewater base rate of \$36.80 and 796 commercial connections that pay a water/wastewater base rate of \$73.60 and both pay \$3.00/100 cubic foot of water usage and \$1.65/100 cubic foot of wastewater disposal.

**Water & Wastewater Fund:**

	2020	2021	2022	2023
Operating Revenue	\$9,038,542	\$12,373,258	\$11,710,926	\$10,216,792
Operating Expenses	5,806,222	6,253,921	6,315,164	6,648,226
Net Operating Revenue	3,232,320	6,119,337	5,395,762	3,568,566
Depreciation	2,365,212	2,579,500	2,530,360	2,801,245
Adjusted Net Operating Revenue	\$5,597,532	\$8,698,837	\$7,926,122	\$6,369,811
Revenue Bond Payments	\$2,763,599	\$2,704,720	\$2,724,636	\$2,710,801
Net Operating Coverage	203%	322%	291%	235%

**Outstanding Debt as of November 4, 2024:**

	Original Debt	Outstanding Debt
General Obligation Bonds - Bridge	\$ 870,000	\$ 130,000
Improvement Bonds	61,951,888	48,615,567
Sales Tax Revenue Bonds - Sports Complex	15,275,000	9,565,000
Revenue Bonds - Water & Sewer <sup>1</sup>	38,436,239	20,227,605
<b>Total</b>	<b>\$ 116,533,127</b>	<b>\$ 78,538,172</b>

<sup>1</sup> Payments to the NDPFA have been made as agreed. The City has eight DWSRF loans with a total outstanding balance of \$14,847,605 and five Clean Water SRF loans that total \$5,305,000. The City had debt service reserves of \$3,615,306.

The average annual payment of all outstanding debt including this new request is \$10,054,767 which is \$415 per resident.

The City of Mandan is located in Morton County on Interstate 94. Based on the 2020 census, the total population is 24,206; this is an increase of 5,875 over the 2010 census. The largest employers in the City are Mandan Public Schools with 697 employees, HIT, Inc. (social assistance) employs 641 and NISC (information services) with 460 employees.

**K-12 School Enrollment:**

2020-2021	2021-2022	2022-2023	2023-2024	2024-2025
4,037	4,223	4,277	4,368	4,375

The City's 2024 taxable valuation was \$131,480,934. This is an increase of \$32,318,077 over the 2020 taxable valuation.

**Property Tax Levies and Collections as of 12/31/2024:**

<b>Levy Year</b>	<b>Dollar Amount of Levy</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$7,888,079	\$3,024,747	38%
<b>2023</b>	\$7,939,478	\$7,842,807	99%
<b>2022</b>	\$7,223,291	\$7,185,035	99%
<b>2021</b>	\$6,608,207	\$6,607,326	100%

**Special Assessment Levies and Collections 12/31/2024:**

<b>Year</b>	<b>Dollar Amount</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$6,737,373	\$3,857,291	57%
<b>2023</b>	\$4,541,789	\$4,242,323	93%
<b>2022</b>	\$4,602,813	\$4,421,783	96%
<b>2021</b>	\$4,625,863	\$4,607,694	100%

**City of Mandan Mill Levy:**

<b>Year</b>	<b>City</b>	<b>School</b>	<b>Park District</b>	<b>State and County</b>	<b>Other</b>	<b>Total for Each Year</b>
<b>2024</b>	64.09	128.14	29.15	55.09	4.13	280.60
<b>2023</b>	63.93	127.22	29.13	56.74	4.10	281.12
<b>2022</b>	63.85	130.15	29.15	60.23	4.41	287.79
<b>2021</b>	63.98	130.15	28.29	58.74	4.47	285.63
<b>2020</b>	63.21	108.15	28.84	57.71	4.41	262.32



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## Memorandum

**TO:** DeAnn Ament, Executive Director  
North Dakota Public Finance Authority

**FROM:** PFM Financial Advisors LLC

**DATE:** March 14, 2025

**RE:** Marketplace Analysis - Clean Water State Revolving Fund Program  
City of Mandan

---

The City of Mandan (the “City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$12,478,000 loan under the Clean Water State Revolving Fund Program (“CWSRF Program”). The CWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various wastewater treatment projects and landfill projects as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to replace water main, sanitary and storm sewer and a lift station along Memorial Highway. The water main will be relocated to a more accessible location and upsized to provide redundancy of service to the southwest portions of the City.

The municipal securities to be acquired by the Authority will be improvement bonds of the City payable from special assessments levied against the benefited property. The proposed term of the loan is 21 years with a subsidized interest rate of 1.50%. The City’s average annual payment under the proposed loan will be approximately \$721,863. The improvement bonds will be a contingent general obligation of the City, which will be required by law to levy a general deficiency tax if the revenues collected from the levy of special assessments are insufficient to make the debt service payments.

As of November 1, 2024, the City has \$130,000 of general obligation bonds, \$48,615,567 of improvement bonds, \$9,565,000 of sales tax revenue bonds and \$20,227,605 of revenue bonds outstanding. The City has five Clean Water SRF and eight Drinking Water SRF loans with outstanding balances of \$5,305,000 and \$14,847,605, respectively. The City is current in its payments for its outstanding Authority loan.

Funding for the construction of the City's projects has been included in a list of approved projects as prepared and updated by the Department. As an authorized participant in the CWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the CWSRF Program.

Attachment 7E

Memorandum

To: Industrial Commission

From: Kylee Merkel, Business Banker  
Bank of North Dakota

Date: March 3, 2025

RE: City of Mandan  
Clean Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$12,478,000 loan to the City of Mandan under the Clean Water State Revolving Fund (CWSRF). The entire cost of the project is \$31,004,000, with Drinking Water State Revolving Fund providing a \$6,909,000 loan, Department of Water Resources providing a \$8,617,000 cost-share grant and the City using \$3,000,000 of American Rescue Plan Act funds.

The project will replace water main, sanitary and storm sewer and a lift station along Memorial Highway. The requested loan term is 20 years. The City will issue an improvement bond payable with special assessment collections. The annual payment will average \$721,863.

**Debt Service Coverage:**

Water and Wastewater Fund	2021	2022	2023
Operating Revenue	12,373,258	11,710,926	10,216,792
Projected Rate Increase			
Operating Expenses	-6,253,921	-6,315,164	-6,648,226
Net Operating Revenue	6,119,337	5,395,762	3,568,566
Plus: Depreciation	2,579,500	2,530,360	2,801,245
Adjusted Net Operating Income	8,698,837	7,926,122	6,369,811
Current Debt Service	2,704,720	2,724,636	2,710,801
Debt Service Coverage	322%	291%	235%

The City currently serves 8,615 residential connections that pay a monthly water/wastewater base rate of \$36.80 and 796 commercial connections that pay a monthly water/wastewater base rate of \$73.60. All connections pay a volume charge of \$3.00 per 100 cubic feet of water usage and \$1.65 per 100 cubic feet of wastewater disposal.

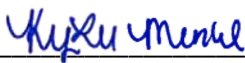
**Outstanding Debt (as of November 4, 2024):**

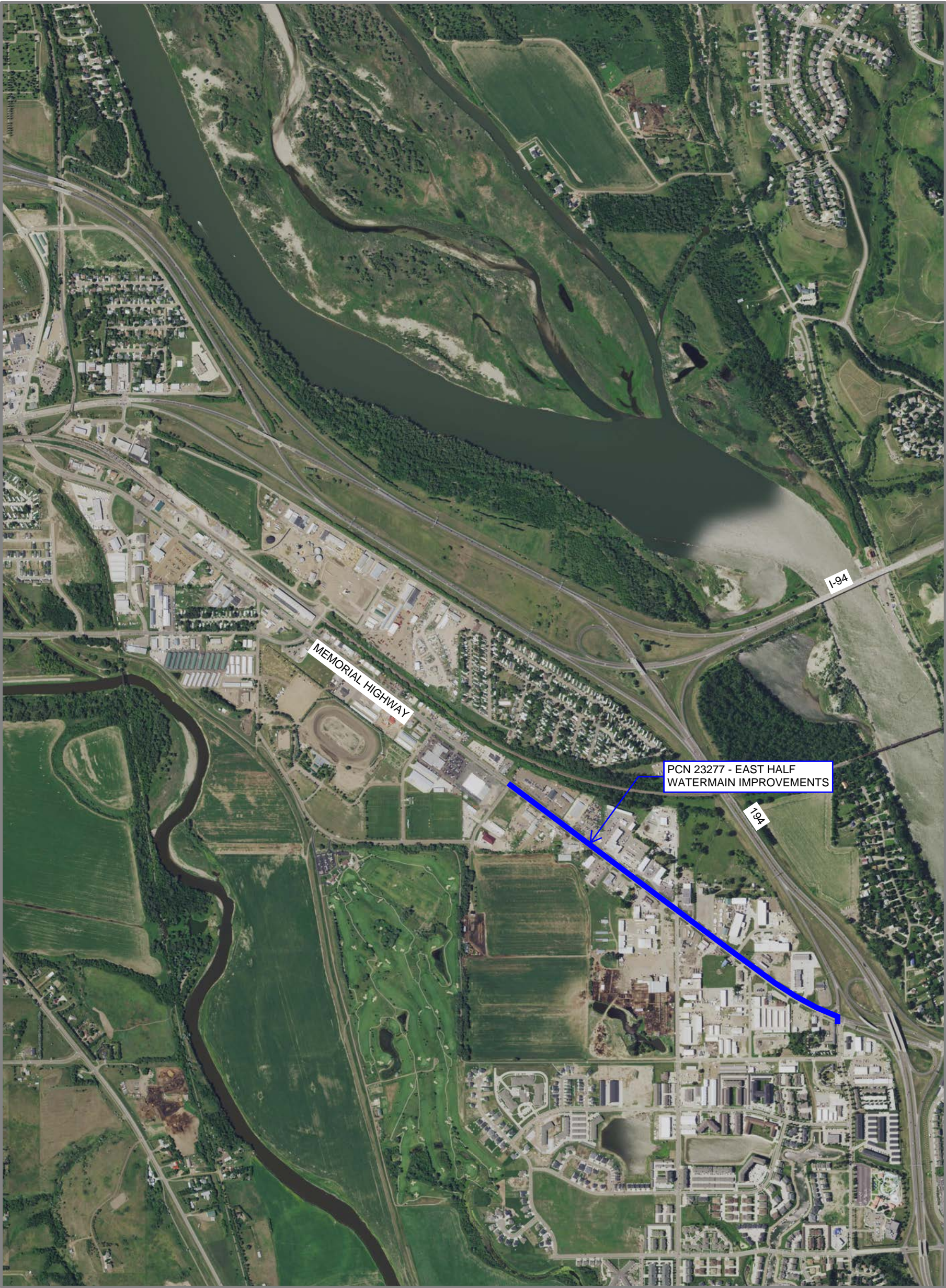
	<b><u>Original Amount</u></b>	<b><u>Current Balance</u></b>
General Obligation Bonds	870,000	130,000
Improvement Bonds	61,951,888	48,615,567
Sales Tax Revenue Bonds	15,275,000	9,565,000
Water/Sewer Revenue Bonds	38,436,239	20,227,605
	116,533,127	78,538,172

Average annual debt service requirements are estimated at \$10,054,766, which is an average of \$415.38 per resident.

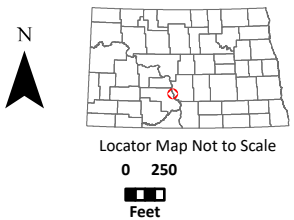
Historical census populations for the City of Mandan were 24,206 in 2020, 18,331 in 2010 and 16,718 in 2000. The largest employers in the City are Mandan Public School District, Housing Industry Training (HIT) and National Information Solutions Cooperative (NISC).

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.

  
\_\_\_\_\_  
Kylee Merkel  
Business Banker



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Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Edited by: CNelson | W:\H\HDR\12154-2018-002\GIS\General Mandan.aprx



**MEMORIAL HIGHWAY  
PROJECT CORRIDOR**  
Mandan | Morton County, ND



**CITY OF  
MANDAN**  
WHERE THE WEST BEGINS

Date: 11/5/2024



**AES**  
**2**

March 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its March 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$6,909,000 Drinking Water State Revolving Fund Program loan to the City of Mandan.

North Dakota Public Finance Authority  
Advisory Committee

Keith Lund, Chairman  
Linda Svihovec  
John Phillips

Industrial Commission  
of North Dakota  
Kelly Armstrong  
GOVERNOR  
Drew H. Wrigley  
ATTORNEY GENERAL  
Doug Goehring  
AGRICULTURE COMMISSIONER

N O R T H  
**Dakota** | Public Finance Authority  
Be Legendary.

### Memorandum

**To:** Public Finance Authority Advisory Committee  
Miles Silbert, Public Finance Management  
Kylee Merkel, Bank of North Dakota

**From:** DeAnn Ament, Executive Director

**Date:** February 28, 2025

**Re:** City of Mandan  
Drinking Water State Revolving Fund Program Loan Application

**Purpose of the Project:** Replacing water main, sanitary and storm sewer and a lift station along Memorial Highway from approximately 32<sup>nd</sup> to 46<sup>th</sup> Avenue. The water main will be relocated to a more accessible location and upsized to provide redundancy of service to the southwest portions of Mandan.

**Project Amount:**

<b>DWSRF Request</b>	\$ 6,909,000
<b>CWSRF Request</b>	12,478,000
<b>DWR Cost Share</b>	8,617,000
<b>ARPA</b>	3,000,000
<b>Project Total</b>	\$ 31,004,000

**Population to Benefit from the Project:** 12,103

**Population Served by the System:** 24,206 plus Missouri West Water System which serves 8,100 people

The requested term for the DWSRF loan is 20 years. Accordingly, the average annual payment loan will be approximately \$399,259. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City currently has 8,615 residential connections that pay a water/wastewater base rate of \$36.80 and 796 commercial connections that pay a water/wastewater base rate of \$73.60 and both pay \$3.00/100 cubic foot of water usage and \$1.65/100 cubic foot of wastewater disposal.

**Water & Wastewater Fund:**

	2020	2021	2022	2023
Operating Revenue	\$9,038,542	\$12,373,258	\$11,710,926	\$10,216,792
Operating Expenses	5,806,222	6,253,921	6,315,164	6,648,226
Net Operating Revenue	3,232,320	6,119,337	5,395,762	3,568,566
Depreciation	2,365,212	2,579,500	2,530,360	2,801,245
Adjusted Net Operating Revenue	\$5,597,532	\$8,698,837	\$7,926,122	\$6,369,811
Revenue Bond Payments	\$2,763,599	\$2,704,720	\$2,724,636	\$2,710,801
Net Operating Coverage	203%	322%	291%	235%

**Outstanding Debt as of November 4, 2024:**

	Original Debt	Outstanding Debt
General Obligation Bonds - Bridge	\$ 870,000	\$ 130,000
Improvement Bonds	61,951,888	48,615,567
Sales Tax Revenue Bonds - Sports Complex	15,275,000	9,565,000
Revenue Bonds - Water & Sewer <sup>1</sup>	38,436,239	20,227,605
<b>Total</b>	<b>\$ 116,533,127</b>	<b>\$ 78,538,172</b>

<sup>1</sup> Payments to the NDPFA have been made as agreed. The City has eight DWSRF loans with a total outstanding balance of \$14,847,605 and five Clean Water SRF loans that total \$5,305,000. The City had debt service reserves of \$3,615,306.

The average annual payment of all outstanding debt including this new request is \$10,054,767 which is \$415 per resident.

The City of Mandan is located in Morton County on Interstate 94. Based on the 2020 census, the total population is 24,206; this is an increase of 5,875 over the 2010 census. The largest employers in the City are Mandan Public Schools with 697 employees, HIT, Inc. (social assistance) employs 641 and NISC (information services) with 460 employees.

**K-12 School Enrollment:**

2020-2021	2021-2022	2022-2023	2023-2024	2024-2025
4,037	4,223	4,277	4,368	4,375

The City's 2024 taxable valuation was \$131,480,934. This is an increase of \$32,318,077 over the 2020 taxable valuation.

**Property Tax Levies and Collections as of 12/31/2024:**

<b>Levy Year</b>	<b>Dollar Amount of Levy</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$7,888,079	\$3,024,747	38%
<b>2023</b>	\$7,939,478	\$7,842,807	99%
<b>2022</b>	\$7,223,291	\$7,185,035	99%
<b>2021</b>	\$6,608,207	\$6,607,326	100%

**Special Assessment Levies and Collections 12/31/2024:**

<b>Year</b>	<b>Dollar Amount</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$6,737,373	\$3,857,291	57%
<b>2023</b>	\$4,541,789	\$4,242,323	93%
<b>2022</b>	\$4,602,813	\$4,421,783	96%
<b>2021</b>	\$4,625,863	\$4,607,694	100%

**City of Mandan Mill Levy:**

<b>Year</b>	<b>City</b>	<b>School</b>	<b>Park District</b>	<b>State and County</b>	<b>Other</b>	<b>Total for Each Year</b>
<b>2024</b>	64.09	128.14	29.15	55.09	4.13	280.60
<b>2023</b>	63.93	127.22	29.13	56.74	4.10	281.12
<b>2022</b>	63.85	130.15	29.15	60.23	4.41	287.79
<b>2021</b>	63.98	130.15	28.29	58.74	4.47	285.63
<b>2020</b>	63.21	108.15	28.84	57.71	4.41	262.32



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## Memorandum

**TO:** DeAnn Ament, Executive Director  
North Dakota Public Finance Authority

**FROM:** PFM Financial Advisors LLC

**DATE:** March 14, 2025

**RE:** Marketplace Analysis - Drinking Water State Revolving Fund Program  
City of Mandan

---

The City of Mandan (the “City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$6,909,000 loan under the Drinking Water State Revolving Fund Program (“DWSRF Program”). The DWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various water treatment, distribution and storage facilities as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to replace water main, sanitary and storm sewer and a lift station along Memorial Highway. The water main will be relocated to a more accessible location and upsized to provide redundancy of service to the southwest portions of the City.

The municipal securities to be acquired by the Authority will be improvement bonds of the City payable from special assessments levied against the benefited property. The proposed term of the loan is 21 years with a subsidized interest rate of 1.50%. The City’s average annual payment under the proposed loan will be approximately \$399,259. The improvement bonds will be a contingent general obligation of the City, which will be required by law to levy a general deficiency tax if the revenues collected from the levy of special assessments are insufficient to make the debt service payments.

As of November 1, 2024, the City has \$130,000 of general obligation bonds, \$48,615,567 of improvement bonds, \$9,565,000 of sales tax revenue bonds and \$20,227,605 of revenue bonds outstanding. The City has five Clean Water SRF and eight Drinking Water SRF loans with outstanding balances of \$5,305,000 and \$14,847,605, respectively. The City is current in its payments for its outstanding Authority loan.

Funding the construction of the City’s improvements has been included in a list of approved uses as prepared and updated by the Department. As an authorized participant in the DWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the DWSRF Program.

Attachment 8E

Memorandum

To: Industrial Commission

From: Kylee Merkel, Business Banker  
Bank of North Dakota

Date: March 3, 2025

RE: City of Mandan  
Drinking Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$6,909,000 loan to the City of Mandan under the Drinking Water State Revolving Fund (DWSRF). The entire cost of the project is \$31,004,000, with Clean Water State Revolving Fund providing a \$12,478,000 loan, Department of Water Resources providing a \$8,617,000 cost-share grant and the City using \$3,000,000 of American Rescue Plan Act funds.

The project will replace water main, sanitary and storm sewer and a lift station along Memorial Highway. The requested loan term is 20 years. The City will issue an improvement bond payable with special assessment collections. The annual payment will average \$399,259.

**Debt Service Coverage:**

Water and Wastewater Fund	2021	2022	2023
Operating Revenue	12,373,258	11,710,926	10,216,792
Projected Rate Increase			
Operating Expenses	-6,253,921	-6,315,164	-6,648,226
Net Operating Revenue	6,119,337	5,395,762	3,568,566
Plus: Depreciation	2,579,500	2,530,360	2,801,245
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Current Debt Service	2,704,720	2,724,636	2,710,801
Debt Service Coverage	322%	291%	235%

The City currently serves 8,615 residential connections that pay a monthly water/wastewater base rate of \$36.80 and 796 commercial connections that pay a monthly water/wastewater base rate of \$73.60. All connections pay a volume charge of \$3.00 per 100 cubic feet of water usage and \$1.65 per 100 cubic feet of wastewater disposal.

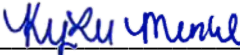
**Outstanding Debt (as of November 4, 2024):**

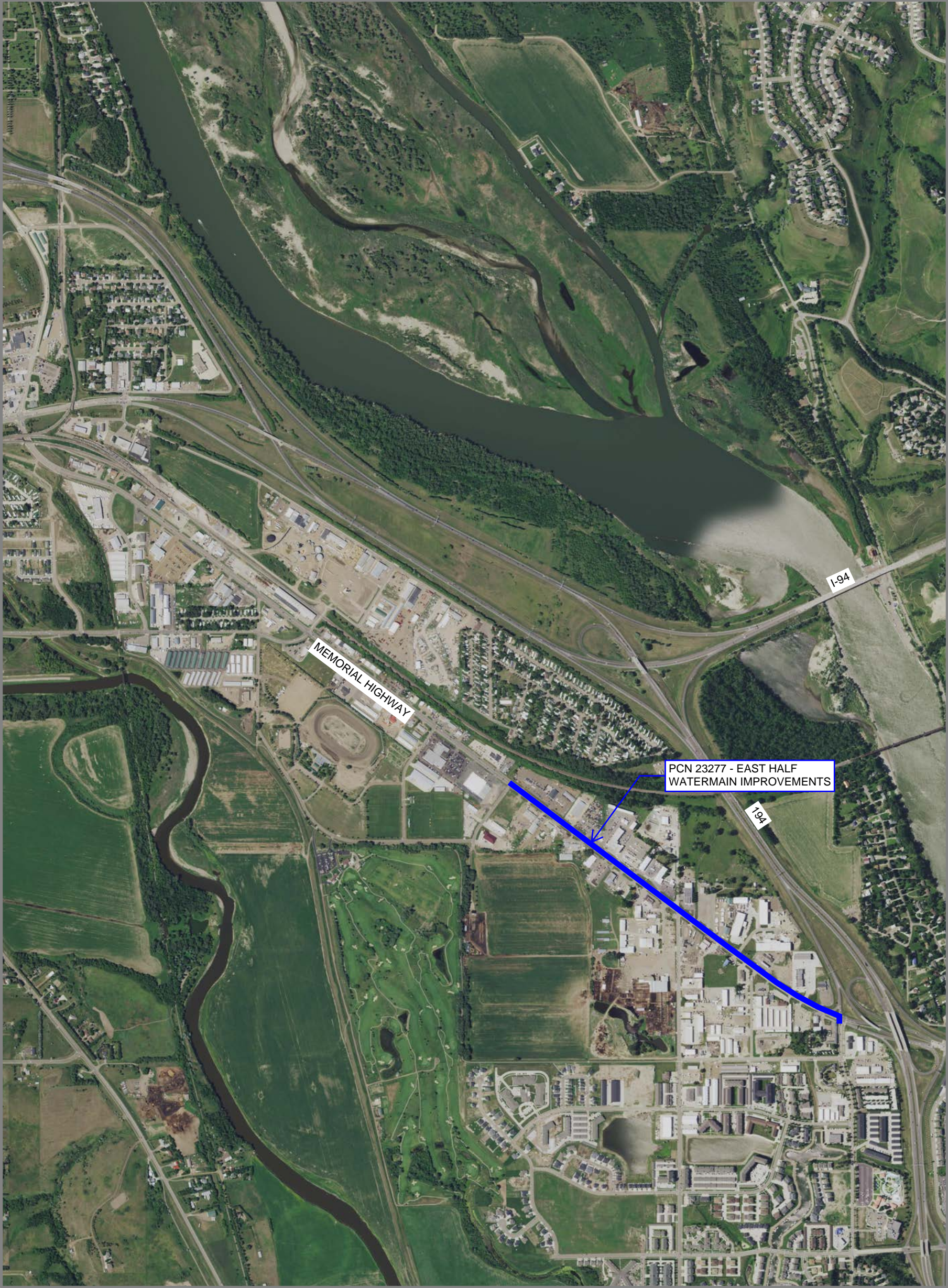
	<b><u>Original Amount</u></b>	<b><u>Current Balance</u></b>
General Obligation Bonds	870,000	130,000
Improvement Bonds	61,951,888	48,615,567
Sales Tax Revenue Bonds	15,275,000	9,565,000
Water/Sewer Revenue Bonds	38,436,239	20,227,605
	116,533,127	78,538,172

Average annual debt service requirements are estimated at \$10,054,766, which is an average of \$415.38 per resident.

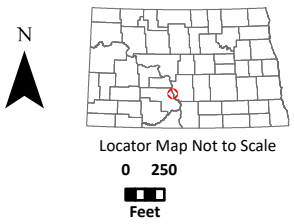
Historical census populations for the City of Mandan were 24,206 in 2020, 18,331 in 2010 and 16,718 in 2000. The largest employers in the City are Mandan Public School District, Housing Industry Training (HIT) and National Information Solutions Cooperative (NISC).

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.

  
\_\_\_\_\_  
Kylee Merkel  
Business Banker



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Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Edited by: CNelson | W:\H\HDR\12154-2018-002\GIS\General Mandan.aprx



**MEMORIAL HIGHWAY  
PROJECT CORRIDOR**  
Mandan | Morton County, ND



CITY OF  
**MANDAN**  
WHERE THE WEST BEGINS

Date: 11/5/2024



Industrial Commission  
of North Dakota

Kelly Armstrong  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



## Memorandum

**To:** Industrial Commission: Governor Kelly Armstrong, Attorney General Drew H. Wrigley, Agriculture Commissioner Doug Goehring

**From:** DeAnn Ament, Executive Director

**Date:** March 17, 2025

**Re:** Colfax, Drinking Water State Revolving Fund  
Jamestown, Drinking Water State Revolving Fund  
Zeeland, Drinking Water State Revolving Fund

Under current policy, the Public Finance Authority can make loans under the State Revolving Fund Program in an amount not to exceed \$2,000,000 and under the Capital Financing Program in an amount not to exceed \$500,000 without seeking the final approval of the Industrial Commission. Within this policy, once the loan has been approved, the Public Finance Authority is required to provide the details of the loan to the Industrial Commission. Accordingly, the Public Finance Authority and its Advisory Committee used this policy to approve the following loans.

The committee reviewed the City of Colfax's Drinking Water State Revolving Fund (DWSRF) application for a \$245,000 loan towards a \$690,000 project. The Department of Water Resources Cost Share will provide \$373,000, ARPA funds of \$24,000 and Municipal Infrastructure funds of \$48,000 will be used. The project will construct a new water main loop from the reservoir to the north side of the city along Richland County Road 1. This would create redundancy in the system and increase water pressure. The requested term for the loan is 30 years. The City will issue revenue bonds payable with water user fee revenue.

The committee reviewed the City of Jamestown's DWSRF application for a \$1,618,000 loan towards a \$3,803,673 project. The Department of Water Resources Cost Share will provide \$2,185,673. This project will replace fourteen blocks of cast iron water mains including valves and hydrants will be replaced with PVC pipe along with the associated appurtenances. The requested term for the loan is 20 years. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The committee reviewed the City of Zeeland's DWSRF application for a \$60,000 loan towards a \$470,080 project. The Department of Water Resources Cost Share will provide \$94,580 and a \$315,500 CDBG grant will be used. The project will install a mixer in the water tower to prevent freezing and new pumps and controls in the pump house to monitor the water levels in the city's system. The requested term for the loan is 20 years. The City will issue revenue bonds payable with water user fee revenue.

The Public Finance Authority's Advisory Committee approved these loans at their March 17, 2025, meeting.

Industrial Commission  
of North Dakota

Kelly Armstrong  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



Public Finance Authority

## Memorandum

**To:** Public Finance Authority Advisory Committee

**From:** DeAnn Ament, Executive Director

**Date:** March 13, 2025

**Re:** City of Colfax  
Drinking Water State Revolving Fund Program Loan

**Purpose of the Project:** Construct a new water main loop from the reservoir to the north side of the city along Richland County Road 1. This would create redundancy in the system and increase water pressure.

**Project Amount:**

<b>DWSRF Request</b>	\$ 245,000
<b>DWR Cost Share</b>	373,000
<b>ARPA</b>	24,000
<b>Municipal Infrastructure Fund</b>	48,000
<b>Project Total</b>	\$ 690,000

**Population to Benefit from the Project:** 225

**Population Served by the System:** 225

The City will issue revenue bonds payable with water user fees. The requested term for the loan is 30 years. The average annual payment for the revenue bonds will be \$10,256. The reserve requirement will be \$11,050 and the 110% coverage requirement will be \$11,281.

The City has 104 connections which pay a monthly base rate of \$22.75 per connection (includes 3,000 gallons) and \$5/1,000 gallons.

**Water Fund:**

	<b>Unaudited</b>			
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Operating Revenue	\$40,109	\$41,760	\$51,932	\$51,856
Operating Expenses	27,012	33,257	33,808	38,379
Net Operating Revenue	\$13,097	\$8,503	\$18,123	\$13,477
Proforma Revenue Bond Payment	\$10,256	\$10,256	\$10,256	\$10,256
Proforma Net Operating Coverage	128%	83%	177%	131%

With the recent rate increase the City should meet the 110% net operating coverage requirement.

**Outstanding Debt December 31, 2024:**

	<b>Original Amount</b>	<b>Outstanding Amount</b>
Improvement Bonds	\$4,173,133	\$ 2,937,585
Revenue Bonds	329,500	222,400
Total Bonds	<u>\$4,502,633</u>	<u>\$ 3,159,985</u>

The average annual bond payment including this new issue is \$115,012 or \$511 per resident.

The City of Colfax is located in Richland County approximately 28 miles northwest of Wahpeton on Interstate 29. The total population according to the 2020 census is 172; this is an increase of 51 from the 2010 census. The largest employers in the area are Richland #44 High School with 27 employees, Minn-Kota Ag (agriculture) which employs 7 and Colfax Express (agriculture) with 5 employees.

**Richland K-12 School Enrollment:**

				<b>Projected</b>
<b>2021-2022</b>	<b>2022-2023</b>	<b>2023-2024</b>	<b>2024-2025</b>	<b>2025-2026</b>
262	273	284	307	310

The City's 2024 taxable valuation was \$1,488,298. This is an increase of \$786,318 over the 2020 taxable valuation.

**Property Tax Collections as of March 12, 2025:**

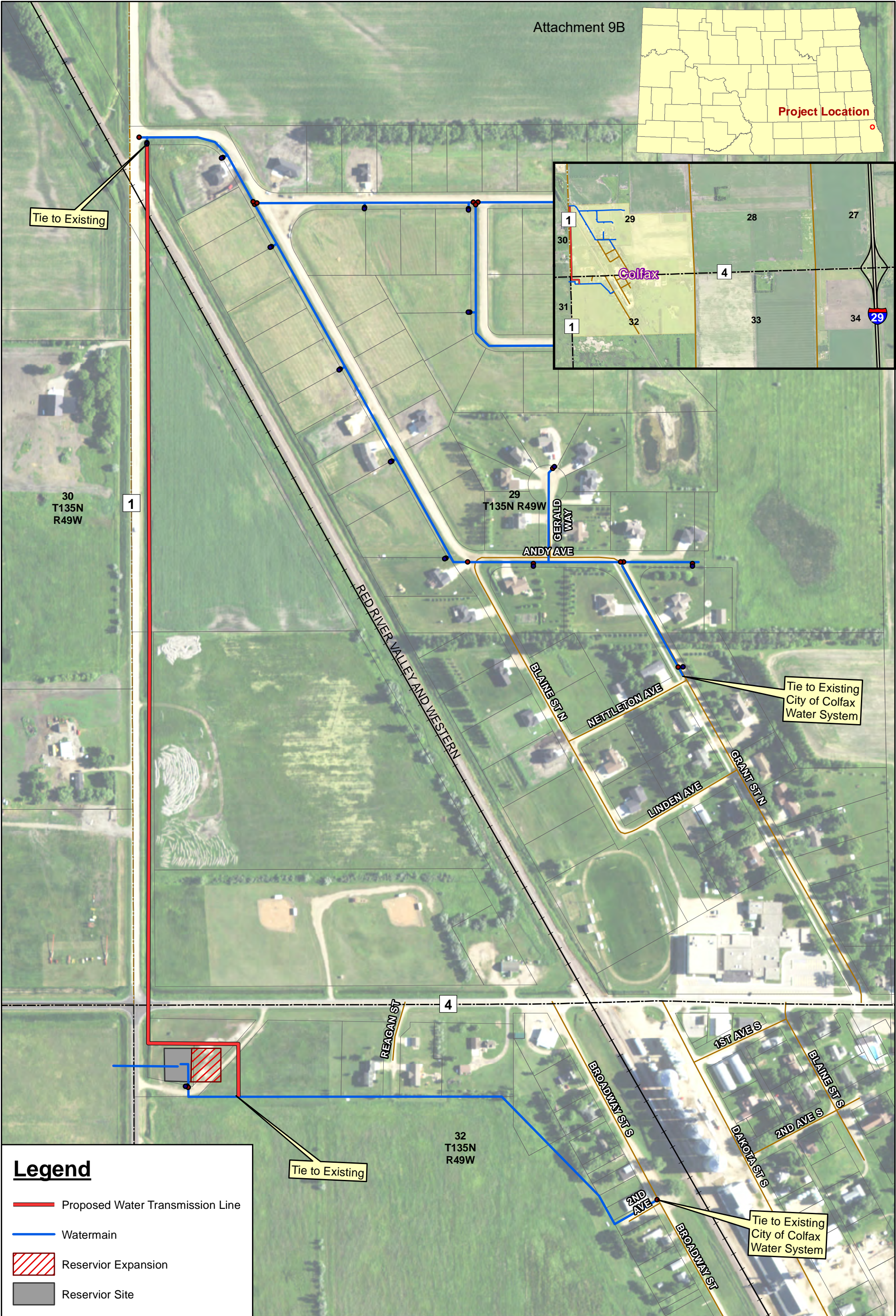
<b>Levy Year</b>	<b>Dollar Amount of Levy</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$207,156	\$172,057	83%
<b>2023</b>	\$134,574	\$126,427	94%
<b>2022</b>	\$113,450	\$112,100	99%

**Special Assessment Collections as of March 12, 2025:**

<b>Year</b>	<b>Dollar Amount</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2023</b>	\$128,447	\$98,934	77%
<b>2023</b>	\$86,823	\$79,468	92%
<b>2022</b>	\$87,991	\$87,146	99%

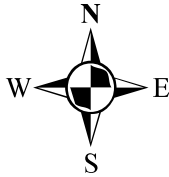
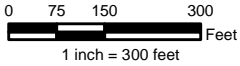
**Mill Levy History:**

<b>Year</b>	<b>City</b>	<b>School</b>	<b>Park District</b>	<b>State and County</b>	<b>Other</b>	<b>Total for Each Year</b>
<b>2024</b>	52.53	106.50	4.56	95.15	13.00	271.74
<b>2023</b>	40.92	106.50	4.56	95.35	8.07	255.40
<b>2022</b>	27.15	109.00	4.56	95.44	8.74	244.89
<b>2021</b>	35.12	110.00	4.56	98.44	9.29	257.41
<b>2020</b>	43.68	113.50	4.56	99.19	9.66	270.59



Proposed Colfax Water Transmission Line  
Waterlooping Project  
Colfax, ND

User Name: Tyler.Birchem Date Exported: 1/31/2022 1:58:31 PM Date Saved: 1/31/2022 1:54:14 PM  
Units: Foot Coordinate System: NAD 1983 2011 StatePlane North Dakota South FIPS 3302 Ftl  
Document Path: Q:\2021\W21's\W2100048\CADD\GIS\11x17OverviewMap.mxd



Industrial Commission  
of North Dakota

Kelly Armstrong  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



## Memorandum

**To:** Public Finance Authority Advisory Committee  
Miles Silbert, Public Financial Management  
Kylee Merkel, Bank of North Dakota

**From:** DeAnn Ament, Executive Director

**Date:** February 24, 2025

**Re:** City of Jamestown  
Drinking Water State Revolving Fund

**Purpose of the Project:** Fourteen blocks of cast iron water mains including valves and hydrants will be replaced with PVC pipe along with the associated appurtenances.

### Project Amount:

<b>DWSRF Request</b>	\$ 1,618,000
<b>DWR Cost Share</b>	2,185,673
<b>Project Total</b>	\$ 3,803,673

**Population to Benefit from the Project:** 5,000

**Population Served by the System:** 15,849

The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 20 years. Accordingly, the average annual payment on the net loan will be approximately \$94,951. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City has 4,963 residential and 489 commercial users which pay a monthly water base rate of \$27.20 including the first 400 cubic feet of water plus \$3.40 per 100 CF in excess of 400 CF.

**Water Fund:**

	<b>Unaudited</b>			
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Interest Revenue	\$14,402	\$24,170	\$56,315	\$139,365
Operating Revenue	5,749,451	5,688,657	6,240,607	6,302,228
Operating Expenses	3,089,211	4,148,841	6,186,836	4,157,980
Net Operating Revenue	2,674,642	1,563,986	110,086	2,283,613
Depreciation	393,861	488,098	559,823	-
Non-Cash Pension Adjustment	-	-	1,936,986	-
Transfer In	3,228,114	2,541,826	-	74,470
Adjusted Net Operating Revenue	\$6,296,617	\$4,593,910	\$2,606,895	\$2,358,083
Revenue Bond Payments	\$1,054,120	\$3,242,730	\$1,268,750	\$950,913
Net Operating Coverage	597%	142%	205%	248%

The City's outstanding indebtedness as of December 31, 2024:

	<b><u>Original Debt</u></b>	<b><u>Outstanding Balance</u></b>
Revenue Bonds:		
Water <sup>1</sup>	\$ 15,042,701	\$ 4,780,000
Sewer <sup>1</sup>	16,885,331	9,399,000
Solid Waste <sup>1</sup>	4,249,147	2,670,000
	<u>\$ 36,177,179</u>	<u>\$ 16,849,000</u>
Improvement Bonds:		
Water and Sewer <sup>1</sup>	\$ 13,249,509	\$ 6,712,000
Other	37,021,054	17,323,607
	<u>\$ 50,270,563</u>	<u>\$ 24,035,607</u>
Total Debt	<u>\$ 86,447,742</u>	<u>\$ 40,884,607</u>

<sup>1</sup> All payments have been made as agreed. The City has nine Clean Water SRF and twelve DWSRF loans with outstanding balances of \$23,561,000.

Per resident, the 2024 outstanding bond debt is \$2,580 and the average annual bond payment is \$403. There will be approximately 90 parcels assessed for this project with the average annual payment will be \$1,055 per parcel.

The City of Jamestown is in Stutsman County, on Interstate 94, 99 miles west of Fargo. The total population according to the 2020 census is 15,849; this is an increase of 422 from the 2010 census. The largest employers in the Jamestown Public Schools with 368 employees, the ND State Hospital with 450 employees and the Anne Carlsen Center with 595 employees.

**K-12 School Enrollment:**

			<b>Current</b>	<b>Projected</b>
<b>2021-2022</b>	<b>2022-2023</b>	<b>2023-2024</b>	<b>2024-2025</b>	<b>2025-2026</b>
2,187	2,122	2,145	2,080	2,070

The City's 2024 taxable valuation was \$55,652,032. This is an increase of \$8,196,370 over the 2020 taxable valuation.

**Property Tax Collections as of December 31, 2024:**

<b>Levy Year</b>	<b>Dollar Amount of Levy</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$6,588,067	\$960,344	15%
<b>2023</b>	\$6,343,919	\$6,213,833	98%
<b>2022</b>	\$6,013,735	\$5,964,374	99%
<b>2021</b>	\$5,744,114	\$5,734,617	100%

**Special Assessment Collections as of December 31, 2024:**

<b>Year</b>	<b>Dollar Amount</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$3,086,650	\$360,298	12%
<b>2023</b>	\$2,933,865	\$2,851,465	97%
<b>2022</b>	\$2,791,009	\$2,763,694	99%
<b>2021</b>	\$2,870,385	\$2,854,055	99%

**Mill Levy History:**

<b>Year</b>	<b>City</b>	<b>School</b>	<b>Park District</b>	<b>State and County</b>	<b>Total for Each Year</b>
<b>2024</b>	118.38	102.00	46.60	69.58	336.56
<b>2023</b>	118.41	102.00	41.38	75.38	337.17
<b>2022</b>	117.92	102.00	40.20	71.98	332.10
<b>2021</b>	118.36	102.00	40.21	71.09	331.66
<b>2020</b>	117.95	100.00	39.36	67.33	324.64



## Memorandum

**TO:** DeAnn Ament, Executive Director  
North Dakota Public Finance Authority

**FROM:** PFM Financial Advisors LLC

**DATE:** March 14, 2025

**RE:** Marketplace Analysis - Drinking Water State Revolving Fund Program  
City of Jamestown

---

The City of Jamestown (the “City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$1,618,000 loan under the Drinking Water State Revolving Fund Program (“DWSRF Program”). The DWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various water treatment, distribution and storage facilities as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds of the loan to replace fourteen blocks of cast iron water mains, valves and hydrants with PVC pipe along with the associated appurtenances.

The municipal securities to be acquired by the Authority will be improvement bonds of the City payable from special assessments levied against the benefited property. The proposed term of the loan is 20 years with a subsidized interest rate of 1.50%. The City’s average annual payment under the proposed loan will be approximately \$94,951. The improvement bonds will be a contingent general obligation of the City, which will be required by law to levy a general deficiency tax if the revenues collected from the levy of special assessments are insufficient to make the debt service payments.

As of December 31, 2024, the City has \$16,849,000 of Revenue Bonds and \$24,035,607 of Improvement Bonds outstanding. The City has nine Clean Water SRF and twelve Drinking Water SRF loans with a total outstanding balance of \$23,561,000. The City is current in its payments for its outstanding Authority loan.

Funding the construction of the City’s improvements has been included in a list of approved uses as prepared and updated by the Department. As an authorized participant in the DWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the DWSRF Program.

CONSTRUCTION PLANS
FOR
WATER MAIN IMPROVEMENTS
2023

DWSRF 4700498-14 / Special Assessment District 23-61

PREPARED FOR
CITY OF JAMESTOWN
NORTH DAKOTA

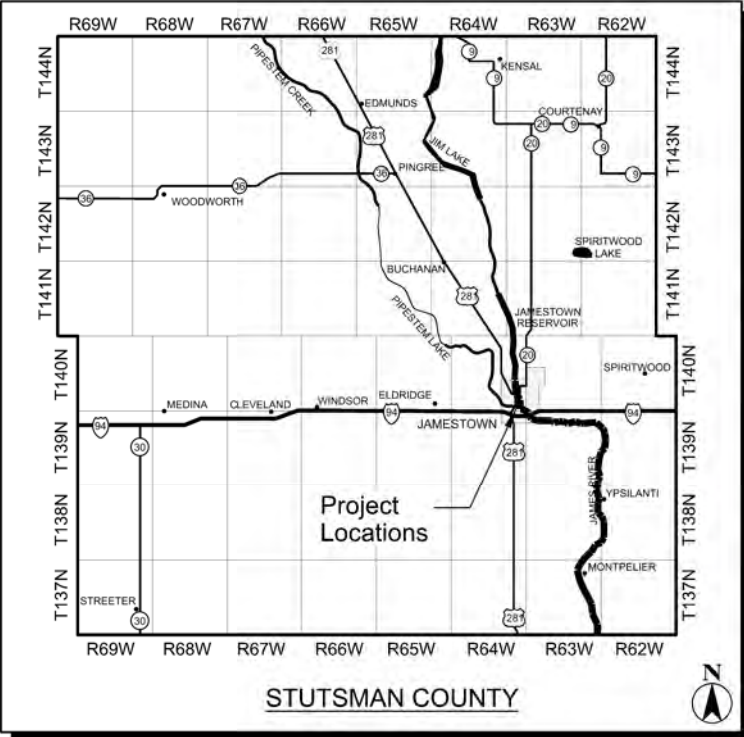
INDEX OF DRAWINGS

Table with 2 columns: SHEET NUMBER, SHEET TITLE. Lists sheets G-1 through T-1 and a summary row.

Attachment 9E



LOCATION MAP
NOT TO SCALE



LOCATION MAP
NOT TO SCALE



SITE MAP
NOT TO SCALE

CITY OFFICIALS

MAYOR.....DWAINE HENRICH
COUNCIL PERSON.....DAN BUCHANAN
COUNCIL PERSON.....BRIAN KAMLITZ
COUNCIL PERSON.....DAVE SCHLOEGEL
COUNCIL PERSON.....DAVE STEELE
CITY ADMINISTRATOR.....SARAH HELLEKSON
WATER SUPERINTENDANT.....JOE ROWELL

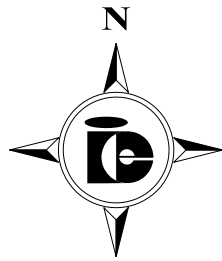


Table with 4 columns: REVISION NO., DATE, BY, DESCRIPTION. Contains revision history.

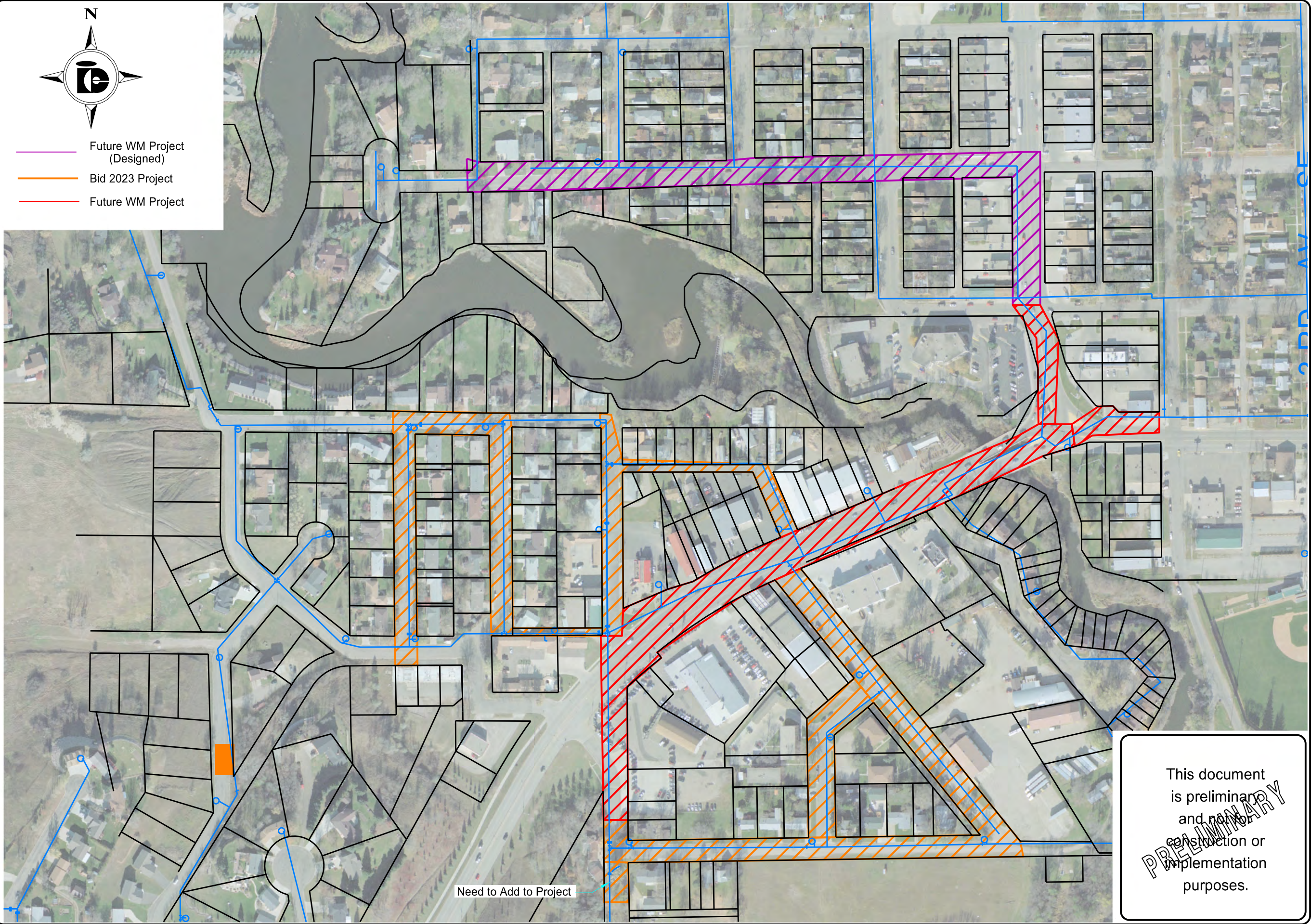
Interstate Engineering logo and contact information, including address, phone, fax, and website.

G1

Sheet Number



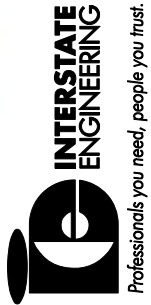
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- Bid 2023 Project
- Future WM Project



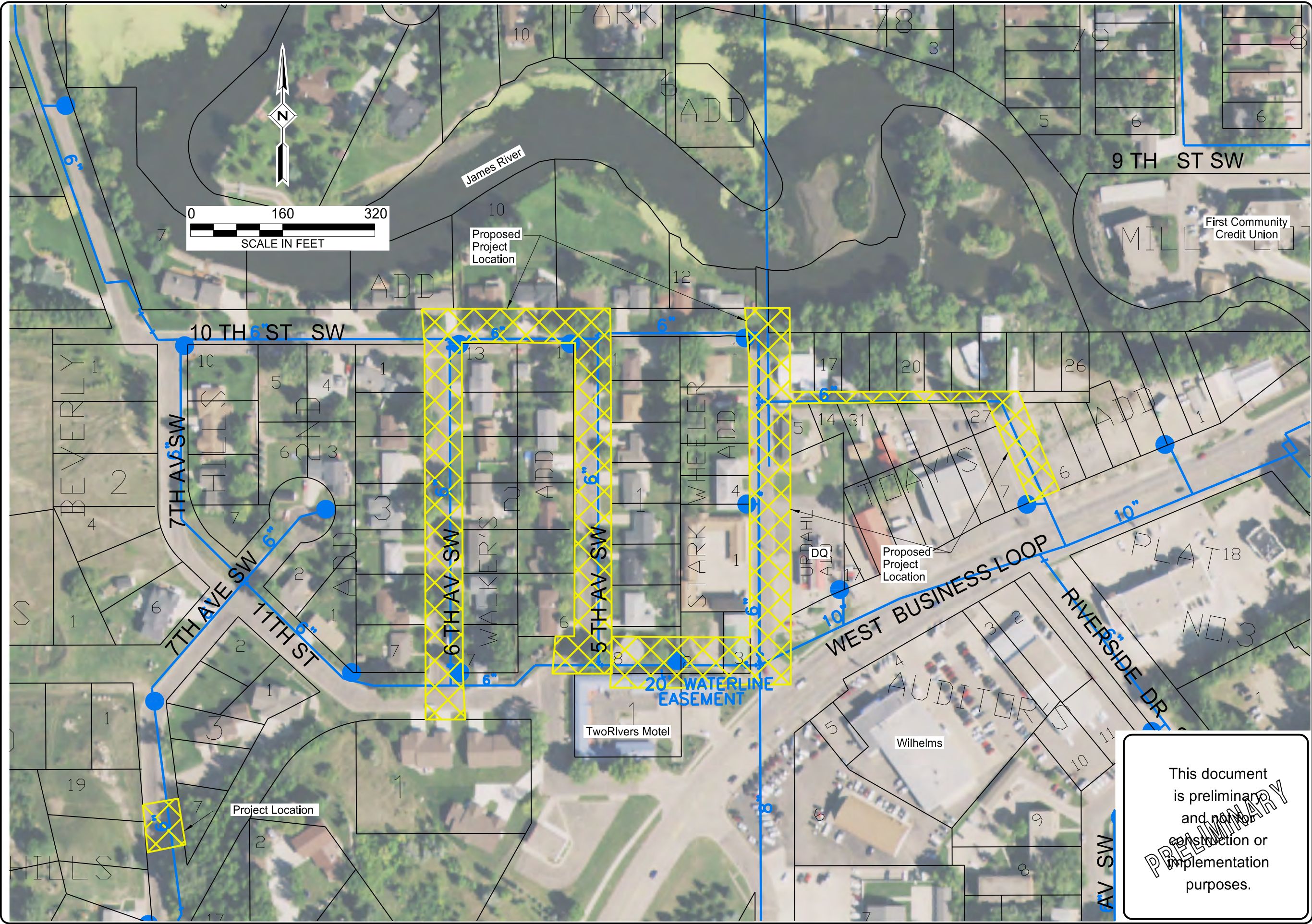
This document is preliminary and not for construction or implementation purposes.

Rev No	Date	By	Description

Watermain Replacement Projects City of Jamestown	
Watermain Planning Locations	
Drawn By: BA	Surveyed By: Project No: 22-00-116
Checked By:	Designed By: Date: 03/21/2023



Offices in North Dakota, Minnesota, Montana and South Dakota

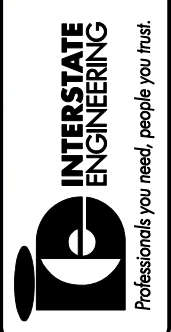


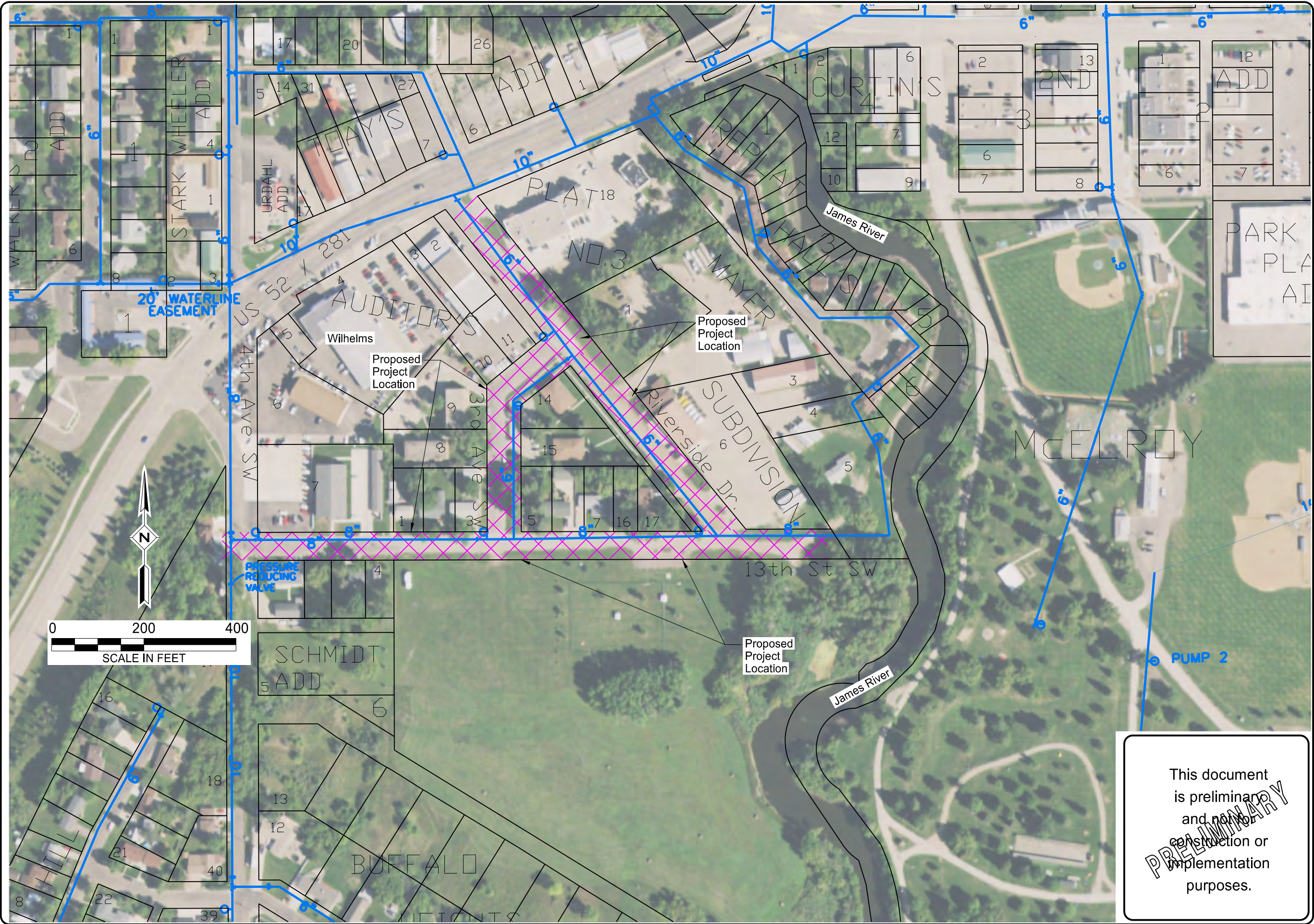
This document is preliminary and not for construction or implementation purposes.

Rev No	Date	By	Description

City of Jamestown Jamestown, North Dakota			
Proposed Waterline Replacement Location			
Drawn By:	Surveyed By:	Project No:	22-00-116
Checked By:	Designed By:	Date:	10/12/2022

Interstate Engineering, Inc.  
P.O. Box 2035  
1903 12th Avenue SW  
Jamestown, ND 58402-2035  
Ph (701) 252-0234  
Fax (701) 252-0203  
www.interstateeng.com



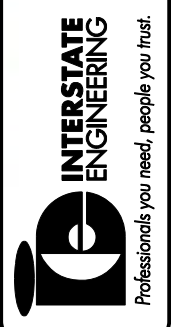


This document is preliminary and not for construction or implementation purposes.

Rev No	Date	By	Description

City of Jamestown Jamestown, North Dakota			
Proposed Waterline Replacement Location			
Drawn By: BA	Surveyed By: NC	Project No: 22-00-116	Date: 10/12/2022
Checked By:	Designed By:		

Interstate Engineering, Inc.  
P.O. Box 2035  
1903 12th Avenue SW  
Jamestown, ND 58402-2035  
Ph (701) 252-0234  
Fax (701) 252-0203  
www.interstateeng.com  
Offices in North Dakota, Minnesota, Montana and South Dakota



Industrial Commission  
of North Dakota

Kelly Armstrong  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



## Memorandum

**To:** Public Finance Authority Advisory Committee

**From:** DeAnn Ament, Executive Director

**Date:** March 6, 2028

**Re:** City of Zeeland  
Drinking Water State Revolving Fund Program Loan

**Purpose of the Project:** Install a mixer in the water tower to prevent freezing and new pumps and controls in the pump house to monitor the water levels in the city's system.

### Project Amount:

<b>DWSRF Request</b>	\$ 60,000
<b>DWR Cost Share</b>	\$ 94,580
<b>CDBG</b>	\$ 315,500
<b>Project Total</b>	\$ 470,080

**Population to Benefit from the Project:** 82

**Population Served by the System:** 82

The City will issue revenue bonds payable with water user fees. The requested term for the loan is 20 years. The average annual payment for the revenue bonds will be \$3,497. The reserve requirement will be \$4,060 and the 110% coverage requirement will be \$3,846.

Effective January 1, 2025, the City increased the monthly water base rate by \$8 to \$30 and the volume charge increased \$6 per 1,000 gallons. The City has 93 connections and the base rate increase will provide additional annual revenue of approximately \$8,928.

**Water Fund:**

			<b>Unaudited</b>	
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Operating Revenue	\$31,629	\$30,535	\$37,854	\$49,320
Operating Expenses	23,976	24,655	42,192 <sup>1</sup>	44,426
Net Operating Revenue (Expense)	7,653	5,881	-4,338	4,894
Proforma Rate Increase Revenue	\$8,928	\$8,928	\$8,928	\$8,928
Revenue Bond Payments	\$3,497	\$3,497	\$3,497	\$3,497
Net Operating Coverage	474%	423%	131%	395%

<sup>1</sup> Water tower repairs due to freezing during cold weather.

With the recent rate increase, the City should meet the 110% net operating coverage requirement.

The City currently has no outstanding debt.

The City of Zeeland is located in McIntosh County approximately 95 miles southeast of Bismarck and 2 miles from the South Dakota border. The total population according to the 2020 census is 82; this is a decrease of 4 from the 2010 census. The largest employers in the area are Zeeland Public School with 17 employees, McIntosh County Highway Department Shop which employs 4 and Coco's Place (grocery store) with 3 employees.

**K-12 School Enrollment:**

				<b>Projected</b>
<b>2021-2022</b>	<b>2022-2023</b>	<b>2023-2024</b>	<b>2024-2025</b>	<b>2025-2026</b>
34	32	27	27	26

The City's 2024 taxable valuation was \$2,943,148. This is an increase of \$11,371 over the 2020 taxable valuation.

**Property Tax Collections as of December 6, 2024:**

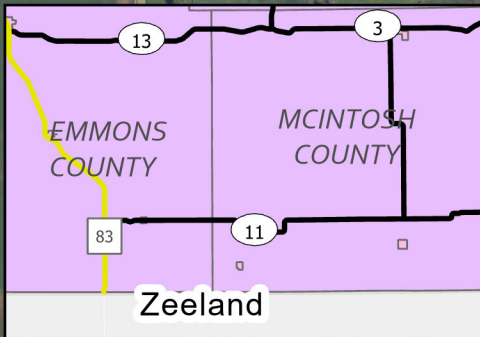
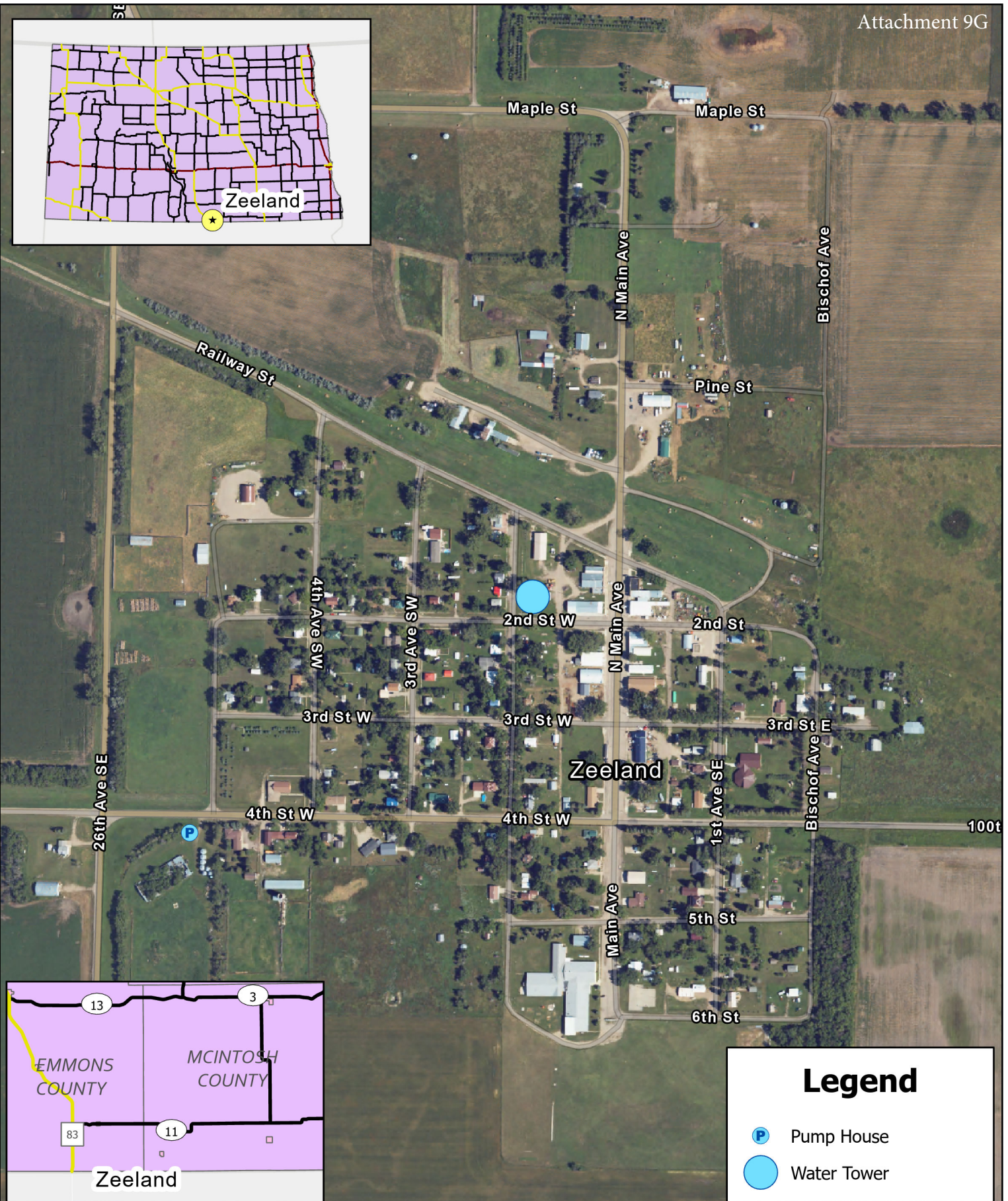
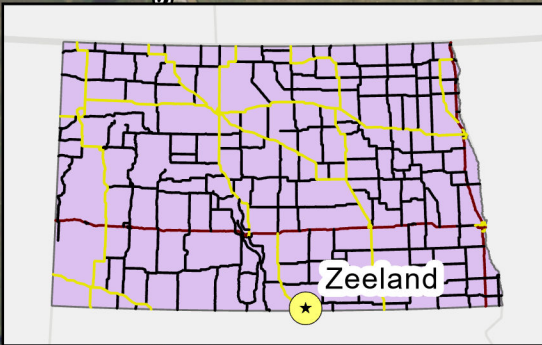
<b>Levy Year</b>	<b>Dollar Amount of Levy</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$14,775	-	-
<b>2023</b>	\$13,896	\$13,370	96%
<b>2022</b>	\$13,135	\$12,833	97%

**Special Assessment Collections as of December 6, 2024:**

<b>Year</b>	<b>Dollar Amount</b>	<b>Amount Collected to Date of Application</b>	<b>Percentage Collected</b>
<b>2024</b>	\$7,851	-	-
<b>2023</b>	\$4,725	-	-
<b>2022</b>	\$1,367	\$536	39%

**Mill Levy History:**

<b>Year</b>	<b>City</b>	<b>School</b>	<b>State and County</b>	<b>Other</b>	<b>Total for Each Year</b>
<b>2024</b>	107.11	93.35	112.38	14.34	327.18
<b>2023</b>	105.00	74.43	111.28	2.51	293.22
<b>2022</b>	110.72	86.01	107.69	2.52	306.94
<b>2021</b>	111.22	83.21	109.98	2.11	306.52
<b>2020</b>	106.86	83.81	113.55	2.14	306.36

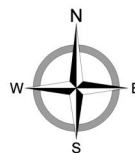


### Legend

- Pump House
- Water Tower

**WATER SYSTEMS IMPROVEMENT PROJECT  
CITY OF ZEELAND  
MCINTOSH COUNTY, NORTH DAKOTA**

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 Plotted By: brook.smith Parcel Date: N/A Aerial Image:  
 Elevation Data: N/A Horizontal Datum: N/A Vertical Datum: NAVD1988  
 T:\BaseData\ND\City\Zeeland\10\_ArcPro\Zeeland Basemap\Zeeland Basemap.aprx



# MEMO

To: Industrial Commission Members  
From: Don Morgan, President/CEO  
CC: Advisory Board Members  
Date: 3/11/2025  
Re: Rural In-House Non-Compliant Residential Program (RINC)

---

Under authority provided to Bank of North Dakota in **N.D.C.C. § 06-09-15**, the bank is requesting approval to create the **Rural In-House Non-Compliant Residential Program (RINC)** to assist with housing issues identified in rural communities with a population of 20,000 or less.

The RINC program provides a solution for the largest identified need in rural communities in North Dakota – secondary market non-compliant appraisals. Specifically, those first lien (purchase or construction) rural residential loans that comply with secondary market requirements; but do not comply with secondary market appraisal requirements.

A loan in this program will exhibit characteristics consistent with a strong likelihood of repayment and consistent with secondary market requirements, i.e. credit score, debt-to-income, length of employment, etc.; however, the appraisal(s) are not acceptable typically based on distance and/or size of required comparable adjustments given the nature of a residence in a North Dakota rural community.

These non-compliant rural residential loans are not sellable to secondary market sources (e.g. FNMA, FMAC) based on appraisal non-compliance and North Dakota financial institutions must choose to hold them on book for term and/or choose not to provide a solution for their customer.

The RINC program as proposed allows the Bank of North Dakota to “buy” these secondary market non-compliant loans under the following guidelines:

**Eligibility:**

- Loan is non-compliant with secondary market appraisal requirements
- Must be for the construction or purchase of a residence in a rural community (population of 20,000 or less)
- No investment or rental properties

**Use of Proceeds:**

- Purchase or construction of residence in rural community

**Loan amount/Limit:**

- Maximum loan amount will be tied to conforming loan limits set forth by Federal Housing Finance Agency (FHFA).
- No Jumbo Loans

**Loan Terms/Guidelines:**

- Loan shall be underwritten and closed by North Dakota financial institutions and/or mortgage originators in compliance with secondary market requirements (FNMA/FMAC)
- Up to 30-year amortization
- Purchase price to be at par and at a market rate of interest

**Loan to Value:**

- In compliance with secondary market requirements as set by Fannie Mae (FNMA) or Freddie Mac (FMAC)

**Credit/Underwriting Criteria:**

- Appraisal non-compliance aside, loan will be underwritten and in compliance with secondary market requirements as set by Fannie Mae or Freddie Mac

**Collateral:**

- 1<sup>st</sup> mortgage on subject property
- Not to exceed 40 acres

**Appraisal Requirements:**

- Uniform Residential Appraisal Report must be completed by a licensed appraiser

## GENERAL LOAN POLICY BANK OF NORTH DAKOTA GENERAL LOAN POLICY

**UNDESIRABLE LOANS**

Loans of the following types are generally considered undesirable by the Bank and will ordinarily be declined unless specifically approved as an exception by the Bank:

- Capital loans to businesses where the loans cannot be repaid within a reasonable period except by borrowing elsewhere or by liquidating the businesses.
- Loans secured by non-marketable stock or other securities.
- Loans which, by their terms, are not consistent with the Bank's asset/liability strategy.
- Loans which, by their terms, do not provide for adequate collateral monitoring.
- Loans for speculative purposes.
- Loans made to pay interest.
- Loans to businesses or individuals where the integrity or honesty of the principals or the individuals is questionable.
- Loans to businesses where the benefits of the businesses do not appear to be in the best interests of the state.
- Loans with environmental contamination yet to be remediated or with inadequate reserves set aside for remediation or not meeting credit quality required as if it is an unsecured loan.

**FIVE C's OF CREDIT**

In addition to the specific statutory or policy requirements which must be met by a borrower in connection with the approval of a loan, no loan may be approved which does not satisfactorily withstand an analysis and review using the "Five C's of Credit" – Character, Capacity, Capital, Conditions, and Collateral. Ideally, a borrower will possess or meet all of these qualifications. However, there are no hard and fast standards to apply in measuring these qualifications and the determination of whether a borrower satisfactorily meets or possesses these qualifications will rest with the approving authority.

**INTEREST RATES**

Financial Institution Market must maintain an interest rate pricing formula that will reflect the current rates being charged on the various types of loans. The interest rate pricing formula should be consistent with legislative goals and objectives established for the Bank and, within those parameters, should provide a rate spread that will assure the Bank of a profitable operation and a fair return on capital.

The interest rate pricing formula will be used as a guideline to ensure a consistent application of rates on similar types of loans while remaining flexible enough to allow for rate differentials determined by factors such as risk, liquidity of collateral, equity position, repayment, and term.

~~Business Bankers are authorized to approve up to a 0.25% reduction in the Bank's net rate of interest on a loan within their approval authority, even if that loan is part of aggregate related exposure that exceeds a Business Banker's individual authority. Sole Approval will be required to approve up to a 0.25% reduction in the Bank's net rate of interest on loans above Business Banker authority not to exceed \$5,000,000. Dual Approval will be required to approve up to a 0.25% reduction in the Bank's net rate of interest on loans larger than \$5,000,000. For rate reductions of more than 0.25%, they may be approved~~

~~by Dual Approval regardless of exposure as long as the margin over the cost of funds is equal to or greater than what it was at the time of the original approval. For example, the spread over cost of funds based on the 5-year index at origination was 1.50%. Two years after origination, an interest rate reduction is being considered. Approval level for this rate reduction is determined by deducting the 3-year index (3 years remaining on the term) from the proposed reduced interest rate, and if the margin over cost of funds is greater than or equal to 1.50%, it may be approved by Dual Approval regardless of exposure level. If the margin is less than what it was at the time of the original approval, the approval level required is based on the aggregate loan exposure with the maximum approval level at Investment Committee.~~

### **BANKER'S ACCEPTANCES**

A request to the Bank to accept a draft or a bill of exchange drawn upon it or to participate in the acceptance of a draft or a bill of exchange drawn upon another financial institution must be handled in the same manner as a request to make or to participate in a loan, provided that any request concerning a draft or a bill of exchange which involves any state agency, department, board, or commission must be approved by the Industrial Commission.

A draft or a bill of exchange which grows out of a transaction involving the importation or exportation of goods or the domestic shipment of goods provided shipping documents conveying or securing title are attached at the time of acceptance, or which is secured at the time of acceptance by a warehouse receipt or other document conveying or securing title covering readily marketable staples, must have a maturity of not more than six months.

The party for whose account a draft or a bill of exchange is accepted must have an unqualified reimbursement obligation at maturity of the acceptance. The form of any draft or bill of exchange which the Bank accepts or in the acceptance of which the Bank will have a participation interest must be reviewed by the Legal Department.

### **OVERDRAFTS**

An overdraft is a direct extension of credit in the same manner as a loan. Because the Bank may not make direct loans in this manner, overdrafts are prohibited unless prior funding arrangements have been established.

### **COMMITMENT FEES**

The Bank may charge a loan commitment or origination fee in connection with the approval of a loan or a letter of credit.

### **SALE, ASSIGNMENT OR PURCHASE OF LOANS**

The Bank may sell or assign most loans or loan participations with the approval of the Investment Committee, regardless of the dollar amount. The only exception to the approval requirement is for Student Loans, Farm Real Estate loans and Residential Real Estate loans which may be sold without approval of the Investment Committee. The Bank will not broker loans for another financial institution.

### **LENDING LIMITS**

The total loans and extensions of credit by the Bank to a borrower outstanding at one time must not exceed fifteen percent of the Bank's Tier I capital based on the most recent month end. The term "loans and extensions of credit" includes all direct or indirect advances of funds to a borrower made on the basis

the aggregate exposure falls into the non-watchlist or watchlist column of the Loan Approval Table. It is not appropriate to use a weighted average risk rating for multiple aggregated credits in determining whether it is a non-watchlist or watchlist credit for approval level purposes.

The President, with the advice of the Chief Lending Officer, Chief Business Development Officer, Chief Credit Officer and Financial Institutions Market Manager, shall establish lending authority for individual business bankers, and student loan staff consistent with their experience, expertise and demonstrated lending judgment and will be reviewed annually. Commercial and agriculture authorities shall be distinguished between non-watchlist and watchlist classifications. Non-watchlist includes credits that are risk rated 1-4. Watchlist includes credits that are risk rated 5-8. The Bank's lending authorities are as follows:

	<b>NON-WATCH LIST CREDITS</b> Authorities for all credit actions except: extensions	<b>WATCH LIST CREDITS</b> Authorities for all credit actions except: extensions, charge offs and moves to and from non-accrual
<b>Individual Loan Approval</b>		
Business Bankers	Up to \$1,000,000	Up to \$500,000
Direct Farm RE Loan Specialist	Up to \$1,000,000	Up to \$500,000
E.D. & Govt Program Manager	Up to \$1,000,000	Up to \$500,000
Special Assets Manager*	Up to \$1,500,000	Up to \$1,000,000
<b>Sole Serial Sign-Off (requires any of the following to approve):</b>		
President/CEO	Up to \$2,500,000	Up to \$1,250,000
Chief Credit Officer	Up to \$2,500,000	Up to \$1,250,000
Chief Business Development Officer	Up to \$2,500,000	Up to \$1,250,000
Chief Lending Officer	Up to \$2,500,000	Up to \$1,250,000
Financial Institutions Market Manager	Up to \$2,500,000	Up to \$1,250,000
<b>Dual Serial Sign-Off (requires any two of the following to approve):</b>		
President/CEO	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Credit Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Business Development Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Lending Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Financial Institutions Market Manager	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
<b>Investment Committee</b>	\$10,000,001 to \$25,000,000	\$5,000,001 to \$12,500,000
<b>Advisory Board</b>	\$25,000,001 to \$35,000,000	\$12,500,001 to \$17,500,000
<b>Industrial Commission</b>	Loans in excess of \$35,000,000	Loans in excess of \$17,500,000

\* Special Assets Manager authorities for non-accruals, charge-offs, OREO, and repossessed assets are outlined in a lending authorities memo approved by the President/CEO annually

All credit requests between \$25 million and \$35 million are required to be presented at the Industrial Commission meeting monthly; however, funding of these loans is not contingent upon Industrial Commission approval. Any credit request exceeding \$35 million in aggregate requires the approval of Industrial Commission prior to funding.

### **INVESTMENT COMMITTEE**

Watchlist loans between \$5,000,001 and up to \$12,500,000 and non-watchlist loans between \$10,000,001 and up to \$25,000,000 require approval from the Investment Committee. The Investment Committee of the Bank shall consist of seven members appointed by the President with no more than three members combined from Business Development and Credit Administration. It is the responsibility of

an absent voter to find a substitute to vote in their place. One-half or more of Committee members shall constitute a quorum. A majority of Committee members present must vote favorably to carry a motion.

For a credit relationship which exceeds \$25,000,000, the Investment Committee may renew the loan without further action by the Industrial Commission or Advisory Board provided: ~~1) the loan has a current and proposed risk rating has a risk rating code~~ of 4 or better; ~~2) the quality of the loan has not deteriorated;~~ and ~~3) the Advisory Board and or~~ Industrial Commission ~~have~~ has previously approved the loan. New monies for an existing credit relationship require the highest approval level up to and including Advisory Board ~~or~~ Industrial Commission unless the new monies are within discretionary lending thresholds established in this policy. All other loan modifications, pricing changes, maturity extensions, and restructures on previously approved existing exposure requires a maximum of Investments Committee approval regardless of exposure level.

Unless otherwise stated in Century code, Investment Committee will have full authority to set pricing, rates, and fees for all loans including loan programs.

### **DISCRETIONARY LENDING AUTHORITY FOR SOLE AUTHORITY AND INVESTMENT COMMITTEE**

- 1) **Sole Discretionary Authority** - For a non-watchlist relationship which has the approval of the Investment Committee, Advisory Board, or Industrial Commission, it will be within Sole Authority to approve an increase in the Bank's exposure up to the Sole lending authority maximum without further action by the Investment Committee, Advisory Board, or Industrial Commission. For a credit relationship which has prior approval only at the Investment Committee level, this discretionary authority is subject to a cap of \$25,000,000 for overall exposure. This discretionary authority is not subject to a cap for overall exposure if it has the prior approval of Advisory Board or Industrial Commission. This discretionary lending authority is valid for one year after approval at the highest level. An approved annual review also qualifies for another year of discretionary lending authority as outlined above. Dual authority does not have any discretionary authority.
- 2) **Investment Committee Discretionary Authority: Up to \$5,000,000 With Prior Approval** - For a proposed non-watchlist credit relationship which has the prior approval of the Advisory Board or Industrial Commission, it will be within the authority of the Investment Committee to approve an increase in the Bank's exposure not to exceed \$5,000,000 without further action by either the Advisory Board or Industrial Commission. This discretionary authority has no expiration after the date of Advisory Board or Industrial Commission approval. In the case of a paydown of exposure subsequent to Advisory Board or Industrial Commission approval, Investments Committee is granted authority to lend back up to the original exposure level approved by Advisory Board or Industrial Commission plus up to an additional \$5,000,000 of discretionary exposure with the only condition that the proposed risk rating for the borrower is at RR4 or better. The Investment Committee minutes will specifically note action taken under this rule.
- 3) **Investment Committee Discretionary Authority: Up to \$1,000,000 Without Prior Approval** - For a credit relationship which has not previously required the approval of the Advisory Board or the Industrial Commission, it will be within the authority of the Investment Committee to approve an increase or renewal in the Bank's exposure not to exceed \$1,000,000 (\$500,000 for watch list credits) without further action by either the Advisory Board or Industrial Commission despite the fact that the additional exposure may exceed the loan approval level granted to Investment Committee. The Investment Committee minutes will specifically note action taken under this rule.

**15% RULE- DISCRETIONARY LENDING AUTHORITY FOR BUSINESS BANKERS**

The 15% rule is intended to give authority to bankers to grant interim loan requests or increased participation share to credits exceeding individual approval authorities. The Rule allows bankers the authority to grant multiple interim loans totaling up to a business banker's individual authority or 15% (whichever is less) of the combined aggregate credit exposure as shown on the most recently approved annual review/new request to any borrower, guarantor, or related entity, without prior approval subject to all of the following conditions:

- Current risk rating is 1, 2, 3, or 4.
- All 15% Rule loans in aggregate granted since the most recently approved annual review/new requests are limited to: a business banker's individual authority or 15% (whichever is less) of combined aggregate exposure as shown on the most recent Annual Review/new request.
- If exercising a 15% Rule results in moving to an Investment Committee approval level, at the time of the next credit request, approval at the Investment Committee will be required. If an attempt to exercise a 15% Rule results in moving to an Advisory Board or Industrial Commission approval level, then the 15% Rule cannot be used. Approval by Advisory Board and Industrial Commission will be necessary.
- Only one 15% Rule application may be applied per aggregated relationship per annual review or new request (multiple interim loans totaling up to one 15% Rule is acceptable).
- The 15% rule resets after a loan decision of the highest authority; however, the most recent Annual Review/new request must be dated within the past 12 months and business banker must conclude that there has been no material change to the borrower's financial condition since last financial review. If negative change or deterioration to the credit has occurred, the 15% rule is not available.
- The new loan proposed complies with loan policy.
- The 15% Rule does not apply to a new borrower to the bank, regardless of existing debt to related entities. The 15% Rule cannot be used to advance to a borrower who does not have existing debt with the bank, however, the 15% rule can be applied to exposure that has been approved but not yet funded.~~Bank.~~
- The combined aggregate credit exposure, including the new proposed debt, DOES NOT exceed legal lending limits or concentration limits.

Upon granting a loan under the 15% Rule, the banker must indicate in the file comment that the loan was granted under the 15% Rule; no additional reporting or approval is required.

**SUNSET CLAUSE FOR LOAN COMMITMENTS**

An initial commitment by the Bank to make a direct loan or to participate in a loan may not exceed 180 days. If the Bank is not a participant in the construction or bridge financing provided to a borrower but has

committed to provide permanent financing to that borrower, the Bank may make up to an 18-month commitment to accommodate the construction or installation phase. Loans under the Economic Development and Government Program area will be allowed up to 12 months before the initial commitment will expire. Upon expiration as outlined herein, the banker must obtain re-approval from the same authority level that made the original approval. Unless tied to an index, fixed rate commitments expire 90 days from the commitment date. If the margin over the cost of funds is equal to or greater than what it was at the time of the original approval (declining rate environment), a fixed rate commitment would then be favorable to BND and would require only business banker approval to extend the commitment up to an additional 90 days regardless of exposure level. If the margin over the cost of funds has declined but is within 0.25% of what it was at the time of the original approval (rising rate environment), extensions of fixed rate commitments are subject to the following approval criteria:

- 1) Business Bankers are authorized to approve fixed rate commitments for an additional 90 days on a loan within their approval authority, even if that loan is part of aggregate related exposure that exceeds a Business Banker's individual authority.
- 2) Sole Approval will be required to approve fixed rate commitments for an additional 90 days on loans above Business Banker authority not to exceed \$5,000,000.
- 3) Dual Approval will be required to approve fixed rate commitments for an additional 90 days on loans larger than \$5,000,000.

If the margin has declined by more than 0.25%, the approval level required is based on the aggregate loan exposure with the maximum approval level at Investment Committee.

### LOAN MATURITY EXTENSIONS

Regardless of exposure level, extensions of loan payments and/or maturity totaling no more than 120 days for non-watchlist loans, and 30 days for watchlist credits, may be granted by the business banker without further approval provided no adverse change has occurred in the borrower's financial condition. Any subsequent extensions must be approved by Sole Approval and shall have the authority to approve an extension of loan payments and/or maturity dates for an additional 120 days regardless of exposure level for non-watchlist credit and an additional 90 days for watchlist credits. The cumulative total of extensions exceeding 240 days must be considered a renewal and require a full financial review and credit analysis of the borrower.

For watchlist credits all extensions of loan payments and/or maturity beyond 120 cumulative days must be approved by Dual authority regardless of exposure level. The cumulative total of extensions exceeding 240 days must be considered a renewal and require a full financial review and credit analysis of the borrower.

### CHANGING INTEREST RATES

Business Bankers are authorized to approve up to a 0.25% reduction in the Bank's net rate of interest on a loan within their approval authority, even if that loan is part of aggregate related exposure that exceeds a Business Banker's individual authority. Sole Approval will be required to approve up to a 0.25% reduction in the Bank's net rate of interest on loans above Business Banker authority not to exceed \$5,000,000. Dual Approval will be required to approve up to a 0.25% reduction in the Bank's net rate of interest on loans larger than \$5,000,000. For rate reductions of more than 0.25%, they may be approved by Dual Approval regardless of exposure as long as the margin over the cost of funds is equal to or greater than what it was at the time of the original approval. For example, the spread over cost of funds

based on the 5-year index at origination was 1.50%. Two years after origination, an interest rate reduction is being considered. Approval level for this rate reduction is determined by deducting the 3-year index (3 years remaining on the term) from the proposed reduced interest rate, and if the margin over cost of funds is greater than or equal to 1.50%, it may be approved by Dual Approval regardless of exposure level. If the margin is less than what it was at the time of the original approval, the approval level required is based on the aggregate loan exposure with the maximum approval level at Investment Committee.

### RISK RATING RESPONSIBILITY

The banker, credit analyst, and management are responsible to determine the level of risk for each loan and assign a risk rating. The risk rating should be reviewed at least annually or whenever improvement or deterioration is noted by the responsible banker. Documentation of any such risk rating changes must be noted in the credit file with the appropriate comment and approval. The level of credit analyst and management involvement in determining the risk rating will depend on the size of the loan as set forth in this policy. The credit analyst will be responsible for assigning risk ratings of credits processed in Credit Administration. Regardless of exposure level, any dispute a proposed change to the risk rating as determined by a credit analyst must be approved by the Chief Credit Officer. If the Chief Credit Officer is not available, Sole Approval of a disputed risk rating is required.

### CHANGING RISK RATING

In circumstances where the banker, credit analyst or Investment Committee detects deterioration in a credit during the annual review or at any time during the year, the banker must promptly process the downgrade to the risk rating (regardless of exposure level) as appropriate. Upgrades generally require the completion of a full operating cycle of the borrower since the downgrade occurred. Upgrades however, will require the highest authority level based on exposure to upgrade the credit; however, the maximum approval level for upgrades with no renewal and no new monies is Dual Approval. Upgrades generally require the completion of a full operating cycle of the borrower since the downgrade occurred. Upgrades do not need Investment Committee, Advisory Board, or Industrial Commission approval regardless of exposure level if there is no renewal or new monies under consideration. Upgrades may also be approved through the regular course of the Problem Loan Committee or approved annual reviews. The maximum level of approval for upgrades which exceed Sole or Dual authority must be by action of Investment Committee. Upgrades do not need Advisory Board or Industrial Commission approval regardless of exposure level.

### LOAN QUALITY CLASSIFICATION

Risk Rating		Description
Exceptional	1	<ul style="list-style-type: none"> <li>• Virtually no risk</li> <li>• Full cash security</li> <li>• Strongly capitalized</li> </ul>
Excellent	2	<ul style="list-style-type: none"> <li>• Minimal risk of any loss</li> <li>• Demonstrated and sustainable debt service capacity at over 1.50x</li> <li>• Top quartile of RMA averages for liquidity and leverage</li> <li>• Collateral is abundant/Strong security position</li> </ul>

Risk Rating	Description
	<ul style="list-style-type: none"> <li>• Excellent financial earnings history/trends</li> <li>• Stable/strong industry</li> </ul>
<b>Good/Average</b>	<b>3</b> <ul style="list-style-type: none"> <li>• Upper middle quartile of RMA averages for liquidity and leverage</li> <li>• Good security margin/LTV</li> <li>• Demonstrated and sustainable debt service capacity at over 1.20x</li> <li>• Steady financial trends/history of profitability</li> </ul>
<b>Acceptable -with Deficiencies</b>	<b>4</b> <ul style="list-style-type: none"> <li>• Lower middle quartile of RMA averages for liquidity and leverage</li> <li>• Can service debt at 1.00x</li> <li>• Collateral is typically adequate</li> <li>• History of profitable operation, with occasional loss years</li> <li>• Cash flow reliance may be based on projections only</li> <li>• Liquidity is limited, and repayment is expected from cash flows through the course or ordinary business</li> <li>• May exhibit weakness of a short-term nature</li> </ul>
<b>Questionable</b>	<b>5</b> <ul style="list-style-type: none"> <li>• Credit demonstrates emerging weaknesses that may extend beyond the short term</li> <li>• Bottom quartile of RMA average for liquidity and leverage</li> <li>• Can service debt at 0.80x to 0.99x</li> <li>• Exhibits declining trends where the primary source of repayment could become questionable</li> <li>• Liquidity is minimal, and repayment is expected from cash flows through the course of ordinary business</li> <li>• Collateral coverage may be marginal and of questionable quality</li> </ul>
<b>Substandard</b>	<b>6</b> <ul style="list-style-type: none"> <li>• Erratic earnings or losses</li> <li>• Borrower still has the ability to address its problems without significant deviation from its core business</li> <li>• Bottom quartile of RMA averages for liquidity and leverage</li> <li>• If the conditions causing the weaknesses are not addressed, the credit may not be able to meet its obligations</li> <li>• Collateral may be insufficient</li> <li>• Primary source of repayment is no longer realistic</li> <li>• Business borrowers that cannot service debt at 0.80x</li> <li>• Information in the credit file is insufficient to draw any conclusion as to quality</li> <li>• Continuing past due status</li> <li>• Numerous note renewals with limited or no principal reduction</li> </ul>
<b>Doubtful</b>	<b>7</b> <ul style="list-style-type: none"> <li>• Primary source of repayment is clearly no longer adequate</li> <li>• Secondary source of repayment is questionable</li> <li>• Collateral support, if any, is very weak</li> <li>• Loan may be in liquidation or in legal action</li> <li>• Possibility of loss is high but classification as "loss" is deferred until a more exact status may be determined</li> </ul>
<b>Loss</b>	<b>8</b> <ul style="list-style-type: none"> <li>• Charged off</li> </ul>

## PROBLEM LOAN IDENTIFICATION AND ADMINISTRATION

The primary responsibility for identifying problem loans rests with the individual business banker.

Each loan identified by a business banker or credit analyst as a problem loan must be listed on the Bank's Problem Loan Report. General criteria for identifying problem loans include the following:

- Loans which have been classified internally or externally as questionable, substandard, doubtful, or loss.
- Loans which have been identified as having a strong potential for non-accrual or loss.
- Loans which have no repayment program, or which have repayment programs which have been identified as inadequate.
- Loans which have seriously deviated from the original repayment plan.
- Loans where the borrowers have suffered material deterioration in their financial positions or earnings.

The business banker responsible for a loan on the Problem Loan Report must prepare and periodically update a workout strategy or plan of action for that loan. ~~All watchlist loans with no renewal and no new monies proposed within the lending authority of the banker~~ can be recommended for removal from the Problem Loan Report by the responsible business banker and Sole or Dual approval with the maximum approval at Dual approval regardless of exposure. ~~of the Financial Institutions Market Manager or the Chief Credit Officer. Any loan which exceeds Sole lending authority for watchlist credits may be removed from the Problem Loan Report by action of the Investment Committee. Upgrades from watchlist status to non-watchlist status may also be approved by action of the Problem Loan Committee or an approved annual review.~~

A plan of action which involves restructuring a loan may include one or more of the following alternatives:

- The deferral of principal and/or interest payments.
- The re-amortization of principal and/or interest payments at a reduced interest rate.
- The forgiveness of a portion of principal and/or interest. ("Debt Settlement" is not encouraged by the Bank and should be considered only in limited circumstances, such as an anticipated loan liquidation.)

A plan of action which includes the restructuring of a loan without new monies may be approved based upon the same lending authority levels outlined in this policy with the maximum approval level as Investments Committee. In special circumstances, the Chief Credit Officer may approve a restructuring plan of action without new monies that exceeds Sole and Dual lending authority. The approval must be reported at the next meeting of the Investment Committee. In the event that a restructure is proposed with new monies, the approval is based on the lending authorities outlined in this policy up to and including Advisory Board and Industrial Commission.

The Special Assets Manager, or delegate along with either the Financial Institutions Market Manager or Chief Credit Officer may accept debt settlement offers on loans as long as the final loss to the Bank does not exceed \$100,000. The approval must be reported at the next meeting of the Investment Committee.

The Bank's Investment Committee will have the ability to modify, amend, adjust, waive, release, exchange and agree to settlement offers on all problem loans regardless of exposure level. These actions

would relate to all loan conditions, documents, guarantees and collateral.

### **PROBLEM LOAN COMMITTEE**

Watchlist loans aggregating \$500,000 or more or considered for non-accrual or charge-off, will be reviewed on a quarterly basis by the responsible business banker with the Problem Loan Committee. A review of problem student loans will be completed at Problem Loan Committee semi-annually. The Problem Loan Committee shall consist of Bank staff selected by the Chief Credit Officer who shall serve as the chairman. The Problem Loan Committee will review and assess the adequacy of the plan of action for each of these loans and will make recommendations as necessary. The Committee will act on recommendations to discontinue collection efforts on loans which have been charged-off. The Problem Loan Committee will review and approve the level of allowance for credit losses for each impaired loan based on the loan's calculated specific reserve. Any allowance adjustment made between Problem Loan Committee meetings which exceeds \$500,000 needs to be approved by the Investment Committee.

### **TROUBLED DEBT RESTRUCTURING**

The Bank's loan portfolio also includes certain loans that have been modified to borrowers experiencing financial difficulty. The Bank will continue to refer to these modifications as a Troubled Debt Restructuring (TDR). Modifications to borrowers experiencing financial difficulty are made to borrowers who are unable to perform according to the original contractual terms of their loans. Such modification activity typically indicates an elevated level of credit risk.

#### **Determining Whether a Debtor is Experiencing Financial Difficulties**

##### **Definition of "Debtor" in determining financial difficulty factors on the borrower(s) only and does not consider support from secondary or tertiary repayment sources.**

In evaluating whether the debtor is experiencing financial difficulties per ASC 310-10-50-42 to 44, a credit shall consider the following indicators:

- The debtor is currently in payment default on any of its debt. In addition, a creditor shall evaluate whether it is probable that the debtor would be in payment default on any of its debt in the foreseeable future without the modification. That is, a creditor may conclude that a debtor is experiencing financial difficulties, even though the debtor is not currently in payment default.
- The debtor has declared or is in the process of declaring bankruptcy.
- There is substantial doubt as to whether the debtor will continue to be a going concern.
- The debtor has securities that have been delisted, are in process of being delisted, or are under threat of being delisted from an exchange.
- On the basis of estimates and projections that only encompass the debtor's current capabilities, the creditor forecasts that the debtor's entity-specific cash flows will be insufficient to service its debt (both interest and principal) in accordance with the contractual terms of the existing agreement for the foreseeable future.
- Without the current modification, the debtor cannot obtain funds from sources other than the existing creditors at an effective interest rate equal to the current market interest rate for similar debt for a nontroubled debtor.

A loan modification or restructure as part of a plan of action is considered to be a TDR when the creditor, for economic or legal reasons related to the borrower's financial difficulties, provides a modification that results in the following:

- Principal forgiveness
- Interest Rate Reductions
- Other-than-insignificant payment delays, or term extensions in the current report period.

Insignificant payment delays would include the following:

- The amount of the restructured payments subject to the delay is insignificant relative to the unpaid principal or collateral value of the debt and will result in an insignificant shortfall in the contractual amount due.
- The delay in timing of the restructured payment period ~~is~~ insignificant relative to the frequency of payments due under the debt, the debt's original contractual maturity, or the debt's original expected duration. Changes in payment frequency such as from monthly to quarterly or semi-annual may not constitute a TDR if the change in frequency is consistent with market terms for a given industry.

Modifications to borrowers experiencing financial difficulty may be different from those previously captured in prior TDR disclosures because an entity no longer will have to determine whether the creditor has granted a concession.

Cash flow constraints may result in modifications(s) of loan terms such as one or a combination of:

- Reduction of the stated interest rate on the loan through the existing maturity; or
- Extension of the maturity dates at an interest rate lower than the current market rate for comparable debt with similar risk;
- Reduction of the face amount or maturity amount of the loan as stated in the instruments or other agreement.
- Reduction of accrued interest;
- Reduction of interest rate below a market rate;
- Forgiving accrued interest or principal;
- Deferment of interest only or deferred P&I; beyond 36 months
- Extension of amortization beyond a market amortization for that property type and location
- Payment going from P-&I to interest only for more than 36 months
- Loan splitting, which is debt divided into separate notes ~~accompanies~~ accompanied by concessions;
- Partial charge-off in conjunction with a restructure that has concessions; and/or Substitution of additional collateral in lieu of payments due (deferred payments or conceding scheduled P&I to interest only payments).

It is important to recognize that not all debt modification is considered "troubled debt" if the refinance or modification is not classified as a modification to a borrower experiencing financial difficulty.

Even though the borrower is experiencing financial difficulties, a debt restructuring may NOT be required to be recognized as a modification under this section if the modification is considered MINOR.

### Determination of New Loan/Loan Refinancing vs Loan Modification/Restructure

#### Loan Refinancing or Restructuring ASC 310-20-35-9

As part of the TDR determination – Loan refinances determined to be a "new loan", are not to be considered a TDR. If the terms of the new loan resulting from a loan refinancing or restructuring are at least as favorable to the lender as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the lender, the refinanced loan shall be accounted for as a "new loan". This condition would be met if the new loan's effective yield is at least equal to the effective yield for comparable loans and if modifications of the original debt instruments are more than minor. Any unamortized net fees or costs and any prepayment penalties from the original loan shall be recognized in interest income when the new loan is granted. The effective yield comparison considers the level of nominal interest rate, commitment and origination fees, and direct loan origination

costs and would also consider comparison of other factors where appropriate, such as compensating balance arrangements.

Subsequent measurement of a debt instrument shall be considered more than MINOR under the preceding paragraph if the present value of the cash flows under the terms of the modification is at least 10 percent different from the present value of the remaining cash flows under the terms of the original terms. If the difference is less than 10 percent, a creditor shall evaluate whether the modification is more than minor based on the specific facts and circumstances / relevant considerations surrounding the modification.

Circumstances that would likely NOT be considered a troubled debt modification may include the following:

- The fair value of cash, other assets, or any equity position accepted from the customer in full satisfaction of a debt at least equals the Bank's recorded investment in the receivable or the customer's carrying amount of the payment;
- The Bank reduces the effective interest rate on the debt primarily to reflect a decrease in interest rates or a change in risk to maintain a relationship with a customer that can readily obtain funds from other sources at the current interest rate;
- The customer refinances the old debt with new debt having an effective interest rate approximately equal to that of similar debt currently issued by non-troubled customers;
- The customer is servicing the old debt and can obtain funds to repay that debt from other than existing creditors at effective interest rates equal to market rates from non-troubled customers;
- Bank agrees to restructure the old debt only to reflect a decline in market interest rates or owing to positive changes in the customer's creditworthiness since the loan was originated;
- A loan to a purchaser of other real estate owned (OREO) by the reporting Bank for the purpose of facilitating the disposal of such real estate is not considered a TDR;
- A loan that is charged-off in full; or
- Evergreen line of credits

## ALLOWANCE FOR CREDIT LOSSES

The Bank uses the allowance method in providing for credit losses in accordance with ASC 326 Current Expected Credit Losses (CECL). CECL replaces the incurred loss methodology for assets measured at amortized cost, net investments in leases, and certain off-balance sheet credit exposures.

Under CECL, the allowance for credit losses (ACL) is an estimate of the expected credit losses on financial assets measured at amortized cost. Approved CECL methodologies measure ACL using relevant information about past events, including historical credit loss experience on pools of loans with similar risk characteristics, current conditions, and reasonable and supportable forecasts that affect the collectability of the remaining cash flows over the contractual term of the loan portfolio.

In concept, an allowance will be created upon the origination or acquisition of a financial asset measured at amortized cost. The measured Allowance for Credit Losses (ACL) will then be updated subsequently at quarterly reporting dates. ACL under CECL is a valuation account measured as the difference between the financial assets' amortized cost basis and the amount expected to be collected on the assets/loans (lifetime credit losses).

The allowance consists of general (collective pool) and specific (individually assessed) components of ACL reserve. The general ACL reserve is the calculation of homogenous loan pools against the assessed historic loss rates and adjusted for qualitative and quantitative factors. Each homogenous pool of loans represents a distinct risk profile. Additionally, the general ACL reserve includes an off-balance sheet component of reserve assessed as a percent of the estimated unfunded commitment utilization within the homogenous loan pools. Specific reserve is assessed to individual loans that are considered collateral dependent with a probable liquidation or foreclosure of collateral assets, which BND refers to internally as “impaired”. Specific reserve would equal the expected losses measured at fair value of the collateral at the reporting date when the bank determines that liquidation or foreclosure is probable.

The (ACL) is increased by the current year’s provision for credit losses charged to operations and reduced by net charge-offs. Credit losses are charged against the allowance when management believes the non-collectability of a full or partial loan balance is confirmed. Subsequent recoveries of previously charged off amounts, if any, are credited to the allowance.

### NON-ACCRUAL

(Non-accrual of student loans is controlled under Student Loan Attachment)

The business banker is responsible for initiating action to place a loan in a non-accrual status. A loan which meets any of the following criteria must be placed in a non-accrual status:

- ~~1. The following loans on which the principal and interest is 90 or more days past due: unless it is well secured and in the process of collection. Unsecured loans, loans secured by other than real property, loans secured by a mortgage on commercial real estate, loans secured by a farm real estate mortgage, loans secured by a conventional residential real estate mortgage.~~
1. Loans in which a principal or interest payment is 90 or more days past due, unless the loan is well secured and in the process of collection.
  - a. A loan is ‘well secured’ if it is secured by collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to pay off the debt (including accrued interest) in full.
  - b. A loan is ‘in the process of collection’ if collection of the asset is proceeding either (1) through legal action, including judgement enforcement procedures, or (2) in appropriate circumstances, through collection efforts not including legal action which are reasonably expected to result in repayment of the debt or its restoration to a current status in the near future.
2. Payment in full of principal or interest is not expected.
- ~~2.3.~~ 2.3. A loan where the borrower has filed for bankruptcy or where the originating lender or the Bank deems itself insecure due to the financial condition of the borrower.
- ~~3.4.~~ 3.4. A loan which the Department of Financial Institutions recommends being placed in a non-accrual status.

A recommendation by a business banker to place a loan in a non-accrual status must be presented to the Investment Committee for approval regardless of loan amount. . Special Asset Manager authority for non-accruals is reviewed annually. Any loans placed to non-accrual by Special Assets Manager are to be reported at the next Investment Committee.

## COLLATERAL VALUATION EVALUATORS AND REVIEWERS

In-house evaluators and reviewers must be independent of the lending transaction, having no direct or indirect interest, financial or otherwise. The Bank's evaluators and reviewers will be:

- Capable of rendering unbiased estimates of value
- Competent to perform the review commensurate with the complexity of the transaction
- Experienced with the related real estate that is relevant to the type of property being evaluated
- Subject to adequate safeguards and controls to ensure the integrity of the evaluations they perform
- Detailed in documenting the file to support the estimate of value and include sufficient information for the engaging financial institution to understand the decision regarding the transaction.
- Selected based on expertise of a given market, property type, or location. Direct requests for a specific evaluator are not guaranteed and will only be accommodated based on staff and resource availability

Individuals who perform any of the engagement, evaluation or review functions described herein will have their credentials documented.

## DIRECT LOAN CLOSINGS

The Bank's Direct Loans, with the exception of bank stock loans and CD secured loans, must be closed by a North Dakota attorney that has been appointed as a Special Assistant of the North Dakota Attorney General.

## REVIEW, APPROVAL, AND MONITORING OF POLICY EXCEPTIONS

Exceptions to this policy should be approved only in limited circumstances. Justification for exceptions to policy should be based upon compelling economic reasons and should not represent undue risk or exposure to the Bank. Each exception to loan policy must be identified in the credit presentation along with the mitigating risk factor(s). Except for environmental and appraisal/valuation policy exceptions, all other exceptions to loan policy must be approved by the appropriate approval levels based on exposure previously outlined in this policy. An environmental and appraisal/valuation policy exceptions require Dual Approval, regardless of exposure level. Policy exceptions will be tracked and monitored by the Chief Credit Officer and reported annually to the Investment Committee and Advisory Board.

## LOAN PROGRAMS

The attachments which follow are loan programs administered by the Bank and are part of this loan policy. Any amendments or additions must be approved by the Bank's Executive Committee, Advisory Board and the Industrial Commission.

## LOAN GUIDELINES

The Guidelines which follow are made a part of this loan policy. The guidelines are generally focused on loan programs, administrative issues or guidance relative to the Bank's credit culture. These topics tend to be subject to frequent modification as a result of changes in:

- Regulatory environment
- Economy of the state or nation
- The Bank's appetite for risk due to concentration issues or other factors

Due to this need to react to changes in the Bank's environment, the Bank's Investment Committee will

**GOVERNMENT GUARANTEED LOAN PURCHASE PROGRAM**

The Bank may purchase the guaranteed portion of a term loan guaranteed by the Farm Service Agency, Rural Development or Bureau of Indian Affairs. For the purpose of providing interest rate assistance to the borrower, the ~~The~~ Bank's interest rate may be variable or fixed as set by the Investment Committee. If the bank purchases a guarantee for bank liquidity or other purposes, the interest rate may vary from the rates set by Investment Committee but must be acceptable to BND. The Bank will receive an Assignment Guarantee Agreement.

Adopted: July 30, 1999

Amended: ~~August 20, 2008~~ March 25, 2025

## **Executive Summary for BND's Annual Loan Stress Testing**

**Date Completed: 3/10/25**

The following summary provides a high-level overview of the results of the Annual BND Loan Stress Testing model. The full report that follows contains detailed results and narrative. The results are reviewed with the Lending and Credit Administration areas of BND, including the administrator of the CECL credit loss model to consider changes to allowance factors.

### **Commercial Stress Testing:**

- Stress testing completed in this section is based on borrower's financial data from 12/31/23, as this is the most recent data available to BND from these individual credits. The exceptions to this are:
  - Metro Areas: This data is comprised of a mix of 12/31/23 financials on existing properties and future projections on properties in construction, due to the high volume of construction on loans in these areas.
- BND has \$737 million in commercial real estate loans, which is 25% of the total CRE portfolio, that are re-pricing in the next 2 years. **We are also aware that there is a larger wave, estimated at over 40% of BND's commercial real estate portfolio, that are set to re-price in 2027 and 2028.**
- In 2024, Ward County was removed from the Oil Country concentration category, unless the Borrower or Property is directly tied to the oil industry. Ward County properties were moved from the Oil Country pools for stress testing and placed in the applicable Bismarck/Eastern ND pools. Previously the geographical area of Minot was automatically considered oil for loan concentration purposes.
- **Based on recent analysis only 38% (\$77 million) of BND's retail portfolio, totaling \$202 million, is vulnerable to e-commerce.**
- Overall, we are seeing improvements compared to last year, except for out of state hotels, office properties, and the Phoenix metro area, which are all showing just slightly more stress compared to last year's results.
  - Out of State Hotels
    - BND has a total portfolio of \$160 million in out of state hotels, and based on our sampling and analysis, 100% of the out of state hotel properties in the test pool don't cashflow with a 20% decrease in gross profit, compared to 86% the year prior.
  - Office Properties:
    - Based on our sampling of office properties, which is a total portfolio of \$172 million, a 20% decrease in gross profit on office properties, 77% of the test pool did not cashflow, compared to 69% last year.
    - Only 5% of the office properties in BND's portfolio are set to re-price in the next 2 years.
    - **Recent analysis shows that only 13% (\$22 million) of BND's office portfolio, totaling \$172 million, is vulnerable to remote work.**
    - **It is estimated that 34% (\$59 million) of BND's office portfolio is medical in nature.**
  - Phoenix Metro Area:
    - **BND has a total exposure of \$247 million in the Phoenix metro area, based on our sampling, 100% of the Phoenix metro properties in the test pool don't cashflow with a 20% decrease in gross profit, compared to 71% the year prior.**

### **Farm Stress Testing:**

- Farm operating stress testing is based on 2025 projections, utilizing 2025 FSA planning prices.
- **Farm operating stress testing is showing worsening results compared to last year, and unfortunately that pool is stressed with only a 10% decrease in profits, or 10% increase in expenses.**
- It would take a 40% decrease in values for the direct and participation portfolios to see over 20% of the loans rise above 90% LTV, which would take a significant event to have that large of an impact to values. It is also worth noting though that the average appraisal in BND's farm real estate portfolio is 7 years old, and land values in ND have increased by 32.4% in the past 7 years.

### **Student Loan Payment Testing:**

- Results are similar to previous years, where interest rate increases would not have much impact to payments overall until rates increase by 4% or more; however, it's worth noting that DEAL One loans have a maximum rate increase of 1% per year.

## BND Farm and Commercial Portfolio Stress Testing

Prepared by Mike Morey, BND Credit Administration

As of 3/10/25

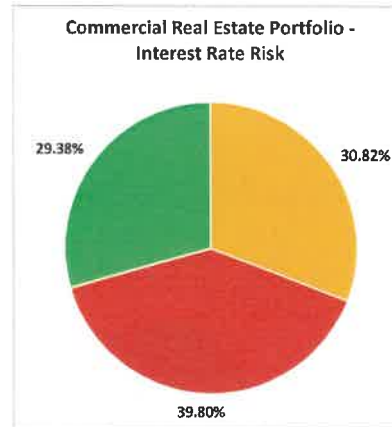
Commercial Real Estate Portfolio - Interest Rate Risk		
Dollar amount of commercial real estate loans that will re-price in the next 24 months (25% of total CRE portfolio) @ 1/31/25	\$	736,691,705
Dollar amount of loans with interest rates potentially increasing between 2% and 2.99%	\$	227,067,489
% of loans with potential rate increases between 2% and 2.99%		30.82%
Dollar amount of loans with interest rates potentially increasing by 3% or greater	\$	293,198,143
% of loans with potential rate increases of 3% or greater		39.80%

### Narrative - Commercial RE Interest Rate Risk:

This section illustrates the risk for potential rate increases of 2% or greater in the commercial real estate portfolio (loans with commercial real estate as the primary collateral), within loans that will re-price within the next 24 months. This is a combination of fixed rate loans with a maturity date in the next 24 months that could potentially be renewed at higher rates, plus variable rate loans with that will adjust no more frequently than annually. The index used to determine the potential fixed rate on a renewal was the 5 year FHLB advance rate (4.40%) + 2.25%, as of 1/31/25. Variable rates were re-priced with their current index and adjustor, as of 1/31/25. The top 2 industries that will see a rate increase of 3% or greater within BND's CRE portfolio within the next 24 months are:

- 46% - Lessors of Residential Buildings and Dwellings
- 28% - Lessors of Nonresidential Buildings (Except Miniwarehouses) - (32% Retail, 10% Office)

**Conclusion:** Around 25% of BND's CRE portfolio will reprice in the next 2 years, and of those, over 70% will increase by 2% or greater and almost 40% by 3% or greater. Interest rate stress testing in the top loan portfolios was completed within the sections to follow. It is also worth noting, that although BND has \$737 million (25%) in CRE loans re-pricing in the next 2 years, we are aware there is a larger wave, estimated at over 40% of CRE loans, that are set to reprice in 2027 and 2028.



% of loans within a range of rate increases:

Increase of 1.99% or less (or decreasing)  
 Increase between 2% and 2.99%  
 Increase of 3% or greater

Note: All cashflow stress testing scenarios are pre-distribution and pre-contribution. Cash flow stress tests in the model are isolated to either gross profit stress, or interest rate stress, but on both concurrently.

\*Input cells are shaded in blue

#### Hotel Stress Testing - All

BND hotel exposure @ 12/31/24 (80 loans)	\$	263,762,806
Dollar amount of hotel loans in test pool	\$	135,817,481
Percentage of loans tested by dollar amount		51.49%
Number of loans in test pool		31
Number of loans in test pool tested for interest rate risk		28
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		4
% of loans rising above 90% LTV based on stress		12.90%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		26
Percentage of loans falling below 1 to 1 debt service coverage		83.87%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		11
Percentage of loans falling below 1 to 1 debt service coverage		39.29%

Below 90% LTV

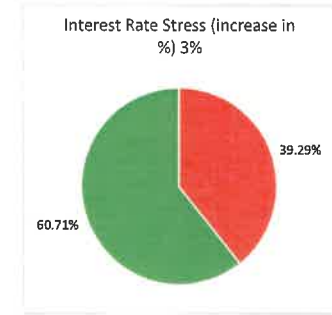
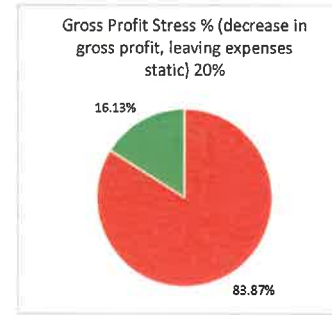
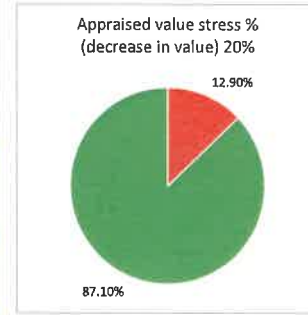
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#### Hotel Stress Testing - Bismarck and Eastern North Dakota

BND hotel exposure @ 12/31/24 (46 loans)	\$	92,143,612
Dollar amount of hotel loans in test pool	\$	46,959,179
Percentage of loans tested by dollar amount		50.96%
Number of loans in test pool		13
Number of loans in test pool tested for interest rate risk		11
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		4
% of loans rising above 90% LTV based on stress		30.77%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		11
Percentage of loans falling below 1 to 1 debt service coverage		84.62%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		3
Percentage of loans falling below 1 to 1 debt service coverage		27.27%

Below 90% LTV

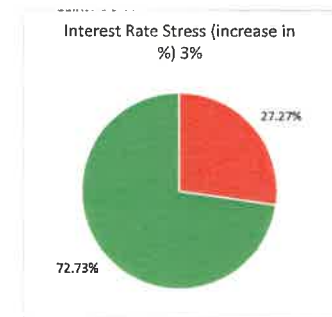
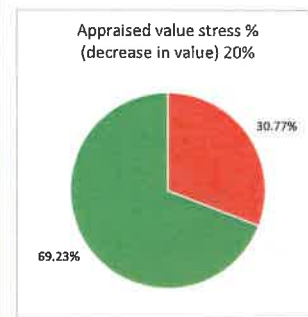
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### Hotel Stress Testing - Oil Country North Dakota

BND hotel exposure @ 12/31/24 (9 loans)	\$	11,477,825
Dollar amount of hotel loans in test pool	\$	7,722,669
Percentage of loans tested by dollar amount		67.28%
Number of loans in test pool		4
Number of loans in test pool tested for interest rate risk		4
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		-
% of loans rising above 90% LTV based on stress		0.00%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		1
Percentage of loans falling below 1 to 1 debt service coverage		25.00%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		-
Percentage of loans falling below 1 to 1 debt service coverage		0.00%

Below 90% LTV

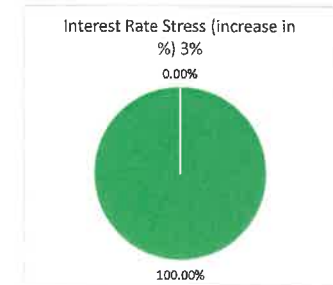
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### Hotel Stress Testing - Out of State

BND hotel exposure @ 12/31/24 (25 loans)	\$	160,141,369
Dollar amount of hotel loans in test pool	\$	81,135,633
Percentage of loans tested by dollar amount		50.67%
Number of loans in test pool		14
Number of loans in test pool tested for interest rate risk		13
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		-
% of loans rising above 90% LTV based on stress		0.00%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		14
Percentage of loans falling below 1 to 1 debt service coverage		100.00%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		8
Percentage of loans falling below 1 to 1 debt service coverage		61.54%

Below 90% LTV

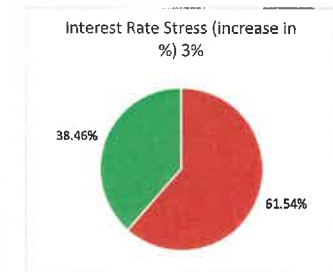
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Note: The weighted average risk rating of BND's hotel loan portfolio as of 12/31/24 was 4.08. The weighted average of the 31 loans sampled for stress testing was 3.93.

### **Narrative - Hotels**

Stress testing the selected hotels within the portfolio shows that based on 2023 year end financials, cashflow for hotels was tight but has improved over the past few years. Of the 31 sampled credits, 17 are from North Dakota or sister cities, and the remaining 14 are from out of state - Minnesota, Arizona, South Dakota, Texas, Colorado and Oregon. The North Dakota properties are located in Beulah, Bismarck, Fargo/Moorhead, Grand Forks, Jamestown, Minot, New Town and Williston.

The overall results indicate the following:

- Of the 31 sampled, 7 do not cashflow prior to any stress testing or 23%. This is an improvement compared to the 29% that did not cashflow prior to any stress testing in last year, and 38% the year prior.
  - If gross profit is stressed 10%, 14 out of 31 or 45% of the properties would not cashflow. At 20%, 26 out of 31 or 84% of the properties would not cashflow, and at 30%, only one of the properties still cashflows. Stress testing is based on financial results for 2023. Occupancy rates and ADRs have continued to increase gradually in 2024.
  - 28 of the 31 hotels sampled had data to support stressing debt service coverage based on increases in interest rate. 6 of the 28 properties, or 21%, do not cash flow prior to any interest rate stress. A 3% increase in interest rates results in 11 of the 28 properties, or 39% that do not cash flow. A 4% increase in rates shows 13 properties(46%) would not cashflow and a 5% increase in rates shows a total of 15 properties, or 54% are short of 1:1 coverage. With recent rate increases, interest could negatively impact the portfolio if rates are reset. We have already seen a 3% rise in rates since 2021, so further rate increases will add even more stress than this model shows as loans reprice upon maturity.
  - Only one property exceeds 90% LTV based on current balance and appraised value. At a 10% reduction in appraised value, 2 of the properties exceed 90% LTV. At 20% reduction in value, 4 of the 31 properties, or 13% exceed 90% LTV and at a 30% reduction in value, 17 properties or 55% exceed 90% LTV. Based on the economic environment due to COVID in 2020 and 2021, the hotel industry is inching closer to break even without stress, but any additional stress, such as increased interest rates at renewal, or decreased occupancies, will impact the portfolio. Reductions in the value of hotel properties are still possible in the current environment.
- When breaking out the sampled hotel properties by three geographical areas - eastern ND (including Bismarck), oil country in ND, and out of state, the following results occur:
- Stressed results are similar across the Bismarck East and Out of State areas. At a 10% reduction in gross profit, 46% of the hotel properties would not cashflow in Bismarck and Eastern ND, and 57% in out of state properties, however all 4 oil country properties would still cashflow with a 10% reduction in gross profit. At 20% stress, 25% of the oil country properties, 85% of Bismarck and Eastern ND, and 100% of out of state would not cashflow. Hotel properties in NW North Dakota saw declines in 2021, but based on hotel industry information by each primary North Dakota market, occupancy rates have continued to improve.
  - Increasing interest rates have differing impacts on the three areas. A 3% increase in rates would see 27% of the Eastern ND (including Bismarck) hotels not cashflow and out of state would see 62% not cashflow. With a 4% increase the Eastern ND (including Bismarck) would see no change and out of state markets would see 77% of the test pool not cashflow. Out of state properties would see 92% of tested properties fall below 1:1 coverage with a 5% rate increase. In oil country all 4 properties would still cashflow even with interest rate increases up to 5%.
  - When stressing appraised values by 20%, 31% of the properties in Bismarck and eastern ND show LTV exceeding 90%. At that same 20% reduction in value, none of the oil country and out of state properties rise above 90% LTV.

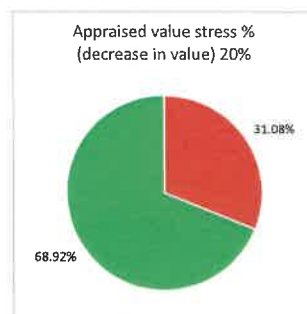
**Conclusion:** Based on the overall results of stress testing the sampling of hotel properties, 2023 showed continued gradual improvement in occupancy & ADRs, and this continued throughout 2024 as well. Since 2023 results were better we are not recommending changes to the qualitative factors at this time, as factors have been updated to reflect on-going changes in vacancy rates, and appear to be in-line with stress testing results. At this time we do not recommend any changes to loan policy or guidelines as concentration thresholds were changed to more conservative levels in the last few years. In addition, BND is monitoring hotel exposure by market in ND on a quarterly basis. Hotels are also a part of the ERM reporting and loan concentration analysis to provide enhanced quarterly monitoring.

### Multi-Family Rentals Stress Testing - All

BND apartment exposure @ 12/31/24 (240 loans)	\$	999,490,860
Dollar amount of apartment loans in test pool	\$	300,740,188
Percentage of loans tested by dollar amount		30.09%
Number of loans in test pool		74
Number of loans in test pool tested for interest rate risk		73
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		23
% of loans rising above 90% LTV based on stress		31.08%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		51
Percentage of loans falling below 1 to 1 debt service coverage		68.92%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		40
Percentage of loans falling below 1 to 1 debt service coverage		54.79%

Below 90% LTV

Above 90% LTV



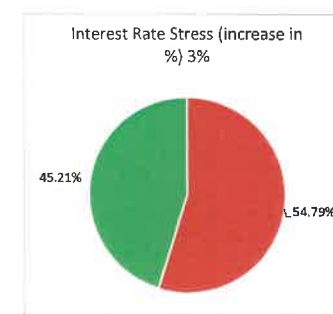
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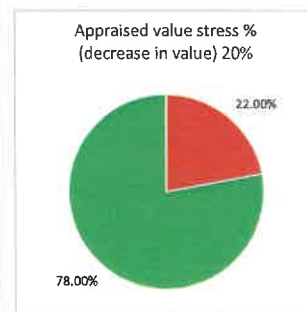


### Multi-Family Rentals Stress Testing - Bismarck/Mandan & Eastern North Dakota

BND apartment exposure @ 12/31/24 (165 loans)	\$	599,993,668
Dollar amount of apartment loans in test pool	\$	228,988,285
Percentage of loans tested by dollar amount		38.17%
Number of loans in test pool		50
Number of loans in test pool tested for interest rate risk		50
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		11
% of loans rising above 90% LTV based on stress		22.00%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		33
Percentage of loans falling below 1 to 1 debt service coverage		66.00%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		24
Percentage of loans falling below 1 to 1 debt service coverage		48.00%

Below 90% LTV

Above 90% LTV



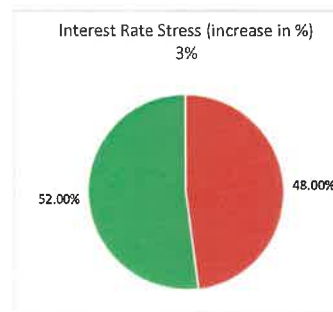
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Multi-Family Rentals Stress Testing - Oil Country		
BND apartment exposure @ 12/31/24 (34 loans)	\$	46,519,114
Dollar amount of apartment loans in test pool	\$	35,470,750
Percentage of loans tested by dollar amount		76.25%
Number of loans in test pool		17
Number of loans in test pool tested for interest rate risk		16
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		10
% of loans rising above 90% LTV based on stress		58.82%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		16
Percentage of loans falling below 1 to 1 debt service coverage		94.12%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		15
Percentage of loans falling below 1 to 1 debt service coverage		93.75%

Below 90% LTV

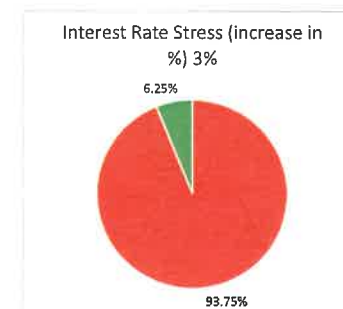
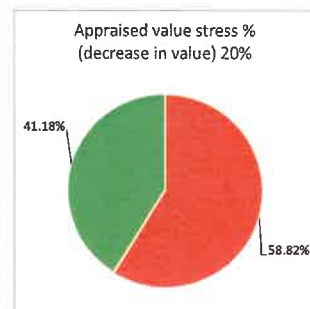
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Multi-Family Rentals Stress Testing - Out of State		
BND apartment exposure @ 12/31/24 (41 loans)	\$	352,978,079
Dollar amount of apartment loans in test pool	\$	36,281,154
Percentage of loans tested by dollar amount		10.28%
Number of loans in test pool		7
Number of loans in test pool tested for interest rate risk		7
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		2
% of loans rising above 90% LTV based on stress		28.57%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		2
Percentage of loans falling below 1 to 1 debt service coverage		28.57%
Interest Rate Stress (increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		1
Percentage of loans falling below 1 to 1 debt service coverage		14.29%

Below 90% LTV

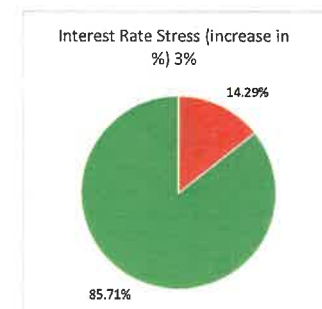
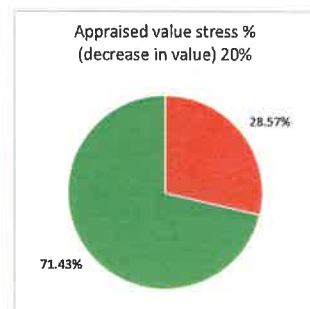
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Note: The weighted average risk rating of BND's multi-family loan portfolio as of 12/31/24 was 3.84. The weighted average of the 74 loans sampled for stress testing was 3.79.

### **Narrative - Apartments**

Stress testing the selected apartments reveals risk within the portfolio even when very limited stress is added to the properties. Of the 74 sampled credits, 67 are spread across North Dakota or sister cities - Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Mandan, Minot, New Town, Valley City, Watford City, Wahpeton and Williston, along with Moorhead, MN which is included with eastern ND. The other 8 sampled credits are out of state - Minnesota, South Dakota and Idaho. BND has 41 loans totaling \$353MM in the out of state portfolio, with \$249MM of that, or 71% in construction. It should be noted that 47% of the \$999MM shown in BND multi-family property exposure is comprised of newer properties that are still in construction or did not yet have a full year of operations. The total exposure of the Fargo/Moorhead apartment portfolio is \$430MM, of which \$200MM, or 46%, is in construction. We have observed vacancy rates in the Fargo/Moorhead market to be on the rise recently and just shy of 8% currently.

The overall results indicate the following:

- Of the 74 sampled, 26 loans or 35% do not cashflow prior to any stress testing with 13 from western ND, 12 from eastern ND and one from the out of state pool.
- If gross profit is stressed 10%, 39 of the properties or 53% would not cashflow and at 20%, 51 of the 74 properties, or 69%, do not cashflow. Recent history in all parts of the state indicate that a 10% reduction in gross profit could be easily realized, especially in Western ND when occupancy rates were low and Eastern ND also saw occupancies struggling to maintain 90% in some specific areas. Western ND continues to struggle with occupancy and monthly rental rates primarily due to the high cost of construction during the oil boom.
- 73 of the 74 properties sampled had data to support stressing debt service coverage based on increases in interest rate. At a 3% increase in interest rates, 55% of properties would not cashflow and at a 4% increase, 60% of the properties do not cashflow or 70%. Additionally a 5% increase in rates would see 48 of the 73 properties would not cashflow or 66%. We have already seen a 3% rise in rates since 2021, so further rate increases will add even more stress than this model shows as loans reprice upon maturity.
- Only 4 of the 74 properties exceed 90% LTV based on current balance and appraised value and all of those properties are in Western ND. At a 10% reduction in value, 10 properties exceed 90% LTV. At 20% reduction in value, 23 of the properties exceed 90% LTV and at 30% reduction in value, 45 of the 74 properties exceed 90% LTV, which is 61% of the properties. Western ND continues to face the most risk with a volatile oil market.

When breaking out the sampled multi-family properties in ND - eastern ND (including Bismarck/Mandan) and oil country in ND the following results occur:

- More stress is evident in western ND properties than eastern ND properties which is expected due to the downturn in western ND after the oil boom. At just a 10% reduction in gross profit, 44% of the properties would not cashflow in eastern ND and 94% would not cashflow in oil country. With a 20% stress, 66% of the eastern ND properties would not cashflow and at 30%, 42 of the eastern ND properties (84%) would not cashflow. Multi-Family properties in Williston and Watford City saw vacancy rates get as high as 40% in 2020, and has since declined to 9%-11%. In Eastern ND, 27 of the 50 properties are located in Fargo/Moorhead, and only 7 of those 27 properties (26%) did not cashflow prior to stress testing.
- Increasing interest rates have a larger impact on Western ND than what we would see in Eastern ND (including Bismarck/Mandan). With just a 1% or 2% rise in rates 13 of the 16 Western ND properties do not cashflow, and all but one property would not cashflow with a 3% increase in rates. A 3% rate increase would cause 48% of the Eastern ND (including Bismarck/Mandan) properties to not cashflow, at a 4% rate increase 56% of Eastern ND (including Bismarck/Mandan) properties would not cashflow, and at a 5% rate increase 60% of these properties would not cashflow.
- When stressing appraised values by 20%, 22% of the eastern ND properties rise above 90% LTV with western ND showing 59% above 90%. When we stress appraised values by 30%, 58% of the eastern ND properties rise above 90% LTV with Western ND showing 71% rising above 90%. Decreases in appraised values would not have as large of an impact on these sampled loans as would the impact of increasing rates or reductions in gross profits. With 71% of the out of state portfolio in construction, based on dollar amounts, it was difficult to get a large sample size of historical data to stress. 7 properties were sampled in the out of state, multi-family portfolio.
- Only one out of state property does not cashflow before any reduction in gross profit, and that remain at one property even with a 10% reduction in income. A 20% decrease in income would cause 2 properties, or 29% to not cashflow, and with a 30% decrease in income 4 of the 7 sampled out of state properties (57%) would not cashflow.
- With 1, 2, 3 or 4% increases in rates, 1 property would not cashflow. A 5% increase in rates would mean 43% of the sampled properties would not cashflow.
- Property values would need to decrease by at least 20% before any of the sampled properties would rise above 90% LTV, and at that only 2 of the 7 properties would rise about 90% LTV. A 30% decrease would cause 57% of the sampled properties to rise above 90% LTV, and a 40% decrease would cause 71% of the properties to rise above 90% LTV.

**Conclusion:** Based on the overall results of stress testing the sampling of multi-family properties, we do not recommend any changes to allowance factors due to oil country multi-family properties continuing at moderate to high factor levels, based on recent factor reviews and updates to vacancy factors for apartments outside of oil country. Oil country apartments are impacted by a more volatile economy tied to the oil market and the high cost of construction impacted the ability to cashflow. As of 12/31/24, 47% (based on total exposure) of the multi-family portfolio in construction, so we do recommend including any applicable and viable results of the stress testing into the quarterly review of qualitative factors if needed. No recommended changes for loan policy, guidelines, or concentration thresholds. BND is monitoring apartment exposure by market within ND, and in its three primary out of state markets including Minneapolis, Phoenix and Sioux Falls, on a quarterly basis and has apartments on the Loan Concentration Dashboard for enhanced monitoring.

Retail Property Stress Testing		
BND retail property exposure @ 12/31/24 (108 loans)	\$	202,287,918
Dollar amount of retail property loans in test pool	\$	103,734,334
Percentage of loans tested by dollar amount		51.28%
Number of loans in test pool		20
Number of loans in test pool tested for interest rate risk		20
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		3
% of loans rising above 90% LTV based on stress		15.00%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		10
Percentage of loans falling below 1 to 1 debt service coverage		50.00%
Interest Rate Stress (Increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		8
Percentage of loans falling below 1 to 1 debt service coverage		40.00%

Note: The weighted average risk rating of BND's retail property loan portfolio as of 12/31/24 was 3.73. The weighted average of the 20 loans sampled for stress testing was 3.65.

### Narrative - Retail properties

Stress testing the selected retail property credits reveals lower risk with cashflow and LTV's when compared to other commercial credits. The 18 credits selected represent locations from Bismarck, Fargo/Moorhead, Grand Forks, Dickinson, Minot, South Dakota, Minnesota and Arizona.

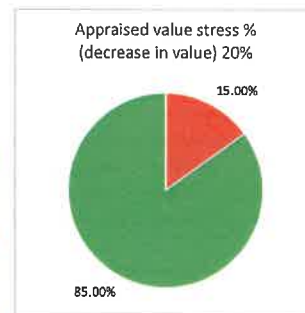
The results indicate the following:

- Of the 20 properties sampled, 5 did not cashflow prior to any stress testing.
- If gross profit is stressed 10%, 40% of the properties would not cashflow. At 20%, 50% of the properties would not cashflow and at 30%, 80% would not cashflow. This was comparable to the 2022 data stressed last year as it appears that the presence of e-commerce may still be having as large of an impact on the brick and mortar retail locations. In addition, BND has been very selective in the retail properties we have booked over the past few years, and we have focused on locations where a physical customer presence is necessary.
- All 20 properties sampled had data to support stressing debt service coverage based on increases in interest rate. With a 2% increase in interest rates, 7 properties would not cashflow and at a 3% increase, 8 of the 20 properties do not cashflow and at a 4% increase, 10 of the 20, or 50%, do not cashflow. With the potential for rate increases due to reprice at loan maturity, an increase in interest could negatively impact the portfolio if rates are reset. Although it would take a rate increase of 4% or higher to negatively impact 50% or more of the portfolio. 13% of BND's retail portfolio (based on loan amounts) is estimated to be impacted by interest rate increases in the next 2 years, with an average estimated rate increase of 3.45%.
- No properties exceed 90% LTV based on current balance and appraised value, and also if collateral values are decreased by 10%. At 20% reduction in value, 3 of the 20 properties exceed 90% LTV and at 30% reduction in value, 9 of the 20 or 45% exceed 90% LTV. Changing economic conditions surrounding the retail economy could impact values going forward, however it appears it would take at least a 30% reduction in values to have a larger impact on the current portfolio.

**Conclusion:** Based on the overall results of stress testing the sampling of retail properties, continued analysis review of allowance factors, and analysis which shows only 38% of BND's retail portfolio being vulnerable to e-commerce, we do not recommend any additional changes for these properties. BND has made changes, as needed, to allowance factors to reflect the continued risk in non-owner occupied retail properties. At this time we do not recommend any changes to loan policy, guidelines, or concentration thresholds as those have been changed to more conservative levels. Retail is currently on the BND Concentration Dashboard and it is in the "yellow" for Concentration Reporting and the "red" level was dropped from 20% of Tier One Capital to 12% in 2020.

Below 90% LTV

Above 90% LTV



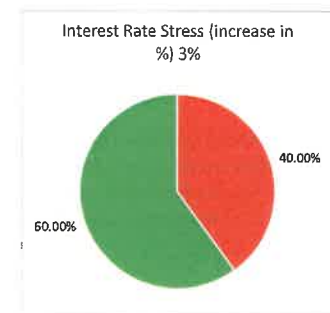
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Office Property Stress Testing		
BND office property exposure @ 12/31/24 (93 loans)	\$	171,792,180
Dollar amount of office property loans in test pool	\$	56,984,793
Percentage of loans tested by dollar amount		33.17%
Number of loans in test pool		13
Number of loans in test pool tested for interest rate risk		11
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		4
% of loans rising above 90% LTV based on stress		30.77%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		10
Percentage of loans falling below 1 to 1 debt service coverage		76.92%
Interest Rate Stress (Increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		7
Percentage of loans falling below 1 to 1 debt service coverage		63.64%

Note: The weighted average risk rating of BND's office property loan portfolio as of 12/31/24 was 3.73. The weighted average of the 13 loans sampled for stress testing was 3.87.

#### Narrative - Office property

Testing of office properties also shows potential tight cashflow if conditions are stressed. 13 different properties were chosen from Grand Forks, Fargo and Minnesota. Of the 13 properties in the test pool, 5 of the properties are used primarily as medical office space, which is in line with the overall office portfolio, where it is estimated that 34% of BND's office exposure is medical in nature.

- 4 of the 13 properties, 31%, do not cashflow prior to stress testing.

- At a 10% stress to income, three more properties do not cashflow and at a 20% stress, 10 of the 13 do not show positive cashflow. With a large amount of office property available and remote working arrangements remaining common after the pandemic, a 20%-50% reduction in occupancy is a realistic possibility upon lease renewal. Some reports indicate that 50% of workers pre-pandemic will not go back to the office full-time (this is down from an estimate of 60% in the past year, due to some migration of workers back to the office).

- 11 of the 13 properties sampled had data to support stressing debt service coverage based on increases in interest rate. Interest rate increases are similar to stressing income, a 3% increase leads to 7 of the 11 properties not cashflowing, and both a 4% and 5% increase leads to 9 of the 11 not cashflowing. Only 5% of BND's office properties (based on loan amount) are estimated to be impacted by rate increases in the next 2 years, with an average estimated rate increase of 3.23%.

- None of the properties are above 90% LTV before stress testing, and even with a 10% reduction in value. At a 20% reduction in value, 4 properties (31%) rise above 90% and at a 30% reduction, 11 of the 13 properties (85%) exceed 90% LTV. Estimates are that the valuation of office properties may decrease as much as 50% from pre-pandemic levels, especially for Class B and Class C properties.

**Conclusion:** 50% of all office properties nationwide are expected to reprice by 400+ bps by the end of 2026. 84% of office properties nationally are considered refi-challenged due to declining rents, increased vacancies, and higher interest rates, the hidden difference between stated vacancy and physical vacancy, and a drop in value up to 50%. Based on the overall results of stress testing the sampling of office properties, analysis that shows only 13% of BND's office portfolio being vulnerable to remote work, and changes that were made to allowance factors over the past few quarters, we do not recommend any additional changes for these properties. BND has made changes to allowance factors to reflect the continued risk in non-owner occupied office properties. We do not recommend any changes to loan policy or concentration thresholds as those have recently been changed to more conservative levels. Office property is currently in the "red" for Concentration Reporting and the "red" level was dropped from 20% of Tier One Capital to 7% in 2020. BND has booked additional office deals since being in the red, however BND is being very selective on the office deals that are originated based on the types of tenants and the nature of their work requiring in-person employees and/or in-person customers.

Below 90% LTV

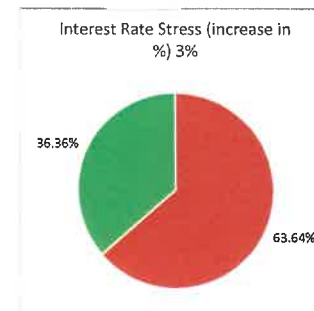
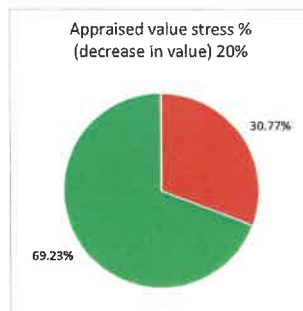
Above 90% LTV

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<b>Out of State - Minneapolis Metro</b>		
BND Minneapolis Metro exposure @ 12/31/24 (39 loans)	\$	255,327,020
Dollar amount of Minneapolis Metro loans in test pool	\$	184,748,286
Percentage of loans tested by dollar amount		72.36%
Number of loans in test pool		21
Number of loans in test pool tested for interest rate risk		19
Appraised value stress % (decrease in value)	20%	
Number of loans rising above 90% LTV based on stress	6	
% of loans rising above 90% LTV based on stress	28.57%	
Gross Profit Stress % (decrease in gross profit, leaving expenses static)	20%	
Number of loans falling below 1 to 1 debt service coverage	19	
Percentage of loans falling below 1 to 1 debt service coverage	90.48%	
Interest Rate Stress (increase in %)	3%	
Number of loans falling below 1 to 1 debt service coverage	16	
Percentage of loans falling below 1 to 1 debt service coverage	84.21%	

Note: The weighted average risk rating of BND's Minneapolis Metro loan portfolio as of 12/31/24 was 3.86. The weighted average of the 21 loans sampled for stress testing was 3.83.

Below 90% LTV

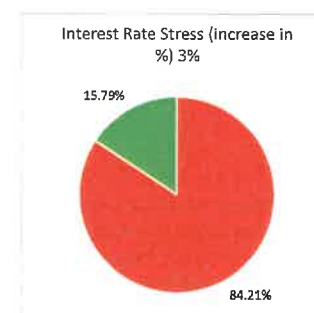
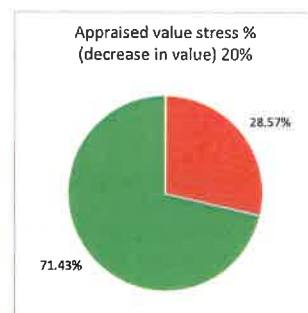
Above 90% LTV

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<b>Out of State - Sioux Falls Metro</b>		
BND Sioux Falls Metro exposure @ 12/31/24 (19 loans)	\$	105,665,364
Dollar amount of Sioux Falls Metro loans in test pool	\$	104,066,214
Percentage of loans tested by dollar amount		98.49%
Number of loans in test pool		14
Number of loans in test pool tested for interest rate risk		14
Appraised value stress % (decrease in value)	20%	
Number of loans rising above 90% LTV based on stress	3	
% of loans rising above 90% LTV based on stress	21.43%	
Gross Profit Stress % (decrease in gross profit, leaving expenses static)	20%	
Number of loans falling below 1 to 1 debt service coverage	11	
Percentage of loans falling below 1 to 1 debt service coverage	78.57%	
Interest Rate Stress (increase in %)	3%	
Number of loans falling below 1 to 1 debt service coverage	11	
Percentage of loans falling below 1 to 1 debt service coverage	78.57%	

Note: The weighted average risk rating of BND's Sioux Falls Metro loan portfolio as of 12/31/24 was 3.68. The weighted average of the 14 loans sampled for stress testing was 3.68.

Below 90% LTV

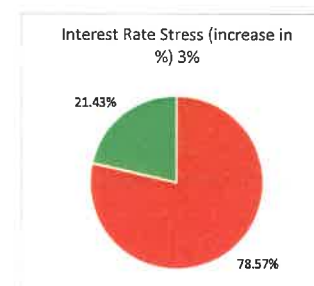
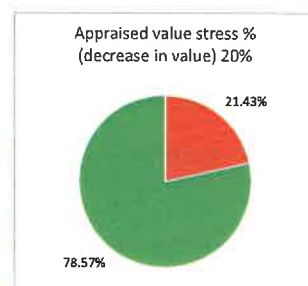
Above 90% LTV

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Out of State - Phoenix Metro		
BND Phoenix Metro exposure @ 12/31/24 (36 loans)	\$	247,350,780
Dollar amount of Phoenix Metro loans in test pool	\$	224,098,167
Percentage of loans tested by dollar amount		90.60%
Number of loans in test pool		23
Number of loans in test pool tested for Interest rate risk		23
Appraised value stress % (decrease in value)		20%
Number of loans rising above 90% LTV based on stress		1
% of loans rising above 90% LTV based on stress		4.35%
Gross Profit Stress % (decrease in gross profit, leaving expenses static)		20%
Number of loans falling below 1 to 1 debt service coverage		20
Percentage of loans falling below 1 to 1 debt service coverage		86.96%
Interest Rate Stress (Increase in %)		3%
Number of loans falling below 1 to 1 debt service coverage		17
Percentage of loans falling below 1 to 1 debt service coverage		73.91%

Note: The weighted average risk rating of BND's Phoenix Metro loan portfolio as of 12/31/24 was 3.95. The weighted average of the 23 loans sampled for stress testing was 4.00.

### Narrative - Out of State-Metro Areas

The out of state Minneapolis, Sioux Falls, and Phoenix metro areas were filtered down to loans with commercial real estate as the primary collateral, across multiple industries. Since such a large amount of loans in the test pools are in construction, a mix of 12/31/23 financial historical data, on existing properties, and future projections on properties currently in construction or with recent construction completion, were used in the stress testing model. Currently, in the Minneapolis metro market, 46% of the total portfolio is in construction. In the Sioux Falls metro market, 47% of the total portfolio is in construction. And in the Phoenix metro market, 53% of the total portfolio is in construction, based on the dollar amount of loans in the portfolios. Since both historical data and future projections were used, we were able to select 21 loans from the Minneapolis metro market, 14 from the Sioux Falls metro market and 23 from the Phoenix metro market.

#### Minneapolis Metro:

- Of the 21 properties in the stress testing model, 5 properties had 2023 financial data, and future projections were used on the other 16, due to the high number of properties in construction in the Minneapolis portfolio.
- 2 of the 21 properties do not cashflow prior to any stress testing. With a 10% decrease in income, 52% of the properties do not cashflow. Decreasing income by 20% results in 90% of the tested properties not cashflowing, and a 30% decrease results in all but one not cashflowing.
- 19 of the 21 properties sampled had data to support stress testing against debt service coverage based on interest rate increases. A rate increase of 3% would mean 16 properties (84%) would not cashflow and it remains that way with a 4% increase. With a 5% rate increase 17 properties or 89% of the properties would not cashflow.
- It would take a 20% decrease in property values for any properties to rise above 90% LTV. And at that 20% decrease, 6 properties or 29% rise above 90% LTV. With a 30% decrease in property values 15 properties, or 71%, would be above 90% LTV.

#### Sioux Falls Metro:

- Of the 14 properties in the stress testing model, 7 properties had 2023 financial data, and future projections were used on the other 7 properties.
- 5 of the 14 properties (36%) does not cashflow prior to any stress testing. Both a 10% decrease and 20% decrease in income causes 11 properties (79%) to not cashflow. With a 30% decrease all but two properties wouldn't cashflow.
- All 14 properties had data to support stress testing against interest rate increases. If rates increase by 2% or 3%, then 11 properties (79%) would not cashflow. With 4% and 5% increases 12 of the 14 properties do not cashflow.
- Property values would need to decrease by 20% before any properties are above 90% LTV, and 3 properties would be above 90% LTV. With a 30% decrease in values, 10 properties (71%) would rise above 90% LTV.

#### Phoenix Metro:

- 10 properties had 2023 financial data that was used in the stress testing analysis, while future projections were used on the other 13 properties, since they are currently in construction.
- 5 of the 23 properties (22%) do not cashflow prior to stress testing. With a 10% decrease in income 15 properties, or 65% do not cashflow. At a 20% decrease in income 87% of the properties do not cashflow, and all but two properties would not cashflow with a 30% decrease in income.
- With a 2% increase in rates, 16 properties (70%) would not cashflow. 74% would not cashflow with a 3% increase in interest rates, 83% would not cashflow with a 4% increase, and 91% would not cashflow with a 5% increase in interest rates.
- Even with a 20% decrease in property values, only 1 property would be above 90% LTV. A 30% decrease in property values would mean 22% of the tested pool would rise above 90% LTV.

**Conclusion:** Based on the overall results of stress testing commercial real estate across the Minneapolis, Sioux Falls and Phoenix metro areas, and based on allowance factors, dashboard concentration monitoring and quarterly ERM tracking, that are currently in place for out of state loans, we do not recommend any additional changes on these properties in loan policy or in the allowance model.

Below 90% LTV

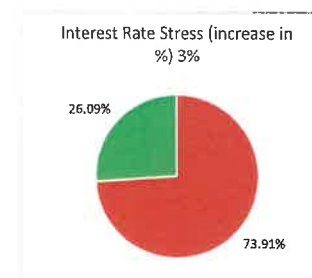
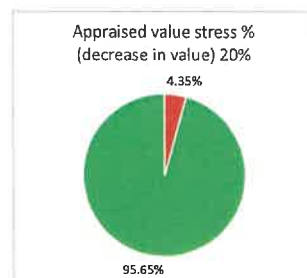
Above 90% LTV

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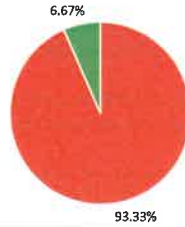


### Farm Operating Stress Testing - 2025 projections

Number of loans in test pool	30
Number of loans in test pool tested for interest rate risk	27
Gross Profit Stress % (decrease in gross profit, leaving expenses static)	20%
Number of loans falling below 1 to 1 debt service coverage	28
Percentage of loans falling below 1 to 1 debt service coverage	93.33%
Farm expense stress % (Increase in expenses, leaving profit static)	20%
Number of loans falling below 1 to 1 debt service coverage	28
Percentage of loans falling below 1 to 1 debt service coverage	93.33%
Interest Rate Stress (increase in % - only applies to 24 of the 30 borrowers)	3%
Number of loans falling below 1 to 1 debt service coverage	22
Percentage of loans falling below 1 to 1 debt service coverage	81.48%

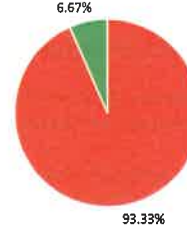
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Gross Profit Stress % (decrease in gross profit, leaving expenses static) 20%



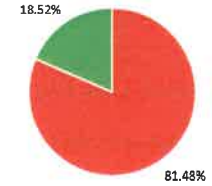
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Farm expense stress % (increase in expenses, leaving profit static) 20%



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Interest Rate Stress (increase in % - only applies to 24 of the 30 borrowers) 3%



### **Narrative - Farm Operating**

30 farm credits were chosen from across the state for stress testing of operating results. All 30 of the selections are based on 2025 projections. As shown in the testing, minimal stress causes significant swings in profitability. It should be noted that the overall majority of the projections are based on 2025 FSA planning prices to be more conservative than current market prices for most crops. Please see below for FSA planning prices.

- 15 of the 30 farms, or 50% show less than 1:1 coverage based on BND's adjusted projections.

- With a 5% decrease in gross profit, 24 of the 30 or 80% drop below 1:1 and a 10% decrease shows 26 or 87% of the farms not cashflowing. With a 20% decrease, 93% do not show positive cashflow and with a 30% decrease, none of the tested loans show positive cashflow. Higher commodity prices, government payments, and favorable crop insurance coverage helped farmers make it through recent years. However, with volatile markets and any growing conditions that may affect yields, a 20% or 30% reduction in gross profit could easily happen, especially for livestock producers who are enjoying all-time record prices for cattle in 2024 and 2025.

- Increasing expenses shows similar results. With a 5% increase in expenses, 24 of the 30 or 80% would not cashflow and a 10% increase shows 25 of the 30 or 83% not cashflowing. A 20% or 30% increase in expenses shows that 93% would not cashflow. Farm budgets have been negatively impacted by lower grain commodity prices, high inflation impacting inputs across the board, as well as higher interest rates on farm loans. More recently, foreign trade has become far less favorable to the American farmer due to strained foreign relations and tariffs.

- 27 of the 30 projections included an interest expense line. 13 of the 27 (44%) do not show positive cashflow prior to an increase in rates. A 1% rise in interest shows 63% of farms not cashflowing and a 2% increase results in 78% of farms not cashflowing. A 3%, 4% or 5% increase results in 22 (81%) farms not cashflowing. With the recent increases in rates there is potential for stress, however, historically increased rates do not appear to impact the farm operating results as much as negative changes in gross profit or increased expenses.

**Conclusion:** Based on the overall results of stress testing the sampling of farm operating results, we do not recommend any changes to loan policy, guidelines, or concentration thresholds. The CECL model has had changes thus far in 2025 in its qualitative factors for the farm portfolio. BND will be monitoring allowance factors especially pertaining to weather related concerns and economic conditions that may arise in 2025, especially when considering the farm stress that exists today is generally not yield related.

#### **FSA 2025 Planning Prices:**

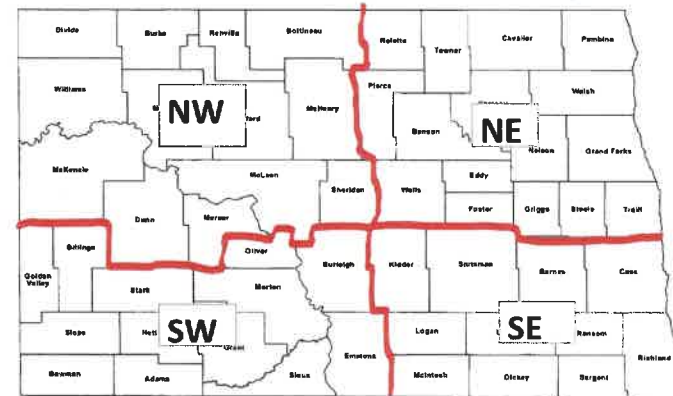
Wheat \$6.25  
Corn \$3.75  
Soybeans \$9.75  
Canola \$21.00  
Edible beans \$28.00  
Sunflower (oil) \$20.00

#### **Breakout of BND farm portfolio as of 12/31/24 - for informational purposes**

Total portfolio exposure of \$845MM

NW - 435 loans  
\$126,313,275 total  
exposure  
15% of total

NE - 945 loans  
\$260,103,187 total  
exposure  
31% of total



SW - 377 loans  
\$127,043,011 total  
exposure  
15% of total

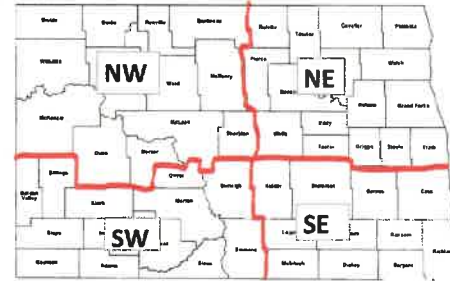
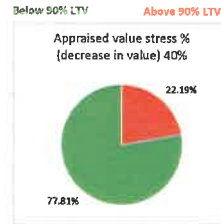
Out of state - 14 loans  
\$39,249,391 total  
exposure  
5% of total

SE - 1,283 loans  
\$291,949,898 total  
exposure  
34% of total

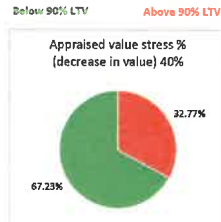
**Direct Farm Portfolio Geographic Distribution**  
 Prepared by Mike Morey, BND Credit Administration  
 As of 12/31/2024

\*Input cells are shaded in blue

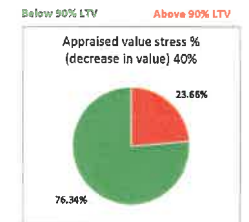
Direct Farm Real Estate Portfolio Stress Testing - Total portfolio	
Total number of direct farm RE loans	1,316
Total number of loans with data available	1,212
Average LTV of loans with data available (based on current balance)	42.08%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	269
% of loans rising above 90% LTV based on stress	22.19%



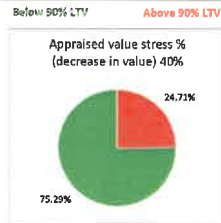
Direct Farm Real Estate Portfolio Stress Testing - Northwest North Dakota	
Total number of loans with data available - NW	177
Average LTV of loans with data available (based on current balance)	45.10%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	58
% of loans rising above 90% LTV based on stress	32.77%



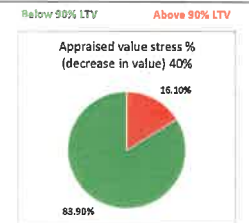
Direct Farm Real Estate Portfolio Stress Testing - Northeast North Dakota	
Total number of loans with data available - NE	393
Average LTV of loans with data available (based on current balance)	43.63%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	93
% of loans rising above 90% LTV based on stress	23.66%



Direct Farm Real Estate Portfolio Stress Testing - Southwest North Dakota	
Total number of loans with data available - SW	170
Average LTV of loans with data available (based on current balance)	41.26%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	42
% of loans rising above 90% LTV based on stress	24.71%



Direct Farm Real Estate Portfolio Stress Testing - Southeast North Dakota	
Total number of loans with data available - SE	472
Average LTV of loans with data available (based on current balance)	39.94%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	76
% of loans rising above 90% LTV based on stress	16.10%



## Participation Farm Portfolio Geographic Distribution

Report cells are shaded in blue

### Participation Farm Real Estate Portfolio Stress Testing - Total portfolio

Percentage of participation loans secured by real estate based on current outstanding balance	40.01%
Total number of participation loans secured by real estate	445
Total number of loans with data available	429
Average LTV of loans with data available (based on current balance)	38.92%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	118
% of loans rising above 90% LTV based on stress	27.51%

Below 90% LTV Above 90% LTV



### Participation Farm Real Estate Portfolio Stress Testing - Northwest North Dakota

Total number of loans with data available - NW	37
Average LTV of loans with data available (based on current balance)	46.34%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	14
% of loans rising above 90% LTV based on stress	37.84%

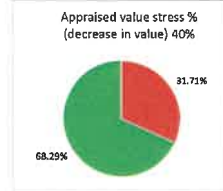
Below 90% LTV Above 90% LTV



### Participation Farm Real Estate Portfolio Stress Testing - Southwest North Dakota

Total number of loans with data available - SW	41
Average LTV of loans with data available (based on current balance)	44.06%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	13
% of loans rising above 90% LTV based on stress	31.71%

Below 90% LTV Above 90% LTV



### Participation Farm Real Estate Portfolio Stress Testing - Northeast North Dakota

Total number of loans with data available - NE	143
Average LTV of loans with data available (based on current balance)	37.52%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	40
% of loans rising above 90% LTV based on stress	27.97%

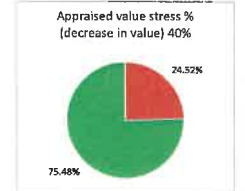
Below 90% LTV Above 90% LTV



### Participation Farm Real Estate Portfolio Stress Testing - Southeast North Dakota

Total number of loans with data available - SE	208
Average LTV of loans with data available (based on current balance)	37.54%
Appraised value stress % (decrease in value)	40%
Number of loans rising above 90% LTV based on stress	51
% of loans rising above 90% LTV based on stress	24.52%

Below 90% LTV Above 90% LTV



**Farm Real Estate Narrative:** Both the direct farm and farm participation portfolios show similar results when appraised values are stressed. The current average LTV is 42% for the direct loan portfolio and 39% for the participation portfolio. These overall LTV's are very similar to last year with the direct portfolio coming in with a 1% lower LTV than last year, and the participation portfolio coming in at the same LTV as last year. At a 10% reduction in appraised values, only one direct farm real estate loan goes beyond 90% LTV and one participation is beyond that threshold. With a 20% reduction in values, a small amount of stress appears in the direct portfolio at 11 loans which is less than 1% of the portfolio. A similar result occurs in the participation portfolio with 5 loans or under 2% of the portfolio rising above 90% LTV with a 20% reduction in collateral value. BND has historically viewed the farm real estate devaluation of the 1980's to be the most recent large-scale event to run a comparison to. Utilizing the estimated 40% reduction in land values that occurred at that time, the direct portfolio shows 269 loans or 22.19% rising above 90% LTV. The participation portfolio shows 118 loans or 27.51% rising above 90% LTV with the same 40% reduction in value. Collateral values must be decreased by over 50% before approximately half of both portfolios rise above 90% LTV. Overall results show that both farm real estate secured portfolios can withstand a sizeable decrease in collateral value and still remain below 90% LTV.

When breaking out both portfolios by the four corners of North Dakota and applying a 40% stress to the land values, the results are similar between each region with the exception of western North Dakota. Both the direct and participation portfolios show between 16% and 28% of the loans rising above 90% with a 40% stress for eastern North Dakota. However, the northwest portion of the state shows 33% of the direct portfolio and 38% of the participation portfolio rising above 90% LTV. The southwest direct portfolio is at 25% and the southwest participation is around 32% of the portfolio rising above 90% LTV as well. It should be noted that the overall number of loans in the western half of the state is also much lower than the eastern half for both portfolios.

**Conclusion:** Based on the overall results of stressing collateral values on both the direct and participation farm real estate portfolios, we are not recommending any changes to existing concentration thresholds, allowance factors, or loan policy and guidelines. Recent analysis shows that the average appraisal in BND's farm real estate portfolio is 7 years old and land values in ND have increased by 32.4% in the past 7 years. In addition, data shows that land prices in ND increased by 10.8% from 2023 to 2024.

## Student Loan Payment Testing Recap

As of 12/31/24

### Portfolio Breakdown

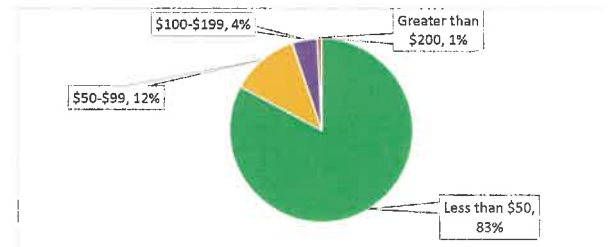
	Fixed	Variable	
DEAL	\$ 464,996,358.46	\$ 116,557,813.93	-no maximum rate increase per year
DEAL Consol	\$ 32,280,367.55	\$ 18,895,842.29	-no maximum rate increase per year
DEAL One	\$ 166,434,877.94	\$ 197,584,734.05	-1% maximum rate increase per year
Combined	\$ 663,711,603.95	\$ 333,038,390.27	

	Fixed	Variable
DEAL	80%	20%
DEAL Consol	63%	37%
DEAL One	46%	54%
Combined	67%	33%

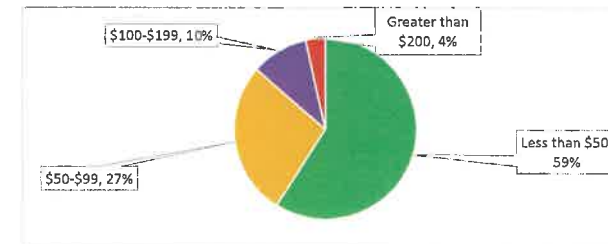
### Student Loan Payment Testing - DEAL and DEAL Consolidation

Number of variable rate customers (no maximum rate increase per year)	5,974
Average Payment Amount	\$ 103.52
Additional Rate Stress	3%
Average Payment Amount Increase	\$ 27.62
Number of Borrowers with Payment Increasing \$50-\$99	719
Number of Borrowers with Payment Increasing \$100-\$199	263
Number of Borrowers with Payment Increasing More than \$200	41

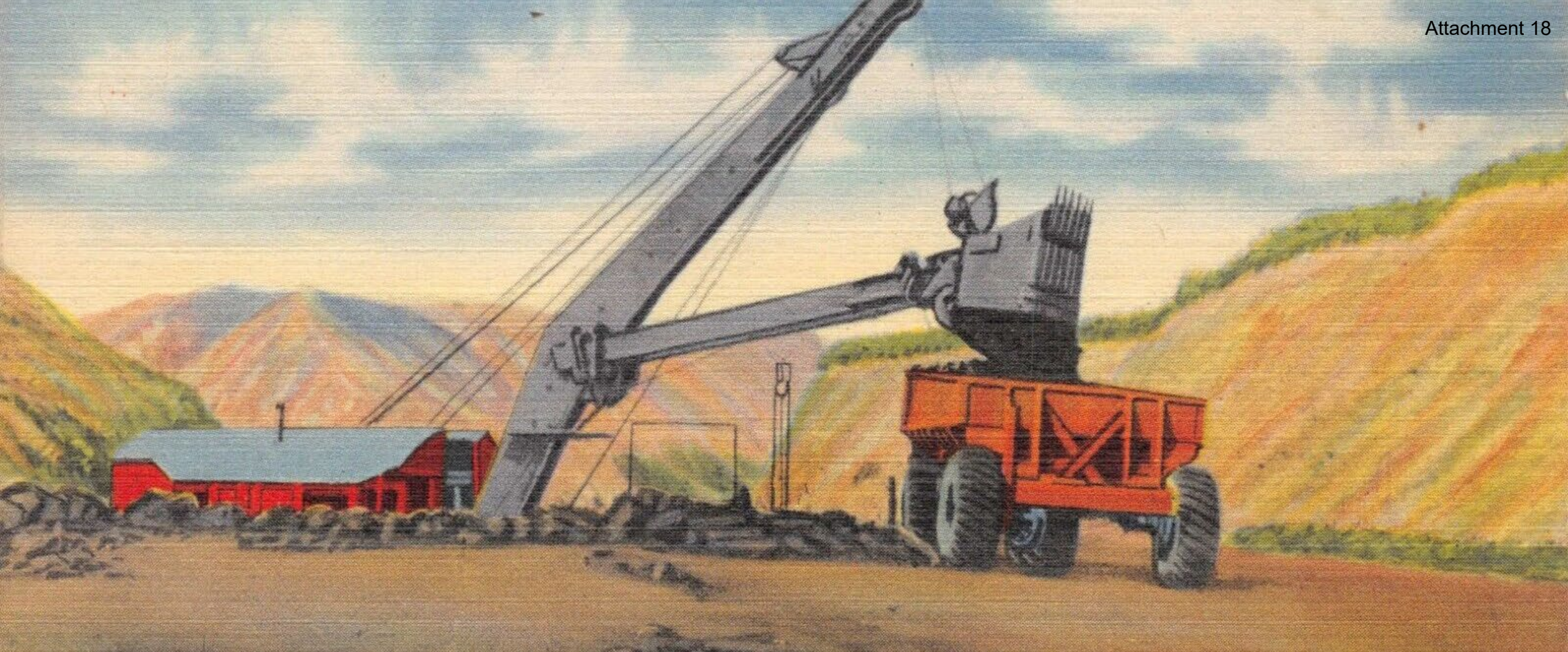


### Student Loan Payment Testing - DEAL One

Number of variable rate customers (maximum rate increase per year of 1%)	5,399
Average Payment Amount	\$ 274.02
Additional Rate Stress	3%
Average Payment Amount Increase	\$ 49.62
Number of Borrowers with Payment Increasing \$50-\$99	1,475
Number of Borrowers with Payment Increasing \$100-\$199	542
Number of Borrowers with Payment Increasing More than \$200	192



**Commentary:** Increases in interest rates affect student loan payments but not at large amounts until rates increase by 2% or more. At that point, 9% of DEAL and DEAL Consolidation borrowers would experience a monthly payment increase of more than \$50. With a 2% increase in rates for Deal One borrowers, 17% would have monthly payments increase by \$50-\$99 and 6% would see an increase of more than \$100. A 3% increase in rates would make payments go up by \$50-\$99 for 12% of Deal and Deal Consolidation borrowers and 27% of Deal One borrowers. That same 3% rate increase would make 4% of Deal and Deal Consolidation borrower payments go up by \$100-\$199 but only 1% go up more than \$200. For Deal One borrowers, a 3% increase causes the payment to go up \$100-\$199 for 10% of borrowers and increasing more than \$200 for 4% of borrowers. Using a larger rate increase of 5% would make payments go up \$50-\$99 for 16% of Deal and Deal Consolidation borrowers and 25% of Deal One borrowers. That same 5% rate increase would make 10% of Deal and Deal Consolidation borrower payments go up by \$100-\$199 and 3% would go up more than \$200. For Deal One borrowers, a 5% increase causes the payment to go up by \$100-\$199 for 24% and over \$200 for 10% of borrowers.



# LIGNITE RESEARCH PROGRAM PROJECT MANAGEMENT REPORT

Reice Haase, Deputy Executive Director, NDIC

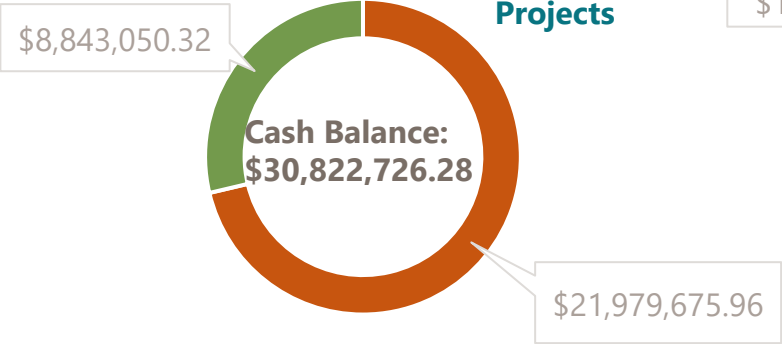
November 2024

NORTH  
**Dakota**  
Be Legendary.™

# INDUSTRIAL COMMISSION-MANAGED FUNDS

Lignite Research Fund

20 Active Projects



Committed Uncommitted

Oil and Gas Research Fund

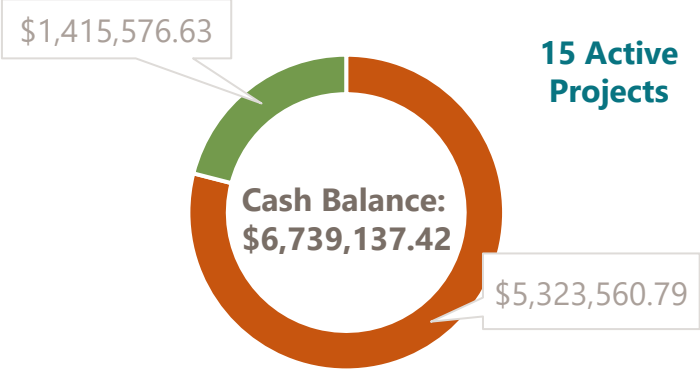
15 Active Projects



Committed Uncommitted

Renewable Energy Fund

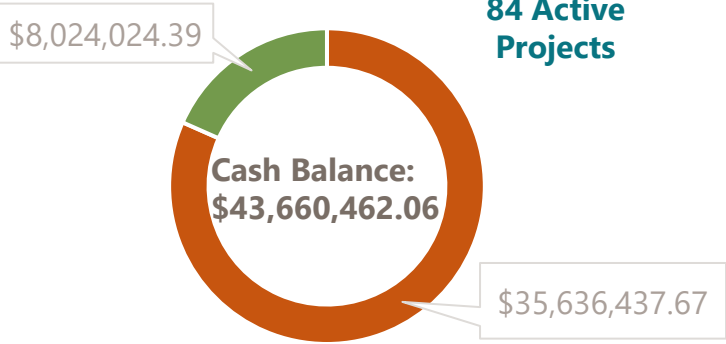
15 Active Projects



Committed Uncommitted

Outdoor Heritage Fund

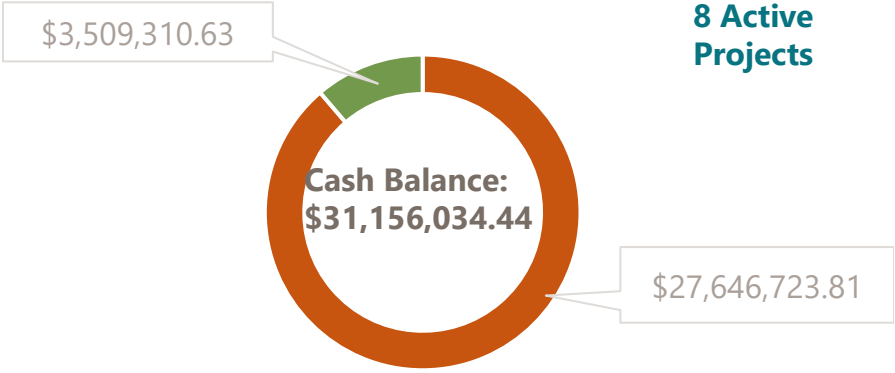
84 Active Projects



Committed Uncommitted

CSEA Fund\*

8 Active Projects

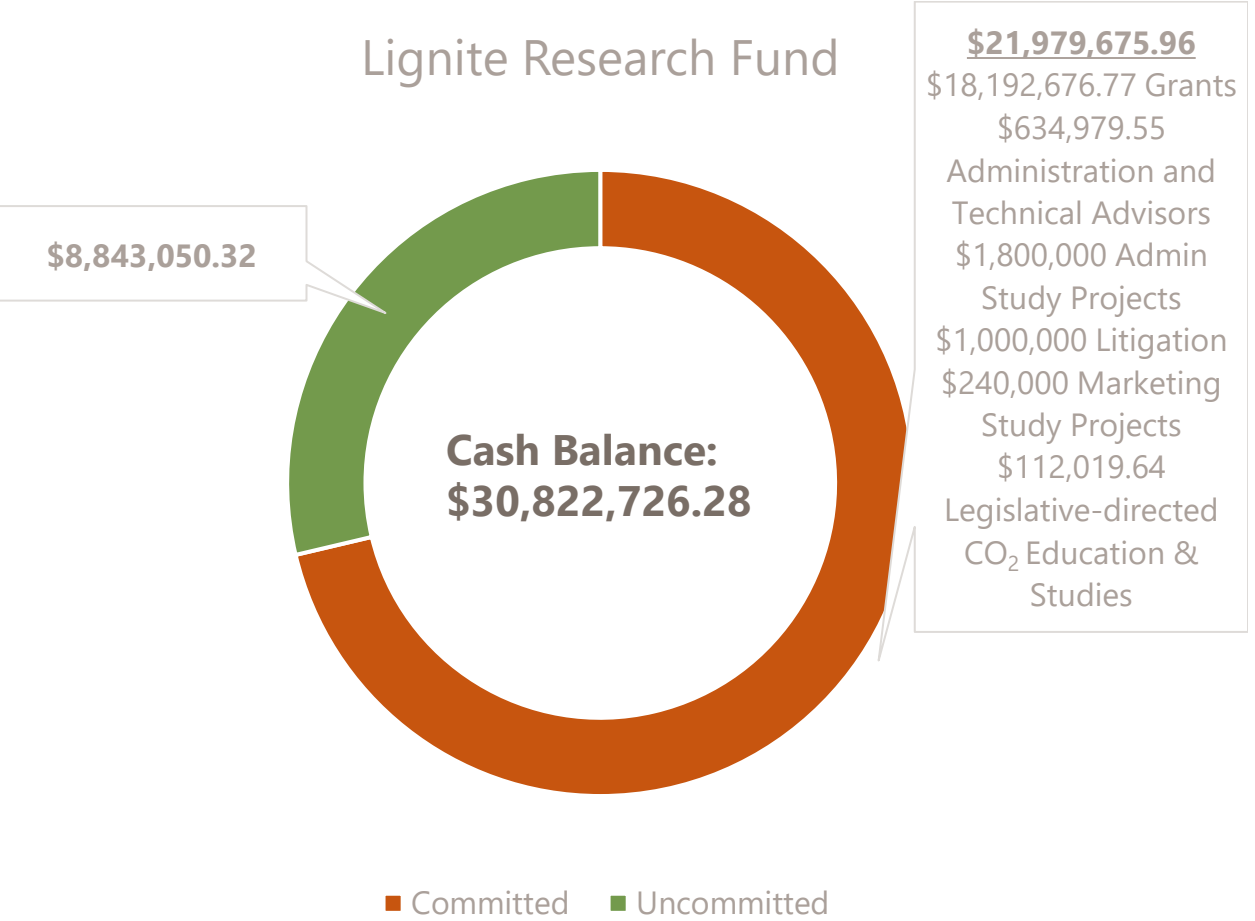


\*Does not include ARPA or Loans  
Committed Uncommitted

**Total Active Projects**  
**142**  
  
**Total Dollars**  
**committed 2023-2025**  
**\$67,451,330.01**

# LIGNITE RESEARCH FUND BALANCE

## NOVEMBER 2024



**Funding Source:**

- \$8.5 million coal severance and conversion taxes
- \$10 million oil and gas taxes



**261 Cumulative Projects**



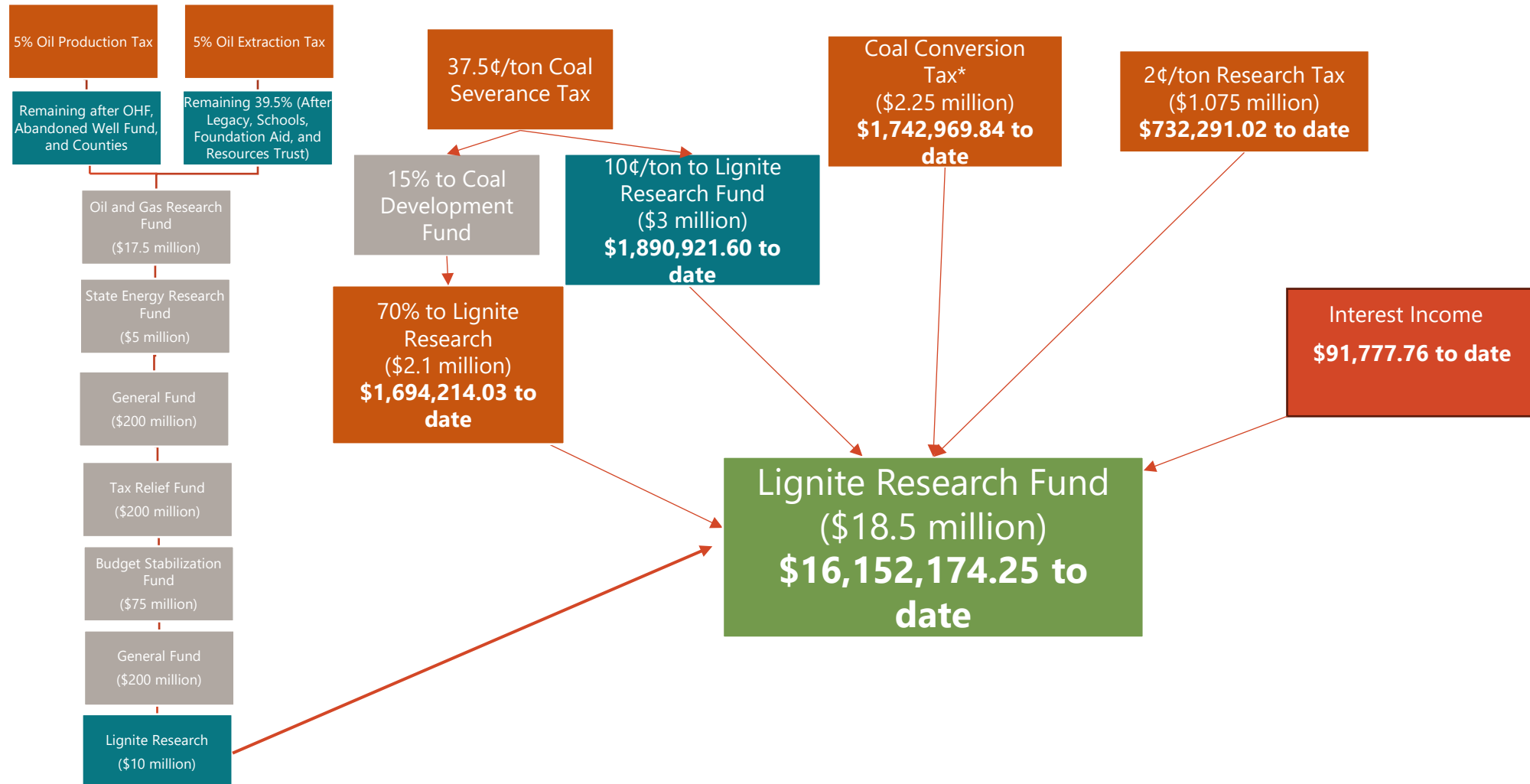
**20 Active Projects**



**Cumulative Value:**

- \$183.1 million granted
- \$2.8 billion project value

# 2023-2025 BIENNIUM APPROPRIATION AND FORECASTED INCOME



**LRC-106A**

**Title:** “Carbon Ore, Rare Earth, and Critical Minerals (CORE-CM) Initiative – Phase II”

**Submitted By:** UND EERC

**PM/PI:** John Kay

**Duration:** 36 Months

**Purpose:** The EERC is proposing the Phase II work scope for the CORE-CM team focused on producing rare-earth elements (REEs), critical minerals (CMs), and nonfuel carbon-based products (CBPs) from Williston Basin coals. The EERC has received additional funding from the DOE and industry support, providing the leveraging of NDIC project funding. The EERC led Phase II effort would focus on advancing the opportunity in North Dakota as part of two regions within the realigned DOE. The proposed additional effort is aimed at collecting more resource data for rare earth elements (REEs) and critical minerals (CMs) in the Williston Basin. This involves identifying data gaps that need to be addressed and developing strategies to move forward. It also includes implementing necessary workforce training and establishing technology innovation centers.

**Funding:** NDIC: \$1,500,000; Total Project Costs: \$3,830,000

**Technical Advisor’s Recommendation:**

**Fund –** The proposed project is a great fit for the Lignite Research Program, as part of the pursuit of emerging markets for North Dakota lignite. All three of the technical reviewers recommended funding, and the proposal received an average score of 204 out of 250. The project leverages state funding by obtaining funding from the DOE and industry.

**Funding would be subject to:**

- Technical advisor participates in project reviews
- Technical advisor reviews the project management plan with the project team

**Conflicts of Interest:** EERC, North American Coal, and BNI.

**Reviewers:** Fund - 3; Consider Funding - 0; Do Not Fund – 0

**LRC:** **Fund: Yes - 15;** No – 0



Energy & Environmental Research Center

15 North 23rd Street, Stop 9018 • Grand Forks, ND 58202-9018 • P. 701.777.5000 • F. 701.777.5181  
www.undeerc.org

February 14, 2025

Mr. Jordan Kannianen  
Deputy Executive Director  
North Dakota Industrial Commission  
600 East Boulevard Avenue, Dept. 405  
State Capitol, 14th Floor  
Bismarck, ND 58505-0840

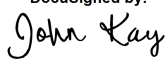
Dear Mr. Kannianen:

Subject: EERC Proposal No. 2025-0116 Entitled "Carbon Ore, Rare Earth, and Critical Minerals (CORE-CM) Initiative – Phase II"

The Energy & Environmental Research Center (EERC) of the University of North Dakota is pleased to submit the subject proposal to the Lignite Research, Development and Marketing Program. The ACH transaction number is 287130 for the \$100 application fee. The EERC is committed to completing the project as described in the proposal if the Commission grants the request.

If you have any questions, please contact me by telephone at (701) 777-4580 or by email at [jkay@undeerc.org](mailto:jkay@undeerc.org).

Sincerely,

DocuSigned by:  
  
6E1D21EBB3594A6...  
John P. Kay  
Principal Engineer Emissions  
and Carbon Capture

Approved by:

DocuSigned by:  
  
29489751F2894D7  
Charles D. Gorecki, CEO  
Energy & Environmental Research Center

JPK/kal

Attachment

c: Erin Stieg, North Dakota Industrial Commission

Lignite Research, Development  
and Marketing Program

---

North Dakota Industrial Commission

## Application

**Project Title:** Carbon Ore, Rare Earth, and  
Critical Minerals (CORE-CM)  
Initiative – Phase II

**Applicant:** University of North Dakota Energy &  
Environmental Research Center

**Principal Investigator:** John P. Kay

**Date of Application:** February 14, 2025

**Amount of Request:** \$1,500,000

**Total Amount of Proposed Project:** \$3,830,000

**Duration of Project:** 36 months

**Point of Contact (POC):** John P. Kay

**POC Telephone:** (701) 777-4580

**POC Email:** jkay@undeerc.org

**POC Address:** 15 North 23rd Street, Stop 9018  
Grand Forks, ND 58202-9018

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## ABSTRACT

The University of North Dakota (UND) Energy & Environmental Research Center (EERC) is continuing to lay the foundation for a new industry in the Williston Basin focused on producing rare earth elements (REEs), critical minerals (CMs), and nonfuel carbon-based products (CBPs). This has been an ongoing effort since October 2021, with the U.S. Department of Energy (DOE) award of the Phase I “Williston Basin CORE-CM Initiative,” also supported by the North Dakota Industrial Commission (NDIC) Lignite Research, Development and Marketing Program (LRDMP). DOE realigned its national divisions for Phase II awards, which divided North Dakota into two regions: Region 3 and Region 4. Region 4 consolidates three Phase I programs and part of a fourth, and it was agreed by those teams that the University of Wyoming will lead the Phase II program with the EERC taking a vital role. **Objective:** The goal of Phase II funding is to collect additional field-derived data and identify areas that show potential for the development of a new industry and drive the expansion and transformation of resources in the Williston Basin to produce REEs, CMs, and CBPs. The information will be incorporated into the full Region 4 assessment. For Region 3, the EERC will provide information to the project team regarding business opportunities in the eastern region of North Dakota. **Expected Results:** This program is the second phase of a DOE-funded multiphase effort. Phase II focuses on gathering and assessing data for REEs, CMs, and CBPs in the Williston Basin, identifying gaps and developing strategies necessary to move forward, and implementing needed workforce training and technology innovation center(s). **Duration and Total Project Cost:** This is a 36-month program (May 1, 2025 – April 30, 2028) with a total value of this effort of \$3,830,000. The proposal requests a total of \$1,500,000 from NDIC LRDMP. BNI Energy (BNI) and North American Coal Corporation (NACCO) offered letters of support with the option of providing in-kind cost share. **Participants:** DOE, NDIC LRDMP, BNI, and NACCO, along with continued input from the original coalition of nearly 30 partners, formed under the formation of the Phase I program in 2021.

## PROJECT SUMMARY

Through the creation of the Williston Basin CORE-CM (carbon ore, rare earth, and critical minerals) Initiative in 2021, the University of North Dakota (UND) Energy & Environmental Research Center (EERC) formed and continues to lead a diverse and experienced coalition team of nearly 30 partners, encompassing all value chain segments, focused on laying the foundation for a new industry for the Williston Basin by expanding the use of coal and coal-based products to produce rare earth elements (REEs), critical minerals (CMs), and nonfuel carbon-based projects (CBPs). REEs have become a critical topic within the United States as they are used extensively in modern electronics, batteries, and other materials, and the majority are imported from China.

This proposed work is the second phase of a much larger program defined by the U.S. Department of Energy (DOE). The first phase was intended to lay the foundation by assembling the existing information, identifying information gaps, developing strategies to move the opportunity forward, and initiating outreach. DOE designated Phase II to focus on a larger region. As shown in Figure 1, North Dakota lies within two DOE regions, Region 3 and Region 4, with Phase I work falling into Region 4. The coalition team has extensive experience and expertise in lignite coal, REE and CM analysis, REE and CM extraction and enrichment, and developing nonfuel CBPs. Additionally, the EERC has a long history of bringing together regional and national stakeholders to tackle critical and complex topics, involving large partnerships in the Williston Basin. The coalition team includes research organizations, state entities, coal producers, mineral processors, business and financial partners, end users, policy experts, and more to guide future opportunities in the Williston Basin.

Region 4 includes three major Phase I project basins: the Powder River Basin in Wyoming, the Williston Basin in North Dakota, and most of the Cherokee–Forest City Basin which stretches from Iowa down to Oklahoma. A portion of the Gulf Coast Basin also lies within Region 4. These Phase I teams elected to collaborate in the proposal to DOE for Phase II, with the University of Wyoming (UoW) acting



Figure 1. Nationwide map of CORE-CM regions.

as program lead, with extensive assistance from the EERC and the Kansas Geological Survey. The University of Illinois (UoI) submitted the proposal for Region 3 with the EERC providing a small role pursuing business opportunities in North Dakota in that program as well. Both proposals were selected for contract negotiations by DOE.

The project will:

- Assist UoW in a regional resource assessment (RRA) by integrating Williston Basin data.
- Collect additional field data to improve the Phase I dataset and expand it beyond coal-related sources to others, such as clays, shales, and produced water.
- Address infrastructure, accessibility, regulatory compliance, and permitting on a regional scale through the EERC working with UoW and UoI to formulate strategies.
- Conduct stakeholder engagement, outreach, and workforce development in Region 4.
- Assist UoW in a technology innovation center (TIC) road map and begin the creation of TICs in the region.

- Participate in DOE-led working groups.
- Participate in the Critical Materials Collaborative (CMC).

### PROJECT DESCRIPTION

The EERC will continue to lead the diverse and experienced coalition team of nearly 30 partners, encompassing all segments of the REE/CM/CBP value chain. The Phase I Williston Basin CORE-CM Initiative had harnessed coalition team experience and Williston Basin resources and infrastructure to begin the development of a new industry that will catalyze economic growth and job creation in the region and enhance national and economic security as well as support the existing coal and coal-based resource industry. The CORE-CM Phase II project will continue to focus Phase I's findings to enhance and transform the use of coal and coal-based resources within the Williston Basin and throughout Region 4.

**Objectives:** The goal of Phase II is to continue to develop expansion and transformation of coal and coal-based resource utilization within Regions 3 and 4 to produce REEs, CMs, and nonfuel CBPs. The objectives are to extend the understanding of the three-dimensional deposition of potential sources, develop a coalition team to create and implement a workforce development plan, and implement plans for technology innovation centers that will be operated by regional-specific public-private partnerships. The coalition teams for Regions 3 and 4 will comprise entities such as private industry; university; local, state, and federal government; local communities; and tribes and tribal organizations.

**Methodology:** Building upon the previous work, the Williston Basin CORE-CM Phase II project wants to expand upon data collected in Phase I to include potential REE/CM/CBP sources beyond coal and fly ash alone and potential sources such as clay, shale, produced water, and non-fuel CBP; extend the understanding of the three-dimensional deposition of potential sources; and continue collaboration with Geological Surveys of North Dakota, South Dakota, Montana, and of the rest of Region 4. Data from each state within the region will be accumulated and compiled and additional field sampling will be conducted within the Williston Basin to expand data already gathered. The CORE-CM Phase II project

will perform work through eight tasks. For Region 3, the work will focus on infrastructure and business opportunities.

**Task 1.0 – Project Management, Planning, and Reporting.** The EERC will manage and direct the project work involving North Dakota and the Williston Basin in accordance with the scope of work to meet all technical, schedule, and budget objectives and requirements. Interim and final reports will summarize the activities of the project and include key findings, results, and lessons learned. This work will be performed in conjunction with the overall work outlined by the CORE-CM Region 4 program manager (UoW). The project team will also participate in UoW-led meetings and DOE-led working groups. The intent of the working groups is to share lessons learned across all DOE project awardees as well as aid in the development of best practices manuals.

**Task 2.0 – Regional Resource Assessment and Initial Planning.** The EERC will assist UoW in developing a RRA, which will be a high-level prospective assessment and will serve as the foundation for future data and information refinements of the regional REE- and CM-containing resources. The RRA will serve as a primary evaluation identifying the most promising resources within Region 4. The focus of the EERC activities will be to incorporate the Williston Basin resources with the other basins in Region 4. Additional sampling will gather new samples across the basin to further refine REE/CM/CBP occurrence. The work performed in Phase I of the DOE program will be used to target promising locations within the Williston Basin for additional sample collection and analysis. The regional RRA will consist of the following data.

- A review and assessment of prior state-of-the-art (SOTA) critical minerals and materials (CMM) data, as well as ongoing studies, that will address how these data were/are being obtained.
- Identification of the carbon ore-based resources and/or other resources, their location within the region, and quantitative estimates of each resource contained within the region.

- Identification of reusable waste streams (coal ash, refuse, produced water brines, etc.) or other CMM-containing waste streams (including industrial and mineral processing waste streams), their location within the region, and estimates of the quantity of each material contained within each resource location.
- The results of a gap analysis that addresses the potential need for additional field sampling activities to adequately reflect the region's resources.
- A description of the requirements, processes, and methodologies for acquiring additional field materials and performing respective characterization analysis of resource materials in each U.S. region.

This will lead to leveraging existing and needed new characterization data to assist in developing geologic models and identifying gaps in the understanding of the resources available and methods to correct those gaps. An example of potential resources in North Dakota are the shales that are ubiquitous throughout the state.

**Task 3.0 – Regional Assessment of CORE-CM Resources, Sampling, and Characterization.** The EERC will assist UoW in a regional assessment of CORE-CM resource types. The assessment will integrate basinal data and will be expanded by regional assessment and characterization of CMM. This assessment will be a broad overview of regional resources by assessment and characterization of contained CMM. The assessment will include leveraging existing and new field characterization data, developing analytical geological models, identifying information gaps and ways to fill those gaps, and informing future research and development (R&D) on resource recovery. Resource characterization and assessment should include, but not be limited to:

- Coal and sedimentary rock associated with coal beds.
- Sedimentary hosted minerals.
- Coal ash (ponded materials, combustion by-products).

- Refuse, preparation plant, or mining waste (coal, other ores).
- Acid mine drainage (coal, other ores).
- Oil and gas produced water, including petroleum industry by-products, carbon storage produced brines, or other waters.
- Other region-specific resources such as gasifier char materials, drill cuttings, produced brines, etc.

The EERC will conduct additional sampling across the Williston Basin, based upon results of CORE-CM Phase I, to be included in the assessment described previously, and engage in collaboration with the North Dakota Geological Survey on work it's conducting. The EERC will work with UoW to integrate coal sediments into a validated CMM geologic model that will include structural and stratigraphic frameworks, paleo depositional environments, and post-depositional processes to as great an extent as possible. The geologic model will be extrapolated across the region. Assays that can be directly associated with specific stratigraphic intervals will be addressed and included in the geologic model. If available, other geophysical data such as well logs, seismic and geochemical information, etc., will be identified. The predictive capability of the resource assessment geological models will include sensitivity analysis, confidence testing, and validation. Model assumptions will be included where geophysical data are missing or not clear.

#### **Task 4.0 – Regional Overview for Infrastructure, Industries, and Business That Include Site Strategies.**

The EERC will work with UoW to formulate strategies to address infrastructure, accessibility, regulatory compliance, and permitting on a regional scale and to integrate and leverage regional infrastructure, industries, and businesses to spur economic growth by utilizing the region's CORE-CM resources as well as other minerals and waste streams. This strategy will address the regional infrastructure needs and economic challenges and identify supply chain gaps. An evaluation using a decision-based matrix will be conducted to down select from regional overview and identify, prioritize sites for consideration for a more detailed analysis, and will include:

- Existing regional industries and businesses' energy needs and infrastructure.
- Regional infrastructure available to active mines, coal, or waste streams and how those materials will be transported to regional locations for further processing.
- Currently available or needed CMM mining and raw material refining infrastructure.
- Additional information that may be needed to complete the analysis of the technologies and infrastructure available to active mines, coal, coal by-products, waste streams, or alternate source materials, and how those materials are transported to current (or future) facilities that refine these raw resource materials into feedstock materials. Facilities that refine these materials may be outside of Region 4, and this will be considered.

Task 4.0 will serve as the basis for the development of an initial regional business commercialization plan. The regional infrastructure, industries, and business assessment will begin development through the collaborative effort and expertise of coalition members across various technology supply chains. This plan will address:

- Integrating current and possible future industries that utilize (or may potentially utilize) coal, coal-based resources, and regional wastes as process feedstock materials.
- Identifying industries in Region 4 that utilize CMM as materials incorporated into intermediate and end products such as magnets, batteries, sensors, electrolyzers, lasers, phosphors, fluorescents, catalysts, and many other products.
- The potential economic impact and challenges of not only producing CMM and valuable, nonfuel, carbon products within Region 4, but also transport requirements for the development of environmentally safe and sustainable projects, businesses, and industries.
- Infrastructure needs, potential business/industry integration, economic challenges, and supply chain gaps that need to be addressed to promote economic growth and create jobs.

- Critical needs to realize the full economic value of the region's resources for producing and utilizing CMM and valuable, nonfuel, carbon products, and/or alternate non-coal-based resource materials.

The EERC will assist UoI with infrastructure and business opportunities in the eastern region of North Dakota in Region 3. Existing infrastructure will be identified as well as potential CMM users and business strategies that may use material from Region 3 or other nearby facilities.

**Task 5.0 – Stakeholder Outreach, Education, and Workforce Development.** The EERC will assist UoW to develop a regional plan for stakeholder outreach, education, and preparation of a workforce development and community engagement plan for CORE-CM resources in the region. This encompasses training (or retraining/uptraining) the next generation of technicians, skilled workers, and STEM (science, technology, engineering, mathematics) professionals, for securing domestic feedstocks and material component production. The plans will integrate accredited mining schools and other academic institutions, local and regional training, and workforce development organizations within Region 4. The plan will address training needs and how to develop and implement training for (1) technicians, (2) skilled workers, and (3) STEM professionals. The plan will also explore potential collaborations with other R&D projects funded by DOE that are relevant to the CORE-CM Initiative.

Stakeholder outreach and education includes (but is not limited to):

- Workforce training and education ongoing during the project outside of the awardee coalition team that encompassed the entire region.
- Open workshops and forums to engage and disseminate information to stakeholder industries, such as mining companies, power plant operators, oil and natural gas companies, and entrepreneurs throughout the region, as well as to the general public and potential future workforce personnel, addressing technical and nontechnical challenges of CORE-CM projects being conducted in their region.

- Engagement with tribal, federal, state, local governments, and nonprofit/non-governmental groups to provide information on technology development, environmentally sustainable pathways, and economic potential within their region for production CMM and valuable, non-fuel, carbon products.

**Task 6.0 – Technology Innovation Center Plans.** The EERC will work with UoW to refine plans and develop a road map to implementation for TICs that will be developed and operated by regional public–private partnerships. The TICs will provide a centralized and consistent platform to develop and validate CORE-CM technologies at laboratory-scale or larger, including technologies that utilize advanced manufacturing techniques. This road map will identify partnerships with other entities for conducting future small-scale R&D projects for innovative waste stream material technology and/or test facility development to prove out and demonstrate innovative waste stream material technology that may include potential coproduction as well as process development such as:

- Extracting and recovering CMM for manufacturing and supply chain needs.
- Using acid and basic chemicals generated from the chlor-alkali process using produced water brines as the chemical leaching media to extract CMM feedstock material.
- Identifying the challenges and potential solutions needed to realize the above.

As part of this road map, the EERC will assist UoW to submit a summary of additional considerations of the proposed TIC addressing:

- The relationship between the amount of resources used and the amount of product formed.
- The associated near-term and legacy environmental impacts of secondary and unconventional mineral recovery when using particular feedstocks.
- How the planned technology remediates legacy environmental impacts of the energy industry, including environmental impacts, and future land use associated with the use of mine waste products in the region.

- The project’s waste management strategy and the anticipated impacts of residual waste on local residents.
- How the project incorporates a plan to ensure community and stakeholder input and engagement from underserved communities, which include persons of color, members of religious minorities, lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality.

Once the road map is complete, the EERC will work with UoW to develop the TIC plan, which will include the management and operational structure of the TIC that is envisioned for the Region 4 CORE-CM Initiative. This plan will discuss how the TICs will integrate the region’s natural resources, infrastructure, industrial needs, and waste stream reuse opportunities. The EERC, in conjunction with UoW, will address the TIC establishment, focus, organizational involvement, and potential management of the TIC within Region 4 with a primary purpose to:

- Accelerate research that will enable commercial deployment of advanced processing and production of CMM and valuable, nonfuel, carbon products.
- Support engagement of public–private partnerships and regional industries to advance new and innovative technology development as well as the potential for new product production.
- Advance opportunities for the education and training of the next generation of technicians, skilled workers, and STEM professionals.

The TIC plan for Region 4 will develop a regional plan to identify partnerships with industry and other stakeholders who represent a variety of industries and institutions and will include opportunities to engage potential partners through project meetings and through the building of the TIC.

**Task 7.0 – CORE-CM Closed Workgroups.** The EERC will participate in DOE-led closed working groups with other CORE-CM recipients as required during the term of the project, including attendance at

related workshops led by National Energy Technology Laboratory (NETL)/DOE staff or contractor personnel. The EERC will attend working group meetings that are both in-person and virtual.

**Task 8.0 – Critical Materials Collaborative.** The EERC will participate as a member of the CMC to:

- Align the DOE research portfolio to achieve climate goals and crosscutting science and technology objectives.
- Support crosscutting RD&D related to critical minerals and materials.
- Accelerate the adoption and deployment of innovative technologies.
- Nurture and expand the innovation ecosystem.
- Facilitate scientific and technical exchange and discussion.

**Anticipated Results:** The Williston Basin CORE-CM Initiative will continue to build the foundation to develop a new industry as well as play a vital role in expanding and transforming the use of coal, coal-based resources, and other sources of REE/CM/CBP within the Williston Basin. As the second phase of an anticipated three-phase program, this phase will build upon the results of Phase I, with a focus on further data collection for the Williston Basin with integration into data for the entirety of Region 4, developing a workforce training strategy that can be implemented within Region 4, and provide the information to start the development of a TIC.

**Facilities:** The EERC employs a multidisciplinary staff of about 275 and occupies a research complex consisting of 254,000 square feet of laboratories, fabrication facilities, technology demonstration facilities, and offices. It has large meeting facilities as well as capabilities to host remote meetings if needed. The EERC houses eight laboratories with extensive analytical capabilities.

**Resources:** Collectively, the coalition team has significant experience characterizing potential CM resources in various Williston Basin deposits and/or waste streams. Over 2400 samples have been previously analyzed for REE content, and UND has laboratory equipment for analyzing additional

samples, if needed, including an inductively coupled plasma (ICP)—optical emission spectrophotometer and an ICP—mass spectrometer.

**Techniques to Be Used, Their Availability, and Capability:** The techniques to be used and their capabilities are described in the methodology section. The CORE-CM Phase II project will harness the knowledge of the diverse coalition team through collaboration, meetings, reports, etc., to assess the opportunity and solve technical and nontechnical challenges. The initiative will leverage existing REE data for resources and mining, processing, and upgrading technologies. The coalition team will provide guidance and direction for the project.

**Environmental and Economic Impacts While Project Is Underway:** The proposed scope of work will have minimal environmental impact. This effort consists primarily of data compilation, analysis, and dissemination by the EERC and coalition team members, with limited sample characterization and analysis at UND laboratories. Economic impacts will also be minimal during this project phase; however, as opportunities are identified, the CORE-CM Phase II project has the potential to create large economic benefits to North Dakota and the Williston Basin region.

**Ultimate Technological and Economic Impacts:** The ultimate impacts of the proposed CORE-CM Phase II project have the potential to be enormous, including expanded support for the existing coal industry as well as establishing a new North Dakota industry. The existing coal industry supports over 3600 direct jobs, provides over \$70 million in state tax revenue, and has an overall economic impact of \$1.8 billion. Supporting and strengthening the current lignite industry has the potential to save significant jobs and regional and state revenues, especially in the event of a future carbon tax or cases where other social or economic impacts are felt. A future REE industry has the potential to provide significant revenue to the state through employment opportunities and state and regional excise and sales taxes. Based on Version 1.0.2 of the North Dakota energy sustainability model developed at the EERC, a fully developed REE industry itself could contribute \$500 million per year in state taxes based on an excise tax alone.

**Why the Project Is Needed:** The production of REEs is of critical importance to the national security of the United States. A REE industry, along with CMs and CBPs, would strengthen and support the existing North Dakota coal industry, provide an additional revenue stream and employer in North Dakota, and reduce the country's dependence on REE and CM imports.

### **STANDARDS OF SUCCESS**

The success of this project will be measured by advancing to Phase III of the DOE program, resulting in further development of this opportunity in the Williston Basin. To accomplish this, we must successfully 1) acquire the information needed for refining the Phase I initial assessments, 2) identify information gaps, and 3) develop plans to drive the future opportunity forward. Products that together will create the overall strategy to move into Phase III include 1) the continued basinal assessment, along with an assessment of Region 4; 2) further development of basinal strategies for infrastructure, industries, and business assessment; 3) technology assessment, development, and field-testing; 4) workforce training development; 5) TIC plan(s); and 6) continued stakeholder outreach and education. Information presented through discussions, webinars, and symposiums, which have already been successful in highlighting the potential of REEs and CMs within the Williston Basin.

### **BACKGROUND/QUALIFICATIONS**

In Phase I, the coalition team included nearly 30 partners across all value chain segments, including over 70 years of experience in supporting coal development and utilization within the Williston Basin (Figure 2). In Phase II, this team will be greatly expanded to include team members from the Phase I program carried out by UoI and UoW and others within Regions 3 and 4. Letters of support are included in Appendix A. The core research members of the coalition team will be responsible for the day-to-day research being performed. All partners will provide advisory guidance in the areas noted, and the following have also indicated the potential to provide in-kind cost share: NACCO and BNI.

John Kay, EERC Principal Engineer, serves as principal investigator (PI) for the Williston Basin portion of Region 4. Mr. Kay has over 28 years of experience in coal research and has extensive project management and leadership experience. He has led the development of advanced analytical techniques for coal characterization and was the project manager (PM) for the Partnership for Plains CO<sub>2</sub> Capture (PCO<sub>2</sub>C) Program. Other key personnel were chosen for their roles because they have successfully managed similar work. Key personnel are listed in Table 1, and resumes of key personnel are provided in Appendix B.

	Mining	Coal Utilities	Research/Academic Institutions/Mining Schools	State Geological Surveys	Mineral Processing	Manufacturing	Business/Financial	CORE-CM Cooperation
<b>Core Research Team</b>								
UND Energy & Environmental Research Center			X					
UND College of Engineering & Mines Research Institute			X					
UND Nistler College of Business & Public Administration			X					
Pacific Northwest National Laboratory			X				X	
North Dakota State University			X				X	
Montana Tech University			X					
Critical Materials Institute (Ames)					X			
<b>Project Partners</b>								
NDIC Lignite Research Program	X	X					X	
North American Coal	X				X			
BNI Energy	X	X						
Minnkota		X						
Basin Electric Cooperative		X						
Current Lighting Solutions					X	X		
Northrup Grumman						X		
General Atomics					X	X		
North Dakota Geological Survey				X				
South Dakota Geological Survey				X				
North Dakota Department of Commerce							X	
Semplastics					X	X		
Lignite Energy Council	X	X						
Western Dakota Energy Association	X	X				X	X	
North Dakota Governor's Office				X			X	
U.S. Geological Survey				X				
Wyoming School of Energy Resources CORE-CM Team								X
Illinois Geological Survey CORE-CM Team								X
University of Alaska CORE-CM Team								X
University of Utah CORE-CM Team								X

EERC TE59573.AI

Figure 2. List of coalition team members.

**Table 1. Key Personnel Roles**

<b>Key Personnel</b>	<b>Role(s)</b>	<b>Key Personnel</b>	<b>Role(s)</b>
John Kay	PI; Task 1	Charlene Crocker	Task 5 lead
Bruce Folkedahl	Task 2 lead	Bruce Folkedahl	Task 6 lead
Ian Feole	Task 3 lead	Nolan Theaker, UND College of Engineering & Mines Research Institute	Task 7 lead
Jason Laumb	Task 4 lead	Nolan Theaker, UND College of Engineering & Mines Research Institute	Task 8 lead

The EERC has extensive experience in understanding, sampling, characterizing, and processing lignite coal for a wide variety of applications. From the earliest existence of the EERC in the 1950s, a significant component of its work has been on Williston Basin lignite coal. More recently, the EERC has successfully led numerous programs that bring together regional stakeholders to advance new concepts. One of the most successful programs is the Plains CO<sub>2</sub> Reduction (PCOR) Partnership. Similar to the vision of the CORE-CM Initiative, the PCOR Partnership, over the course of 20+ years, has advanced the concept of carbon capture, utilization, and storage from a regional assessment to commercial demonstration (e.g., Project Tundra in North Dakota). The EERC has also led and/or participated in numerous projects within the last few years focused on REE/CM characterization, extraction, and concentration of REEs/CMs and the production of graphene and carbon-based building materials in conjunction with Semplastics.

The UND College of Engineering & Mines Research Institute (CEMRI) has been conducting REE and CM extraction research from coal-based materials for 4 years and has been involved in conventional and novel processes ranging in scale from proof of concept to pilot demonstrations. CEMRI has specific expertise in the available extraction mechanisms for REEs from coal-based materials, specifically on the mode of occurrence within the material and identifying nontraditional ore bodies and/or associations. Additional support is also provided by the UND Nistler College of Business & Public Administration. In addition to the members named above, the coalition team has an extensive group of cooperating partners and cost-share providers.

### **VALUE TO NORTH DAKOTA**

Advancement of a REE industry from Williston Basin coal in North Dakota has the potential to support and strengthen the existing coal industry and develop a new industry in North Dakota, providing employment opportunities and regional and state revenues. This second phase of a longer-term effort will provide the basis to move forward and develop the strategy, further resulting in significant investment in the Williston Basin by DOE. As noted previously, this industry, fully developed, could provide \$500 million in state tax revenues alone.

### **MANAGEMENT**

The EERC manages over 200 contracts a year, with over 1330 clients in 53 countries. Systems are in place to ensure that projects are managed within budget, schedule, and scope. Mr. Kay will oversee the entire program, including integration of tasks, collaboration with stakeholders, and organization of meetings. The task leads are shown in Table 1. Regular meetings will be scheduled to provide updates on research activities and discuss the direction of future activities.

### **TIMETABLE**

This effort is proposed as a 36-month program (May 1, 2025 – April 30, 2028). Figure 3 summarizes the preliminary program timetable. Additional timetable detail will be developed as the program evolves.

### **BUDGET AND MATCHING FUNDS**

The estimated cost for the proposed effort is \$3,830,000. The budget breakdown is given in Table 2. \$1,500,000 of cash cost share is requested from NDIC's Lignite Research, Development and Marketing Program. \$20,000 of the request is to support the work in Region 3, with the remainder of the requested funds being applied to support Region 4. All money given by NDIC for this project will be used to increase the information and knowledge of the Williston Basin, which adds to the overall DOE work for Region 4. Letters of commitment provided by BNI and NACCO can be found in Appendix A. Budget notes can be found in Appendix C. If less funding is available than requested, changes to the scope will be

considered. Deliverables for this program will be delivered to NDIC's Lignite Research, Development and Marketing Program as annual presentations, with a final comprehensive report at the end of the project, April 30, 2028.

#### **TAX LIABILITY**

The EERC, a department within UND, is a state-controlled institution of higher education and is not a taxable entity; therefore, it has no tax liability to the state of North Dakota or any of its political subdivisions.

#### **CONFIDENTIAL INFORMATION**

This proposal has no confidential information.

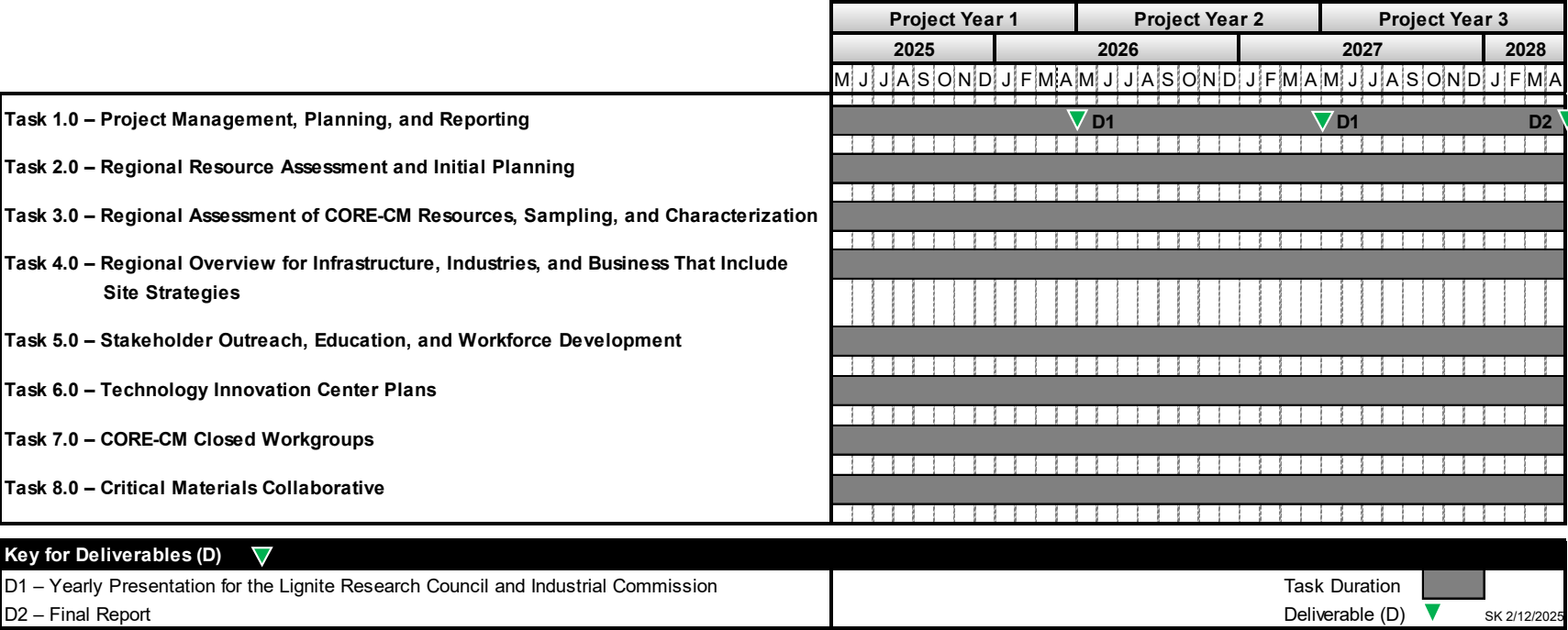


Figure 3. Preliminary timetable.

**Table 2. Budget Breakdown**

	Region 3			Region 4			Total		
<b>Project-Associated Expense</b>	<b>NDIC Share (Cash)</b>	<b>DOE Share (Cash)</b>	<b>Total Project</b>	<b>NDIC Share (Cash)</b>	<b>DOE Share (Cash)</b>	<b>Total Project</b>	<b>NDIC Share (Cash)</b>	<b>DOE Share (Cash)</b>	<b>Total Project</b>
<b>Labor</b>	\$13,079	\$38,869	<b>\$51,948</b>	\$960,156	\$1,015,678	<b>\$1,975,834</b>	\$973,235	\$1,054,547	<b>\$2,027,782</b>
<b>Travel</b>	\$0	\$8,216	<b>\$8,216</b>	\$0	\$77,386	<b>\$77,386</b>	\$0	\$85,602	<b>\$85,602</b>
<b>Tuition Remission</b>	\$0	\$0	<b>\$0</b>	\$0	\$30,331	<b>\$30,331</b>	\$0	\$30,331	<b>\$30,331</b>
<b>Supplies</b>	\$0	\$0	<b>\$0</b>	\$0	\$20,500	<b>\$20,500</b>	\$0	\$20,500	<b>\$20,500</b>
<b>Subcontractor – North Dakota State University</b>	\$0	\$0	<b>\$0</b>	\$0	\$29,805	<b>\$29,805</b>	\$0	\$29,805	<b>\$29,805</b>
<b>Communications</b>	\$0	\$0	<b>\$0</b>	\$1,061	\$699	<b>\$1,760</b>	\$1,061	\$699	<b>\$1,760</b>
<b>Printing and Duplicating</b>	\$166	\$160	<b>\$326</b>	\$1,193	\$1,021	<b>\$2,214</b>	\$1,359	\$1,181	<b>\$2,540</b>
<b>Laboratory Fees and Services</b>									
EERC Natural Materials Analytical Research Lab	\$0	\$0	<b>\$0</b>	\$17,720	\$22,100	<b>\$39,820</b>	\$17,720	\$22,100	<b>\$39,820</b>
EERC Analytical Research Lab	\$0	\$0	<b>\$0</b>	\$0	\$157,740	<b>\$157,740</b>	\$0	\$157,740	<b>\$157,740</b>
EERC Document Production Service	\$0	\$5,389	<b>\$5,389</b>	\$0	\$64,570	<b>\$64,570</b>	\$0	\$69,959	<b>\$69,959</b>
EERC Engineering Services Fee	\$0	\$346	<b>\$346</b>	\$0	\$11,600	<b>\$11,600</b>	\$0	\$11,946	<b>\$11,946</b>
EERC Geoscience Services Fee	\$0	\$0	<b>\$0</b>	\$0	\$4,203	<b>\$4,203</b>	\$0	\$4,203	<b>\$4,203</b>
Outside Lab - Standard Laboratories	\$0	\$0	<b>\$0</b>	\$0	\$100,000	<b>\$100,000</b>	\$0	\$100,000	<b>\$100,000</b>
College of Engineering & Mines Recharge Center	\$0	\$0	<b>\$0</b>	\$0	\$25,000	<b>\$25,000</b>	\$0	\$25,000	<b>\$25,000</b>
<b>Total Direct Costs</b>	\$13,245	\$52,980	<b>\$66,225</b>	\$980,130	\$1,560,633	<b>\$2,540,763</b>	\$993,375	\$1,613,613	<b>\$2,606,988</b>
<b>Facilities and Administration</b>	\$6,755	\$27,020	<b>\$33,775</b>	\$499,870	\$689,367	<b>\$1,189,237</b>	\$506,625	\$716,387	<b>\$1,223,012</b>
<b>Total Project Costs</b>	<b>\$20,000</b>	<b>\$80,000</b>	<b>\$100,000</b>	<b>\$1,480,000</b>	<b>\$2,250,000</b>	<b>\$3,730,000</b>	<b>\$1,500,000</b>	<b>\$2,330,000</b>	<b>\$3,830,000</b>

**LRC-102A**

**Title:** **“The Regulatory and Litigation Support Project for the North Dakota Lignite Industry”**

**Submitted By:** Lignite Energy Council

**PM/PI:** Jonathan Fortner

**Duration:** 24 Months

**Purpose:** The applicant is requesting funding for two years to provide support to the collaborative efforts of the lignite industry and North Dakota government agencies in responding to federal agency rulemakings. Overall, the Regulatory and Litigation Support Project has a primary goal to safeguard the current lignite fleet in North Dakota. To reach this goal, the project will enable crucial tasks such as public comments, reports, studies, or modeling.

**EXPECTED RESULTS:**

- Production of comprehensive legal, technical, and policy analysis to counter restrictive federal regulations.
- Development of studies and modeling that illustrate the economic and environmental feasibility of lignite operations.
- Engagement in litigation and regulatory advocacy to protect the industry.

**Funding:** NDIC: \$1,325,000

**Technical Advisor’s Recommendation:**

**Fund-** The two technical reviewers recommended fully funding the project. The reviewers provided positive comments about the objectives, achievability, methodology, contribution, awareness/background of the principal investigators and the budget. This is an appropriate use of LRC dollars and will help provide a legal framework and strategy to navigate the federal regulatory environment that has the potential to severely limit the lignite industry in the state.

**Funding would be subject to:**

- Semi-annual reporting be provided to the Industrial Commission

**Conflicts of Interest:**

Lignite Energy Council and members of the Lignite Energy Council.

**Reviewers:** Fund - 2; Consider Funding - 0; Do Not Fund – 0

**Average Score:** 220.5 / 250

**LRC:** **Fund: Yes - 15; No – 0**

## Lignite Research, Development and Marketing Program

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### North Dakota Industrial Commission

#### Application

**Project Title:** The Regulatory and  
Litigation Support Project for the North  
Dakota Lignite Industry

**Applicant:** Lignite Energy Council

**Date of Application:** 2/14/2025

**Amount of Request:** \$1,325,000

**Total Amount of Proposed Project:**  
\$1,325,000

**Duration of Project:** April 1<sup>st</sup>, 2025 -  
March 31<sup>st</sup>, 2027

#### **Point of Contact (POC):**

Jonathan Fortner

#### **POC Telephone:**

701-355-2189

#### **POC Email:**

jonathanfortner@lignite.com

#### **POC Address:**

1210 Owens Ave

Bismarck, ND 58201

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## **ABSTRACT**

**OBJECTIVE:** The Regulatory and Litigation Support Project aims to enhance the existing collaboration among government agencies, elected leaders, and the lignite industry, reinforcing the North Dakota lignite industry's long-term sustainability. The initiative is a response to an unprecedented series of federal agency rulemakings that pose the risk of premature closures of lignite-based power plants.

North Dakota has a long-standing commitment to lignite development, as reflected in legislative policies dating back to 1991. The Lignite Research, Development, and Marketing Program was established to support economic, efficient, and environmentally responsible use of lignite. Historically, the NDIC, with recommendations from the Lignite Research Council, has allocated funding for studies, litigation, and policy efforts to protect the industry and its workforce.

In 1991, the North Dakota Legislative Assembly enacted legislation creating the Lignite Research, Development and Marketing Program and declaring that:

“...it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota’s vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state’s lignite industry for the general welfare of North Dakota.....” (NDCC § 54-17.05-01)

In the past the North Dakota Legislative Assembly has appropriated funding from the Lignite Research Fund for the purpose of contracting for services that will focus on the preservation of existing jobs and production as well as the growth of the lignite industry. The NDIC, with policy advice and funding recommendations from the Lignite Research Council, has administered this program. As guidance to the NDIC for the use of the nonmatching funding, the Legislature stated that:

“...Moneys appropriated pursuant to this section may ... be used for the purpose of contracting for nonmatching studies and activities in support of the Lignite Vision 21 Project; **for litigation that may be necessary to protect and promote the continued development of lignite resources**; for nonmatching externality studies and activities in externality proceedings; or other marketing or environmental activities that assist with marketing of

lignite-based electricity and lignite-based byproducts...” (Chapter 14, Section 11, 2011 ND Session Laws)

In the 2023 legislative session, the engrossed version of House Bill 1014 updated that section of law:

**SECTION 16. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - LIGNITE MARKETING FEASIBILITY STUDY - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY. 1.**

Pursuant to the continuing appropriation under section 57-61-01.6, up to \$4,500,000 from the lignite research fund may be used for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. **Moneys designated under this section also may be used for the purpose of contracting for nonmatching studies and activities** in support of advanced energy technology and other technology development programs; **for litigation that may be necessary to protect and promote the continued development of lignite resources**; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys needed for the purposes stated in this section are available to the industrial commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

This legislation established a clear precedent for regulatory and litigation support project funding by explicitly authorizing the use of Lignite Research Fund monies for litigation, regulatory studies, and externality proceedings to protect and promote lignite development. The historical and continued legislative intent demonstrates the state’s commitment to defending the industry through legal and regulatory means.

The updated provisions in the engrossed version of HB 1014 of the 2023 North Dakota Legislative Session also reinforce this, by prioritizing projects that preserve existing jobs, attract private investment, and promote technological advancements. This consistent legislative backing establishes a strong foundation

for using state funds to support litigation and regulatory efforts that safeguard North Dakota's lignite sector.

Overall, the Regulatory and Litigation Support Project has a primary goal to safeguard the current lignite fleet in North Dakota. To reach this goal, the project will enable crucial tasks such as public comments, reports, studies, or modeling. These activities aim to generate essential data, serving as technical and legal documentation that illuminates the operational intricacies of the industry for strategic purposes. By fulfilling these objectives, the project aims to foster collaboration between individual industry infrastructure and state agencies. This collaborative effort becomes particularly crucial as we navigate the implementation of proposed federal rules and regulations.

### **EXPECTED RESULTS:**

- Production of comprehensive legal, technical, and policy analysis to counter restrictive federal regulations.
- Development of studies and modeling that illustrate the economic and environmental feasibility of lignite operations.
- Engagement in litigation and regulatory advocacy to protect the industry.

**DURATION:** A period of 24-months (April 1, 2025 – March 31st, 2027).

**TOTAL PROJECT COST:** The Regulatory and Litigation Support Project is seeking \$1,325,000 from the North Dakota Industrial Commission (NDIC).

### **PARTICIPANTS:**

- **Jonathan Fortner, Project Manager/Policy Advisor** – Oversees project execution, manages reporting, and ensures alignment with regulatory goals. He brings extensive experience in government relations, policy development, and stakeholder coordination.
- **Jason Bohrer, Policy Advisor** – Provides strategic direction on policy matters and legislative initiatives, leveraging his expertise in energy regulations and industry advocacy.
- **Mike Holmes, Technical Advisor** – Offers technical expertise on lignite research, carbon capture, and environmental compliance, ensuring reports and strategies are scientifically grounded and technically accurate.

- **Angie Hegre, Project Administrator** – Manages administrative tasks, supports reporting efforts, and ensures effective coordination between project members and external stakeholders.
- **Robert Paine, AECOM** – An expert in environmental and air quality modeling, Robert Paine contributed technical analyses and assessments of the proposed rules' environmental impacts, including data on air quality and emission control feasibility.
- **Isaac Orr, Always On Energy Research** – Leveraging his expertise in energy markets and policy, Isaac Orr conducted analyses on mining practices and regulatory impacts, providing detailed technical and economic data to support public comments and advocacy efforts.
- **Mack McGuffey, Troutman Pepper** – A seasoned attorney specializing in air law, Mack McGuffey provided legal analysis of federal environmental regulations, crafting legal arguments and contributing to the preparation of public comments.
- **Mike Nasi, Jackson Walker** – With extensive experience in environmental and energy law, Mike Nasi offered critical insights on regulatory compliance and litigation strategies, helping ensure alignment between industry objectives and legal frameworks.
- **Wade Mann, Crowley Fleck** - An attorney with Crowley Fleck PLLP, brings extensive experience in lignite mining issues including regulatory analysis, environmental law, and energy policy. His expertise in interpreting federal rules, assessing industry impacts, engaging with stakeholders, and formulating strategic documentation ensures effective responses to regulatory challenges facing the lignite industry.

## **PROJECT DESCRIPTION**

**OBJECTIVES:** The objective of the Regulatory and Litigation Support Project aims to enhance the existing collaboration among government agencies, elected leaders, and the lignite industry, reinforcing the North Dakota lignite industry's long-term sustainability. The initiative is a response to an unprecedented series of federal agency rulemaking, as well as related state initiatives, that pose the risk of premature closures of lignite-based power plants.

To accomplish the objectives of the Regulatory and Litigation Support Project, the

Lignite Energy Council (LEC), working collaboratively with industry partners and the state, will undertake a comprehensive approach. This involves:

1. **Review and Analysis of Proposed and Finalized Federal and State Rules:** The project team will scrutinize and analyze proposed and finalized federal rules relevant to the lignite industry. This process will include a detailed examination of the regulatory landscape, ensuring a clear understanding of the requirements set forth.
2. **Technical Considerations:** The project team will incorporate technical considerations that recognize the unique characteristics of generating units and mines within the lignite industry. This involves an in-depth assessment of the chemical and physical properties of lignite to tailor solutions that align with the industry's specific needs.
3. **Evaluation of Technology Applicability and Readiness:** The project team will evaluate the applicability and readiness of available technologies essential for meeting the new regulatory requirements. This assessment ensures that technological solutions are not only viable but also ready for implementation within the given context.
4. **Development of Industry Public Comments:** The LEC will work with industry and subcontractors to actively contribute to the regulatory process by developing well-informed and strategic public comments. These comments will serve to articulate industry perspectives, highlight challenges and propose constructive solutions.
5. **Identification of Industry Challenges:** A key aspect of the project involves identifying and understanding the challenges faced by the lignite industry. This includes recognizing obstacles to compliance and proposing effective strategies for overcoming them.
6. **Building the Administrative Record:** The project will actively contribute to building a comprehensive administrative record. This involves assembling and organizing relevant industry data, technical insights, and public comments to provide a robust foundation for regulatory decision-making.
7. **Providing Industry Data to State Agencies:** The LEC will collaborate with state agencies, supplying them with essential industry data. This cooperation ensures that state agencies have access to accurate and pertinent information, fostering effective communication and collaboration between the lignite industry and regulatory bodies.

The Regulatory and Litigation Support Project is committed to ensuring effective progress, preventing duplication of services, and optimizing value for the State. This will be achieved through collaborative efforts with various stakeholders, including industry

representatives, technology developers, federal and state agencies, and other interested parties. The primary goals are to find solutions that enable the maintenance of existing lignite facilities and facilitate new growth in the lignite industry. The activities and tasks to be addressed by the Regulatory and Litigation Support Project include:

- 1. Project Management:** Efficient project management is essential for coordinating efforts, allocating resources, and ensuring that the project stays on track. This involves establishing clear goals, timelines, and communication channels to facilitate seamless collaboration among team members and stakeholders.
- 2. Data Aggregation and Interpretation:** This project will collect comprehensive environmental, technical, and legal data to document the impacts of federal and state regulations on lignite mining. It includes drafting detailed public comments during rulemaking and reviewing stakeholder feedback to align industry goals with legal strategies. Collaboration with industry partners, legal experts, and state agencies will strengthen advocacy for balanced policies that protect the environment while supporting economic viability.
- 3. Rule Analysis:** Thorough analysis of proposed rules and regulations impacting the lignite industry is crucial. This task involves examining the details of regulatory changes, understanding their implications, and identifying potential challenges or opportunities for the industry.
- 4. Technical Considerations:** The Regulatory and Litigation Support Project will delve into the technical aspects of the lignite industry, considering the unique characteristics of generating units and mines. This includes evaluating the physical properties of lignite and assessing the applicability and readiness of available technologies.
- 5. Regulatory Strategy:** Developing an effective strategy is key to navigating the complex regulatory landscape. This involves formulating approaches and tactics to address regulatory requirements, ensure compliance, and advocate for industry interests in the regulatory process.

The project team will work along with consultants who have legal, research & development, environmental, and transmission technical expertise to execute the project. A detailed description of the management organization and qualifications of key personnel are outlined on pages 19 through 22, and the organizational chart is provided in Appendix 3.

## **METHODOLOGY:**

### **Legislative History Supporting the Grant Proposal: Lignite Litigation**

The State of North Dakota has a longstanding commitment to protecting and promoting its lignite resources through strategic litigation. A key legal precedent supporting this grant proposal is 2007 House Bill No. 1093, which allocated \$500,000 from the lignite research fund during the 2007-09 biennium specifically for litigation expenses. These funds were instrumental in supporting legal efforts aimed at safeguarding the state's lignite industry and ensuring its continued development.

Additionally, during the 2007 legislative session, House Bill No. 1014 amended the continuing appropriation for the Lignite Research, Development, and Marketing Program to authorize nonmatched funding for “litigation that may be necessary to protect and promote the continued development of lignite resources.” This critical authorization has been a consistent component of the program since its inclusion.

Over the past eight biennium’s, funding to protect lignite resources has been provided through both the state general fund and the lignite research, development, and marketing program. This project seeks funding from the \$4.5 million that was authorized to the program in the 2023 legislative session under House Bill No. 1014, which is derived from coal conversion and coal severance industry tax revenues.

The program has evolved into a robust initiative, demonstrating strong collaboration between the state and industry. Over the years, funding and expenditures have varied, reflecting the program's shifting priorities and focus:

- **2007-09 Biennium:** \$83,379 expended.
- **2009-11 Biennium:** \$153,907 expended.
- **2011-13 Biennium:** \$652,519 expended.
- **2013-15 Biennium:** \$983,288 expended, with \$451,555 contributed by industry partners.
- **2015-17 Biennium:** \$259,159 expended, with \$122,866 contributed by industry.
- **2017-19 Biennium:** \$1,500,000 allocated from the general fund and spent by the North Dakota Industrial Commission (NDIC) on state-led litigation efforts.
- **2019-21 Biennium:** \$1,500,000 allocated from the general fund and spent by the NDIC on state-led litigation efforts.
- **2023-25 Biennium:** \$3,000,000 allocated from the general fund and spent by the NDIC on state-led litigation efforts.

It is important to note that the funds allocated from 2017-2025 were specifically used by the NDIC to support legal actions pursued by the state. Separate from this, the lignite industry independently financed additional litigation and advocacy efforts, with private contributions exceeding the state's expenditures.

The state's proactive litigation efforts achieved a landmark success against the State of Minnesota, securing a total settlement of \$1,410,000. Of this settlement, \$670,000 was distributed to industry partners to offset previously incurred costs, while the remaining \$740,000 was reinvested in the lignite research fund to support ongoing and future initiatives.

The original \$500,000 allocation was fully utilized by the end of the 2011-13 biennium. Subsequent funding has been drawn from nonmatching program funds, underscoring North Dakota's unwavering dedication to sustaining these critical efforts. The lignite industry has also consistently contributed a substantial share of litigation costs, exemplifying a robust public-private partnership.

This legislative history underscores the importance of strategic investment in litigation to protect natural resources. North Dakota's successful approach serves as a compelling model for this grant proposal, illustrating how targeted funding can yield significant benefits for resource development, economic stability, and long-term industry sustainability.

### **Task 1.0: Project Management – 24 months (\$175,000)**

#### **Task 1.1 Reports**

As part of the Regulatory and Litigation Support Project, the Project Manager is responsible for preparing and submitting various reports, including biannual reports, final reports, and any other necessary documentation to meet contractual obligations. Additionally, the Project Manager will create written and oral presentations to effectively communicate project activities and findings. These reports and presentations are critical tools for conveying valuable insights and outcomes to stakeholders, including the North Dakota Industrial Commission (NDIC), state leaders, and industry representatives.

The reports and presentations will ensure transparency, support informed decision-making, and maintain engagement among stakeholders. By providing clear and detailed updates on project progress, key findings, and strategic insights, the project team will help reinforce the value and impact of the Regulatory and Litigation Support Project.

## **Task 1.2 Administration and Support Facilities**

The Lignite Energy Council (LEC) will provide comprehensive direction, administration, and technical support for the project. The project team will manage contract oversight, coordinate personnel, and supervise the budget throughout the grant period. Additionally, the team will facilitate seamless communication between various entities, ensuring alignment and collaboration.

The team will coordinate with the Lignite Research Council, lignite industry stakeholders, the NDIC, the North Dakota Legislative Assembly, Congressional delegations, and national and regional associations. They will also engage with federal and state agencies to ensure cohesive advocacy and regulatory support. This coordination is crucial for aligning industry objectives, addressing regulatory challenges, and supporting litigation efforts.

## **Task 2.0: Data Aggregation and Interpretation (\$400,000)**

This task includes the work performed by the Lignite Energy Council (LEC) in collaboration with industry partners during the 2023-2024 public comment periods on key federal regulations. The task focused on gathering and interpreting comprehensive data to assess the impacts of federal rules on lignite mining, electric generation facilities, and available technologies in order to build the administrative record for which legal challenges are built upon for both the state and the industry. These efforts were crucial for developing informed legal, technical, and environmental strategies to address the challenges posed by regulatory mandates.

### **Key Data Collection Areas**

1. **Environmental Data** – Studies addressing land use, air and water quality impacts associated with lignite mining operations.
2. **Technical Data** – Feasibility assessments on technology readiness, chemical properties of lignite, sustainable mining practices, and industry-specific mitigation strategies.
3. **Legal Information** – Analysis of existing and proposed environmental laws, regulations, and case law to bolster legal arguments for state and industry stakeholders.

## Task 2.1: Draft Public Comments

Detailed, well-supported public comments were prepared and submitted at each stage of the federal rulemaking process. These comments aimed to:

- Highlighted industry concerns and potential impacts on lignite mining and electric generation.
- Provided comprehensive technical, environmental, and legal evidence to substantiate industry positions.
- Articulated the need for balanced, workable regulatory solutions that protect the environment while supporting economic viability.

## Task 2.2: Review Public Comments

1. **Evaluate Feedback** – A thorough review of all submitted public comments to ensure consistency with industry goals and legal strategies.
2. **Collaborate with Stakeholders** – Findings and public comments were shared with key stakeholders to foster alignment and strengthen advocacy efforts. Stakeholders included:
  - National and State Industry Partners
  - Legal Experts
  - State Agencies:
    - Attorney General's Office
    - Department of Environmental Quality
    - Public Service Commission
    - Industrial Commission members and staff

This collaborative process ensured a unified and strategic approach, reinforcing the administrative record to support legal challenges. By building on prior industry investments, this task provided critical support for the state's advocacy efforts, promoting policies that balance environmental protection with economic viability.

## Key Project Subcontractors

- **Robert Paine, AECOM** – An expert in environmental and air quality modeling, Robert Paine contributed technical analyses and assessments of the proposed rules' environmental impacts, including data on air quality and emission control feasibility.
- **Isaac Orr, Always On Energy Research** – Leveraging his expertise in energy markets and policy, Isaac Orr conducted analyses on mining

practices and regulatory impacts, providing detailed technical and economic data to support public comments and advocacy efforts.

- **Mack McGuffey, Troutman Pepper** – A seasoned attorney specializing in air law, Mack McGuffey provided legal analysis of federal environmental regulations, crafting legal arguments and contributing to the preparation of public comments.
- **Mike Nasi, Jackson Walker** – With extensive experience in environmental and energy law, Mike Nasi offered critical insights on regulatory compliance and litigation strategies, helping ensure alignment between industry objectives and legal frameworks.

This multidisciplinary team, comprising industry leaders and experts, ensured the thorough collection and interpretation of data, driving a unified response to the challenges posed by federal regulations.

### **Task 3.0: Rule Analysis – 24 months (\$175,000)**

**Task 3.1 Review and Analysis of Proposed and Finalized Federal Rules:** In this task, the project team will conduct a thorough examination and analysis of proposed and finalized federal rules directly impacting the lignite industry. The objective is to gain a comprehensive understanding of the regulatory landscape and assess the implications of the proposed rules. The process involves the following key components:

1. **Scrutiny of Proposed Rules:** The project team will meticulously scrutinize each proposed federal rule related to the lignite industry. This involves a detailed review of the language, provisions, and objectives outlined in the rules to grasp their scope and intent.
2. **In-Depth Analysis:** A comprehensive analysis will be conducted to evaluate the potential impacts of the proposed rules on the lignite industry. This includes assessing how the rules may affect operations, compliance requirements, and overall industry dynamics.
3. **Regulatory Landscape Examination:** The project team will examine the broader regulatory landscape to place the proposed rules in context. This involves considering existing regulations, potential conflicts and understanding the regulatory framework within which the lignite industry operates.
4. **Clear Understanding of Requirements:** The goal is to achieve a clear understanding of the requirements set forth in the proposed federal rules.

This includes identifying any ambiguities, potential challenges, or areas requiring clarification.

5. **Identification of Key Stakeholders:** Recognizing the stakeholders involved in the regulatory process is essential. The project team will identify and understand the perspectives of key stakeholders, including regulatory agencies, industry representatives, and other relevant entities.
6. **Documentation of Findings:** The results of the review and analysis will be documented comprehensively. This documentation will serve as a foundation for informed decision-making, strategic planning, and communication with stakeholders.

By undertaking this task, the Regulatory and Litigation Support Project aims to equip itself with a detailed and nuanced understanding of the regulatory environment, enabling the development of effective strategies and responses to proposed federal rules affecting the lignite industry.

### **Key Project Subcontractors**

- **Mack McGuffey, Troutman Pepper** – A seasoned attorney specializing in air law, Mack McGuffey provided legal analysis of federal environmental regulations, crafting legal arguments and contributing to the preparation of public comments.
- **Mike Nasi, Jackson Walker** – With extensive experience in environmental and energy law, Mike Nasi offered critical insights on regulatory compliance and litigation strategies, helping ensure alignment between industry objectives and legal frameworks.
- **Wade Mann, Crowley Fleck** - An attorney with Crowley Fleck PLLP, brings extensive experience in lignite mining issues including regulatory analysis, environmental law, and energy policy. His expertise in interpreting federal rules, assessing industry impacts, engaging with stakeholders, and formulating strategic documentation ensures effective responses to regulatory challenges facing the lignite industry.

### **Task 4.0: Technical Considerations – 24 months (\$175,000)**

**Task 4.1 Technical Considerations:** Within the Regulatory and Litigation Support Project, a focused exploration into the technical facets of the lignite industry will be conducted. This involves a detailed examination of the distinctive features of generating units and mines within the industry. Key components of this task include:

**a. Evaluation of Physical Properties:** A comprehensive assessment of the physical properties of lignite will be undertaken. This includes considerations such as combustion characteristics, energy content and other relevant aspects that influence the utilization of lignite in generating units.

**b. Applicability of Technologies:** The project team will assess the suitability and practicality of available technologies within the lignite industry context. This involves understanding how existing and emerging technologies can be effectively applied to enhance operations, reduce environmental impact and meet regulatory requirements.

**c. Readiness Assessment:** An evaluation of the readiness of technologies will be conducted to gauge their current state of development and implementation within the lignite sector. This assessment ensures that proposed technological solutions align with the industry's immediate needs.

Through these technical considerations, the Regulatory and Litigation Support Project aims to equip the lignite industry with the knowledge and strategic framework necessary to navigate technical challenges and regulatory dynamics effectively.

### **Key Project Subcontractors**

- **Mike Holmes, Technical Advisor** – Offers technical expertise on lignite research, carbon capture, and environmental compliance, ensuring reports and strategies are scientifically grounded and technically accurate.
- **Robert Paine, AECOM** – An expert in environmental and air quality modeling, Robert Paine contributed technical analyses and assessments of the proposed rules' environmental impacts, including data on air quality and emission control feasibility.

### **Task 5.0: Regulatory Strategy – 24 months (\$400,000)**

Given the complexity of the regulatory landscape, the Regulatory and Litigation Support Project will develop and execute a comprehensive regulatory strategy to navigate challenges and advocate for the lignite industry's interests. This task is critical to ensuring the industry remains compliant, resilient, and competitive in the face of evolving regulations.

#### **Task 5.1: Regulatory Strategy**

The project team will focus on strategic planning and execution to address regulatory challenges through three key activities:

### **1. Comprehensive Regulatory Analysis**

- Conduct an in-depth review of existing and proposed federal and state regulations affecting the lignite industry.
- Identify the nuances and implications of these regulations, assessing potential impacts on lignite mining operations, electric generation facilities, and transmission infrastructure.

### **2. Formulation of Approaches**

- Develop proactive strategies and tactical measures to ensure regulatory compliance, mitigate risks, and leverage new opportunities.
- Craft clear pathways to address regulatory challenges, ensuring that the industry can adapt efficiently to changes and maintain operational continuity.

### **3. Advocacy for Industry Interests**

- Engage directly with regulatory bodies to represent the lignite industry's interests, providing expert insights and advocating for balanced, workable regulations.
- Foster collaboration between industry partners, policymakers, and regulatory agencies to ensure that industry perspectives are considered in the decision-making process.

### **Task 5.2: Legal Strategies**

The project team will provide essential legal support for federal and state administrative actions, ongoing federal rulemakings, and potential litigation. Activities include:

- **Regulatory and Litigation Support:** Offer legal analysis and counsel on regulatory compliance, rule challenges, and litigation strategies to defend industry interests.
- **Strategic Coordination:** Align legal strategies with broader regulatory goals, coordinating with stakeholders to achieve unified and effective advocacy.

### **Key Project Subcontractors**

- **Mack McGuffey, Troutman Pepper** – A highly experienced attorney specializing in air law, Mack provides legal analysis on federal environmental regulations, develops legal arguments, and supports the preparation of public comments and litigation strategies.
- **Mike Nasi, Jackson Walker** – With deep expertise in environmental and energy law, Mike offers strategic insights on regulatory compliance and litigation, ensuring alignment between industry goals and legal frameworks. He also advises on infrastructure development and regulatory reforms.

Together, this team of legal and regulatory experts will develop a cohesive strategy to navigate challenges, advocate for industry interests, and promote the sustainable growth of North Dakota's lignite industry

### **ANTICIPATED RESULTS:**

This project will deliver a thorough review and in-depth analysis of regulatory and legal actions impacting the lignite industry, ensuring a well-documented and strategic approach to ongoing and future challenges. Each task will be meticulously evaluated to identify potential risks, compliance requirements, and opportunities for proactive engagement in regulatory and litigation matters. The outcomes will include detailed reports on policy implications, legal precedents, and recommended courses of action to safeguard the interests of the lignite industry and the state. Additionally, this project will support stakeholder engagement, providing expert insights and guidance for industry leaders, policymakers, and legal teams navigating evolving regulatory landscapes. The findings will contribute to a stronger, more informed strategy for maintaining industry viability and regulatory compliance in the face of shifting federal and state policies.

### **FACILITIES:**

No additional facilities are needed to implement this budget. See Appendix 1 for a more detailed budget description.

### **RESOURCES:**

Existing regulatory expertise, legal counsel, and industry partnerships will be utilized to conduct thorough analyses and provide necessary support.

### **TECHNIQUES TO BE USED, THEIR AVAILABILITY AND CAPABILITY:**

Legal and regulatory research, stakeholder consultation, and policy analysis will be employed. These techniques are readily available and supported by experienced professionals with proven capability in addressing industry challenges.

### **ENVIRONMENTAL AND ECONOMIC IMPACTS WHILE PROJECT IS UNDERWAY:**

No direct environmental impact is anticipated. The project will contribute to economic stability by supporting regulatory and legal strategies that protect the industry's long-term viability.

### **ULTIMATE TECHNOLOGICAL AND ECONOMIC IMPACTS:**

#### **Economic Impact**

North Dakota is the top lignite coal producing state in the United States, accounting for 56% of the country's lignite production in 2022. North Dakota has the world's largest lignite deposit, with an estimated 351 billion tons of lignite. Throughout many decades, lignite producers in North Dakota have maintained a steady annual production level at approximately 27 million tons. At this rate, the state's lignite reserves are enough to last over 800 years at the current rate of production.

According to a 2023 North Dakota State University study titled the “Economic Contribution of the Lignite Industry” researchers calculated that the state’s valuable natural resource provides 12,000 North Dakotans with direct and indirect jobs, provides \$104 million annually in state and local taxes and has an annual econ Beyond economic contributions, the lignite sector continues to play a crucial role in providing clean, low-cost, and reliable electricity, serving as a cornerstone for the state's economy.

## **Opportunities**

For over a decade, the lignite industry has been at the forefront, making substantial contributions to the development of a diverse array of innovative technologies. These opportunities stand as invaluable assets for North Dakota's future economic landscape. However, these prospects face potential threats from federal regulations that could prematurely halt lignite-based operations before they reach full viability. A noteworthy aspect of the industry's innovation lies in the advancements made in extracting rare earth elements and critical minerals (REE-CMs) found within lignite. These REE-CMs possess significant potential for applications, as do the various carbon materials and construction products from lignite under development. This underscores the industry's dedication to fostering innovation and diversification.

State and industry researchers have also been working on developing carbon capture technologies. The state has unique geology that provides for an 800-year supply of lignite reserves and the United States Geological Service estimates that there may be up to 7.3 billion barrels of undiscovered and recoverable oil in the Bakken Formation.

The Department of Energy, working alongside with state-based interests including the world-renowned Energy and Environment Research Center (EERC) at the University of North Dakota, the North Dakota Industrial Commission, the Lignite Research Council and the Lignite Energy Council along with state and federal policymakers, have invested tens of millions in the past 15 years into the research and development of carbon capture technologies and geologic exploration to survey underground storage locations in deep saline formations.

The EERC has performed extensive geologic research along with industry partners such as Minnkota Power Cooperative with Project Tundra located at the Milton R. Young Station. The scientific data that was gathered estimates that there is enough

storage space inside our state's borders to store up to 252 billion tons of near-liquified CO<sup>2</sup> up to one mile underground. To put that in perspective, that is enough space to store an amount that is equal to the nation's annual carbon dioxide emissions each year for the next 50 years or to store all of North Dakota's annual carbon dioxide emissions for the next 4,400 years.

Carbon capture provides a viable option for development that energy companies are seeking to combine greenhouse gas mitigation with operations, creating market advantages and opportunities for the federal 45Q tax credit, sale or use of captured carbon dioxide. North Dakota State University recently completed an economic analysis on full scale carbon capture sequestration and use and they projected that the lignite industry would have the growth potential to double in size if every plant utilized the technology and CO<sub>2</sub> was also utilized in enhanced oil recovery (EOR).

The outcome of the 2024 presidential election, with Donald Trump securing the presidency, is poised to significantly influence the regulatory approaches of executive branch agencies, notably the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM). Under the new administration, there is an expectation of policy shifts that may include the repeal or replacement of existing rules and a potential change in the direction of ongoing litigation.

Industry stakeholders must be prepared to actively participate in the rulemaking process by providing comprehensive technical and environmental data. This involvement is crucial for building a robust administrative record at each stage, ensuring that any new or revised regulations are informed by accurate and up-to-date information. Such proactive engagement will help shape policies that balance environmental stewardship with economic viability.

Allocating resources to gather and analyze pertinent data will enable the industry to effectively contribute to the development of regulations that are both practical and sustainable. This approach not only supports compliance but also fosters a collaborative relationship with regulatory agencies, facilitating the creation of rules that reflect the interests and expertise of all stakeholders involved.

## **WHY THE PROJECT IS NEEDED:**

### **1) EPA Rulemaking and Other Legal Issues affecting the Lignite Industry**

The lignite industry in North Dakota is currently grappling with several challenges stemming from rulemaking by federal agencies. The potential cumulative impacts of these rules are very harmful, as are each individual rule, and include the risk of premature retirements of coal plants, threats to the reliability of the electric grid, and significant hindrances to the industry's capacity to construct and effectively implement

carbon capture technology. A concise overview of some of the key concerns arising from these rulemakings is outlined below.

### **EPA Regional Haze (Initial public comments filed July 2022)**

States are mandated to formulate and submit regional haze plans aimed at addressing visibility issues in Class I areas. On July 8, 2021, the EPA issued guidance to constrain the broad discretion and flexibility traditionally afforded to states during the development of these plans. Simultaneously, EPA regions have adopted a more restrictive interpretation of states' discretion when evaluating regional haze plans for the second planning period.

This updated interpretation seeks to mandate the installation of scrubbers and Selective Catalytic Reduction (SCR) systems on coal plants that currently lack these controls. The imposition of expensive scrubbers and SCR systems could be a requirement for coal plants without these controls already in operation by the end of 2027. In cases where the EPA disapproves of a state's plan or if a state fails to submit a plan, the EPA retains the authority to enforce emission controls through a federal implementation plan (FIP). This underscores a more stringent regulatory approach to address visibility impairment, with an emphasis on specific emission control technologies for coal plants.

In their State Implementation Plan, the North Dakota Department of Environmental Quality meticulously examined all accessible industry and air quality data. Following a comprehensive public comment process and hearing, the department submitted a State Implementation Plan (SIP) to the Environmental Protection Agency (EPA) for their review. This SIP reflects the state's strategic approach to achieving and maintaining air quality standards, taking into account input from the public and relevant stakeholders.

In November 2024, the EPA issued a partial disapproval of North Dakota's State Implementation Plan (SIP) for Regional Haze. Specifically, the EPA proposed disapproval of portions related to the long-term strategy, reasonable progress goals, and Federal Land Manager (FLM) consultation. However, the EPA approved other elements of the SIP, including the calculations of baseline, current, and natural visibility conditions; progress to date; the uniform rate of progress; reasonably attributable visibility impairment; progress report requirements; and the monitoring strategy.

This decision means that while North Dakota's SIP was approved based on scientific measurements and adherence to applicable standards, the EPA disapproved the long-term strategy portion due to misalignment with their federal goals.

At this time, it is unclear how the state will respond or whether litigation will be pursued. With the incoming federal administration taking office in January 2025, North Dakota

may consider filing for administrative reconsideration or petitioning for judicial review of the decision. A new administration may also modify or reverse this disapproval.

In the interim, significant work is needed to strengthen the administrative record supporting the SIP. This grant project is essential for funding research and analysis to bolster the state's case for the second decadal review which also provides the baseline work for the third decadal review in 2028. The goal is to ensure that the state's and industry's efforts to meet the standards of the Regional Haze Rule are recognized, aligning with both current and long-term benchmarks.

This support is critical to defending North Dakota's rights and promoting the continued responsible development of its natural resources.

### **EPA MATS Rule (Initial public comments filed June 2023)**

The Mercury and Air Toxics Standards (MATS) rule, established in 2012, set stringent limits on mercury and other hazardous air pollutant (HAP) emissions from coal-fired power plants. The Environmental Protection Agency (EPA) is now revisiting these standards with a proposed tightening of emission limits, underpinned by two primary considerations: (1) evaluating residual public health risks after the emission reductions achieved by the 2012 rule, and (2) assessing advancements in practices, processes, and control technologies since the rule's inception. This process, known as the "risk and technology review" (RTR), has raised significant concerns within the energy industry, particularly in regions dependent on lignite coal.

The EPA's recent proposal suggests reducing the current mercury emission limit for lignite-fired units from 4.0 lb/TBtu to 1.2 lb/TBtu. It also includes tightening the filterable particulate matter (fPM) limit from 0.030 lb/MMBtu to 0.010 lb/MMBtu, with an even stricter alternative option reducing the fPM limit to 0.006 lb/MMBtu. These changes could lead to significant coal plant retirements, with EPA estimates ranging from 500 MW to as much as 12,300 MW by 2028, depending on the selected standards.

Additionally, the EPA proposes eliminating the subcategory for "low-rank coal," which has been essential for recognizing the distinct chemical properties of lignite. This subcategory, established in the 2012 MATS rule, reflected the challenges lignite-fired units face due to their unique emissions profiles and coal characteristics. The removal of this subcategory disproportionately affects North Dakota, where power plants rely on 100% lignite from mine-mouth operations without blending with other coal types.

Emission control solutions for power plants are not interchangeable, as they must account for site-specific factors such as coal composition, boiler design, and operational needs. For North Dakota's lignite-fired units, compliance with the proposed MATS RTR mercury limit of 1.2 lb/TBtu poses a particular challenge. To date, there is no verified or

demonstrated technology capable of consistently achieving this standard across all such units.

Moreover, compliance costs are prohibitive. Testing alone to accurately quantify requirements for each unique Electricity Generation Unit (EGU) is estimated to exceed \$1 million per unit. For example, upgrading electrostatic precipitators—a critical component for meeting new standards—requires a three-year timeline from construction to implementation. With only four vendors nationwide capable of performing such upgrades, the competition among impacted facilities makes timely compliance even less feasible.

On April 25, 2024, the EPA finalized its revised MATS rule with minimal changes despite widespread industry objections. In response, North Dakota led a coalition of states in challenging the rule. This effort was bolstered by an industry-led coalition that filed its own legal challenge in the D.C. Circuit Court of Appeals. Both groups argued that the proposed standards are technically unworkable and economically burdensome, particularly for states reliant on lignite.

The industry petitioners sought a Motion for Stay in the D.C. Circuit, which was denied on August 6, 2024. Subsequent appeals to the U.S. Supreme Court for a stay were also denied on October 4, 2024. The litigation now continues on an expedited timeline, with a hearing scheduled for January 2025.

The elimination of the lignite subcategory, coupled with the EPA's proposed emission limits, threatens North Dakota's energy reliability and resilience. Lignite-fired plants provide the majority of electricity consumed in the state and serve as a backbone of grid stability. The rule disproportionately targets North Dakota facilities due to their reliance on pure lignite operations, unlike other states that blend lignite with different coals to achieve lower mercury emissions.

Looking ahead, the incoming federal administration may shift regulatory priorities. Potential outcomes include maintaining the rule, rescinding it, or introducing a revised framework that balances environmental goals with economic and grid reliability considerations. Regardless of these possibilities, industry stakeholders must remain proactive, compiling technical and environmental data to support public comments, regulatory reviews, and potential future litigation.

The proposed MATS RTR changes present a significant challenge for North Dakota's lignite industry and its electricity generation infrastructure. With limited viable compliance technologies, excessive costs, and unworkable timelines, the rule's impact could be far-reaching. Continued investment in research, legal advocacy, and stakeholder engagement is essential to safeguarding North Dakota's energy interests and ensuring fair regulatory treatment.

## **EPA Coal Combustion Residuals (Initial public comments filed April 2023)**

The Environmental Protection Agency (EPA) introduced the 2015 Coal Combustion Residuals (CCR) Rule to establish comprehensive guidelines for the management and disposal of CCR and non-CCR waste streams generated by coal-fired power plants. This rule was designed to mitigate environmental risks associated with coal ash while ensuring responsible waste management practices.

Currently, the EPA is evaluating applications from utilities seeking extensions of closure deadlines for unlined CCR surface impoundments or committing to retire such impoundments by 2028. If these requests are denied, affected plants may face significant operational challenges, including potential idling for several months while alternative disposal capacity is developed or being forced into premature retirement. Unfortunately, the EPA's decision-making process on these extension requests has been notably slow, creating uncertainty for utilities and the communities they serve.

In response to the 2015 CCR Rule, the North Dakota Department of Environmental Quality (NDDEQ) submitted a program approval package to the EPA in September 2020 and May 2021. This program sought to continue North Dakota's decades-long tradition of state-led regulation for coal ash management, ensuring that local authorities retained oversight instead of transitioning to federal control.

To meet EPA requirements, the 68th Legislative Assembly passed HB1090, redefining the term "groundwater" to align with federal standards. This legislative adjustment was a critical step in securing program approval. However, despite North Dakota's proactive measures, the EPA has not yet approved the state's program. This delay has left the regulatory landscape for CCRs in North Dakota ambiguous, creating uncertainty for power plants and industries dependent on clear regulatory guidance.

On April 25, 2024, the EPA finalized a new rule extending CCR requirements to previously exempt units, including legacy CCR surface impoundments and newly defined CCR management units. While the rule aims to address environmental concerns related to inactive coal ash disposal sites, it also significantly expands federal oversight into an area traditionally managed by NDDEQ.

For decades, North Dakota has maintained a successful state-led program under which coal ash disposal sites were effectively regulated and safely closed. The new federal rule threatens to undermine this established framework by reopening sites that were previously deemed secure. This could lead to unnecessary costs for the industry and introduce new environmental risks at already stabilized locations.

The NDDEQ is actively reviewing the finalized rule and working to negotiate a compromise with federal authorities. However, the tension between state and federal

regulatory frameworks remains unresolved. Should mediation fail to produce a satisfactory outcome, North Dakota may pursue litigation to clarify which regulatory body will have authority over inactive coal ash disposal sites.

This regulatory conflict highlights the importance of detailed research and robust data collection by industry stakeholders. Such information will play a pivotal role in strengthening the state's position during ongoing discussions or potential legal proceedings. Collaboration between NDDEQ and industry partners is essential to ensure that North Dakota's longstanding, effective coal ash management practices are preserved, and that the state retains control over these critical regulatory responsibilities.

North Dakota's efforts to maintain state-led regulation of coal combustion residuals underscore its commitment to responsible environmental management and regulatory efficiency. However, the slow pace of federal decision-making, combined with the recent expansion of federal oversight, presents significant challenges for the state and its industries. Continued engagement, research, and collaboration are vital to addressing these challenges and protecting North Dakota's interests in coal ash management.

### **EPA Section 111 Greenhouse Gas Emissions/Carbon Rule (Initial public comments filed August 2023)**

The Environmental Protection Agency (EPA) has introduced a new rule aimed at tightening greenhouse gas (GHG) emissions standards for fossil fuel-fired electric generating units. Building on previous regulations, such as the Clean Power Plan and Affordable Clean Energy Rule, this rule establishes stringent CO<sub>2</sub> limits for new gas-fired turbines and emission guidelines for existing coal, oil, and gas-fired units. However, the rule has faced widespread criticism for its legal, technical, and practical shortcomings.

The EPA's rule relies heavily on technologies such as Carbon Capture and Storage (CCS) and low-GHG hydrogen co-firing, requiring coal and gas plants to achieve 90% carbon capture by January 1, 2032. The compliance deadlines and requirements are based on the expected retirement timelines of these units:

- Retiring Before 2032: Must meet a performance standard with no increase in CO<sub>2</sub> emissions by January 1, 2032.
- Retiring Before 2035: Must operate at a 20% capacity factor and meet a performance standard by January 1, 2032.
- Retiring Before 2040: Must co-fire with 40% natural gas by January 1, 2030.
- Retiring 2040 or Later: Must implement CCS to achieve 90% CO<sub>2</sub> capture by January 1, 2032.

During the public comment period, the Lignite Energy Council (LEC) and the lignite industry raised significant concerns about the feasibility of these mandates. They argued that CCS and hydrogen co-firing are not adequately demonstrated for widespread application and that the necessary nationwide infrastructure and geological capacity are lacking. Furthermore, the high costs associated with these technologies place an undue burden on the energy sector, threatening the viability of coal and gas-fired power plants.

LEC highlighted that the rule is likely to result in the premature shutdown of reliable coal power plants, exacerbating risks to grid reliability and economic security. This comes at a time of increasing electricity demand driven by the growth of artificial intelligence, data centers, and the electrification of the transportation sector. The lignite industry contends that the EPA's proposal disregards warnings about grid reliability and fails to account for the lack of viable replacement capacity.

LEC and industry groups have also argued that the rule violates the Clean Air Act and exceeds the EPA's authority as clarified by the Supreme Court's *West Virginia v. EPA* decision. They assert that the rule undermines cooperative federalism by restricting state flexibility and imposes significant costs without delivering meaningful reductions in global CO<sub>2</sub> emissions. Summarizing their position, LEC described the rule as "All Pain, No Gain."

The finalized rule, published on May 9, 2024, prompted immediate legal challenges. A coalition of states, led by West Virginia and North Dakota, filed a lawsuit against the rule, arguing that it is illegal, unworkable, and incompatible with the Clean Air Act. LEC and its industry partners also challenged the rule in the U.S. Court of Appeals for the District of Columbia Circuit.

Despite requests from states and industry groups to pause the rule, the Supreme Court denied a stay, allowing the rule to proceed during litigation. The case is now on an expedited schedule, with oral arguments set for December 6, 2024. A decision from the D.C. Circuit is pending.

The EPA's Greenhouse Gas Rule represents a significant regulatory challenge for the power sector. With high compliance costs, unproven technologies, and substantial risks to grid reliability, the rule has sparked intense legal and technical opposition. The outcome of the ongoing litigation will have profound implications for the energy industry, state regulatory authority, and the future of coal and gas-fired power plants in the United States. Continued advocacy, research, and engagement from industry stakeholders will be critical to addressing these challenges and ensuring a balanced regulatory framework.

## **Bureau of Land Management's Resource Management Plan (Initial Public Comments Submitted 2024)**

The Bureau of Land Management's (BLM) Proposed Resource Management Plan (RMP) for North Dakota introduces sweeping changes to federal coal and fluid mineral leasing, with significant implications for the state's lignite industry and broader economy. The RMP proposes to block leasing on over 4 million acres—nearly 99%—of federal coal acreage in the state and to close off 213,100 acres, or 44%, of federally owned fluid mineral acreage from leasing. These restrictions raise serious concerns about their alignment with federal, state, and local policies.

North Dakota has long prioritized responsible natural resource development under a comprehensive state regulatory framework that ensures environmental protection and reclamation. The RMP's Alternative D, which increases the acreage deemed unacceptable for coal leasing from 435,800 acres (under the 1988 RMP) to 1,037,800 acres, directly conflicts with North Dakota's policies. Critics argue that these restrictions are inconsistent with federal laws such as the Mining and Minerals Policy Act, which aims to promote mineral development.

The lignite industry, a cornerstone of North Dakota's economy, contributes \$5.7 billion in business volume, sustains 12,000 jobs, and generates \$104 million in state and local tax revenue. Industry comments contend that the BLM's assertion that the RMP will have "limited influence" on the coal industry ignores the substantial economic and operational impact of these proposed restrictions.

Industry stakeholders and state officials highlight the RMP's federal overreach into areas historically managed at the state level. The public comments emphasize that North Dakota's regulatory framework already addresses environmental protections, making additional federal restrictions unnecessary. Furthermore, they argue that reopening previously closed leasing areas would impose arbitrary costs and risks at sites already deemed secure.

A specific concern involves the BLM's reliance on a Montana court case (WORC) to justify these restrictions. Critics argue that this decision does not apply to North Dakota and should not be used as a precedent to reshape leasing policies in the state. Additionally, the plan disregards opportunities for rare earth elements (REEs) and critical mineral extraction within lignite deposits—resources that are vital for advancing U.S. energy independence and critical mineral supply chains.

Former Governor Doug Burgum formally protested the RMP in September 2024, calling it a direct threat to grid reliability, national security, and consumer energy costs. His protest, submitted as part of the "Consistency Review" process, argues that the RMP's

restrictions are not only economically harmful but also conflict with state laws prioritizing resource development.

The State of North Dakota and the lignite industry have each submitted formal protests, urging the BLM to reconsider Alternative D. Industry comments stress that the proposed restrictions lack a rational basis and are inconsistent with federal directives to promote mineral development. They also point out the BLM's failure to consider the technical feasibility of extracting critical minerals and the broader economic contributions of the lignite industry.

Governor Burgum has announced plans to challenge the RMP through an appeal process reserved for governors, highlighting the state's commitment to protecting its core economic interests. Additionally, North Dakota is exploring legal avenues to overturn the plan. The industry has emphasized the importance of gathering robust data on lignite mining, environmental compliance, and technical capabilities to bolster the state's position in these challenges.

Public and industry comments call for a more balanced approach to federal coal leasing, one that respects environmental protections while supporting sustainable mining practices and economic viability. They urge the BLM to align its policies with both state and federal laws, ensuring that the economic contributions of the lignite industry are preserved while addressing environmental concerns.

This grant proposal seeks funding to collect critical industry data that will strengthen North Dakota's challenge to the BLM's Proposed Resource Management Plan (RMP). The data will support efforts to advocate for a workable solution that respects state authority, promotes sustainable resource development, and ensures the economic sustainability of the lignite industry. By leveraging this opportunity and potential federal policy shifts, North Dakota can pave the way for a revised RMP that aligns with its economic and environmental priorities.

## **2) Value to North Dakota**

The Regulatory and Litigation Support Project recognizes the significance of the existing lignite fleet, which represents a substantial \$18 billion capital investment in North Dakota. To ensure the continued viability of this industry, it is crucial that regulatory and statutory initiatives, whether at the federal level or initiated by states in the region, are not only cost-effective but also grounded in sound scientific principles.

The primary objective of the Regulatory and Litigation Support Project is to safeguard and preserve the substantial investment made in the lignite industry. The potential consequences of not achieving this objective are profound, as the State could face the loss of approximately 3,620 direct jobs and a substantial portion of the over 12,800

indirect and induced positions associated with providing services to the industry. Collaborative efforts between the State and the lignite industry are vital to developing strategic regulatory and legal solutions that proactively address the need for reasonable regulations based on sound scientific principles.

In addition to the employment impact, the State stands to lose state and local revenues exceeding \$125 million, along with the industry's gross business volume estimated at \$5.7 billion annually. The Regulatory and Litigation Support Project grant serves as a valuable tool for North Dakota, offering the ability to provide regulatory certainty for an industry that has been a consistent provider of low-cost and reliable electricity to the region for many generations.

In essence, the value of the Regulatory and Litigation Support Project to North Dakota extends beyond the immediate economic considerations; it lies in the ability to establish a regulatory framework that ensures the sustainability of the lignite industry, thereby safeguarding jobs, revenues, and the production of affordable and dependable electricity to the region.

## **STANDARDS OF SUCCESS**

The success of the Regulatory and Litigation Support Project will be measured by achieving key milestones and objectives outlined in the project proposal. Periodic reports will be submitted by the project team to document accomplishments and progress in each task area, serving as a standard of success.

**Objective Measurement:** The primary standard of success for this project is the completion of strategic studies or modeling that illuminates the economic and grid reliability impacts on the lignite industry and the residents of North Dakota. The success metrics include:

1. **Strategic Studies and Modeling:** Completion of comprehensive studies or modeling exercises addressing the economic and grid reliability impacts resulting from proposed federal rules affecting the lignite industry in North Dakota.
2. **Evaluation of Negative Impacts:** Strategic activities to best evaluate the negative impacts of each proposed federal rule, tailoring assessments based on rule specifics and potential consequences for the industry.
3. **Inclusion in Public Comments:** The successful integration of findings into public comments, contributing to the development of an expansive administrative record. This record will encompass technical, economic, electricity market, and grid reliability data for potential use in legal activities.

4. **Summary Analyses for Environmental Managers:** Providing summary analyses of each rule to environmental managers, Industrial Commission Members and staff, and the Department of Environmental Quality (DEQ) from external legal and technical experts. Ensuring that these experts are well-informed on North Dakota-specific considerations addressed in the rules.

**Metrics for Success:** Metrics for success will be provided in summaries included in interim reports. These summaries will offer a transparent overview of achievements, progress, and key milestones, aligning with the standards of success outlined in the project proposal.

**Compliance with Attorney General's Requests:** The project will ensure alignment with the requests from the Attorney General's office, addressing specific information needs and providing insights essential for legal considerations/

## **BACKGROUND/QUALIFICATIONS**

*Please provide a summary of prior work related to the project conducted by the applicant and other participants as well as by other organizations. **This should also include a summary of the experience and qualifications pertinent to the project of the applicant, key personnel, and other participants in the project.***

### **A. Capabilities and Experience**

The Lignite Energy Council is a trade organization comprised of 250+ members including major lignite producers who produce a total of 30 million tons annually, the nation's largest commercial gasification project, and investor-owned utilities and rural electric cooperatives from a multi-state area that generate electricity from lignite serving millions of people from Canada to Texas. For over 30 years, the Lignite Energy Council has maintained a formal partnership with the NDIC to assist with the administration of the Lignite Research, Development and Marketing Project and provide technical assistance to the NDIC.

Besides partnering with the NDIC on the development and implementation of the state's research and development program, the Lignite Energy Council manages a regional public relations program for lignite-based electricity and an education program that trains teachers from across the region about the lignite industry. Because of the important impact that governmental policies have on the competitive position of lignite and the ability to develop new lignite projects, the Lignite Energy Council is also involved in various governmental relations activities such as legislative, Congressional, and public official forums and briefings.

The Lignite Energy Council has effectively managed similar contracts with the NDIC dating back to May 1999. Based on this experience and the above-described capabilities, the Lignite Energy Council is capable of administering the Regulatory and Litigation Support Project.

## B. Key Personnel



### Project Manager/Policy Advisor

Jonathan Fortner has served as Vice President of Government Relations and External Affairs at the Lignite Energy Council (LEC) since 2018. With over 14 years of experience in public policy and government relations, he has been instrumental in shaping legislation on economic development, taxation, and energy policy, strengthening North Dakota's lignite industry.

Jonathan leads key LEC committees, including the Environmental Managers Committee, Legal Strategies Committee, and Reclamation Managers Committee. These committees aggregate vital technical, environmental, and legal data, which form the foundation for administrative records in regulatory challenges. He also champions carbon capture technology and rare earth mineral development to advance industry sustainability.

He represents the coal industry as Chair of the Affiliate Sector on the Midcontinent Independent System Operator (MISO) Advisory Committee and manages legislative affairs in North Dakota, Minnesota, and Washington, D.C. Appointed by Governor Doug Burgum, he serves as Chairman of the North Dakota Environmental Quality Review Council.

Jonathan holds master's degrees in business administration and public administration from the University of North Dakota and is a Policy Fellow at the Humphrey School of Public Affairs. He is also an alumnus of the Leadership North Dakota program at the University of Mary.

### Policy Advisor

Jason Bohrer has served as President and CEO of the Lignite Energy Council since 2013. A graduate of North Dakota State University with a law degree from George Mason University, Jason was a member of the National Coal Council prior to its dissolution and is a member of the North Dakota Empower Commission.

Before joining the Lignite Energy Council, Jason spent nine years in Washington, D.C., focusing on energy policy related to coal mining, energy development, nuclear energy, waste disposal, oil and gas exploration, energy tax credits, hydropower relicensing, and renewable energy projects such as biomass. He has also drafted legislation aimed at expanding the nation's transmission infrastructure and enhancing cybersecurity protocols.

Under his leadership, the Lignite Energy Council has strengthened its research and development capabilities, as well as its public affairs and legislative programs, advancing the interests of North Dakota's lignite industry.

### **Technical Advisor**

Mike Holmes has over 30 years of experience in developing technologies for the clean and efficient use of coal. Before joining the Lignite Energy Council in 2017 as Senior Vice President of Research and Development, he spent 15 years each at Babcock & Wilcox in Alliance, Ohio, and the Energy & Environmental Research Center (EERC) at the University of North Dakota. At the EERC, he served as Director of Energy Systems Development, overseeing fossil energy research initiatives.

He specializes in CO<sub>2</sub> capture, fuel processing, gasification systems for producing hydrogen, fuels, chemicals, and electricity, as well as advanced energy systems and emission control technologies. In addition to his role at the Lignite Energy Council, he serves as Technical Advisor to the North Dakota Industrial Commission (NDIC) for the state's Lignite Research, Development, and Marketing Program.

He holds B.S. degrees in Chemistry and Mathematics from Mayville State University and an M.S. in Chemical Engineering from the University of North Dakota.

### **Project Administrator**

Angie Hegre has over 15 years of experience in the energy industry. Before joining the Lignite Energy Council (LEC) in 2019, she served as Generation Support Coordinator at Great River Energy, where she worked closely with senior leadership in Minnesota and North Dakota, including the Director of ND Generation. Her responsibilities included

managing environmental reporting, regulatory compliance, and safety record retention, as well as coordinating engineering and operations for year-end and outage reporting.

Since August 2019, Angie has been the Research and Development Program Manager for the LEC. She supports the Lignite Research Council grant rounds, collaborating with the ND Industrial Commission (NDIC), principal investigators, technical reviewers, and advisors. She is responsible for preparing bi-annual summaries and reports to the NDIC and works closely with the Director and Deputy Director of the ND Transmission Authority on reports, presentations, and research initiatives.

### **Legal Consultant**

Mack McGuffey has been a partner at Troutman Pepper in Atlanta, specializing in air law since 2003. He represents clients in the electric utility, landfill, manufacturing, and industrial sectors, focusing on air quality issues related to the construction and operation of stationary sources. Mack assists with permitting, regulatory compliance, enforcement actions, and participating in federal and state rulemaking processes.

With extensive experience in litigation over air regulations, Mack is skilled at interpreting complex and often ambiguous air quality laws and applying them to real-world emissions data. He provides clear, practical advice to help clients achieve compliance and minimize risk.

Mack has direct experience with key Clean Air Act programs, including:

- New Source Review/Prevention of Significant Deterioration (NSR/PSD)
- National Ambient Air Quality Standards (NAAQS)
- Title V Operating Permits
- Regional Haze/Best Available Retrofit Technology (BART)
- New Source Performance Standards (NSPS)
- National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT)

His expertise in navigating the intersection of emissions data and regulatory frameworks makes him a valuable asset for air quality-related projects.

### **Legal Consultant**

Mike Nasi is a partner with Jackson Walker, where he practices environmental and energy law. For over 28 years, he has appeared before state and federal regulatory agencies and appellate courts working on energy and infrastructure project development issues. His clients have ranged from small governmental bodies to state governments; multi-state compacts to state and national industry associations; and small, privately held companies to multi-national publicly traded corporations.

Mike's law practice spans across numerous federal and related state environmental, natural resource, and utility regulatory programs with a focus on regulatory compliance counseling and litigation as well as project development incentives and market reforms. His practice spans the following subject matters:

- Carbon Trading and Carbon Capture and Utilization (CCUS)
- State/Federal Clean Air Act issues & Preconstruction & Operating Permits
- Clean Water Act (CWA) permitting, including NPDES discharge permits
- Underground Injection Control (UIC) Well Permitting
- Endangered Species Act Issues, including incidental take permitting
- State and Federal Solid Waste Disposal Act Permitting & Remediation
- State and Federal Environmental Enforcement
- Environmental Audits

### **Technical Consultant**

Robert Paine brings over 50 years of experience in meteorology and air quality analysis, specializing in air dispersion modeling and environmental impact assessments. He holds a Master of Science in Meteorology from the Massachusetts Institute of Technology and a Bachelor of Science in Atmospheric Science from the State University of New York at Albany. Mr. Paine is a Certified Consulting Meteorologist (C.C.M.) and a Qualified Environmental Professional (Q.E.P.).

Throughout his distinguished career at AECOM (formerly ENSR and ERT), Mr. Paine has led numerous high-profile projects related to coal-fired power plants and environmental regulations. His expertise includes the design and implementation of air quality models, permitting studies, field investigations, and the evaluation of airborne toxic releases. He has provided expert witness testimony on air quality matters and has contributed extensively to the development and refinement of key regulatory models, including AERMOD and CALPUFF.

Notably, Mr. Paine has worked with entities such as the Lignite Energy Council, Basin Electric Power Cooperative, and Minnkota Power Cooperative, providing technical analysis on the Regional Haze Rule and SO<sub>2</sub> characterization. He has been instrumental in developing advanced modeling approaches to ensure compliance with environmental regulations while advocating for the coal industry's operational needs.

His contributions have been recognized by the Air & Waste Management Association, which conferred upon him an Honorary Member Award in 2018. Mr. Paine's extensive body of work includes numerous publications and conference presentations that have shaped the field of atmospheric science and regulatory air quality modeling.

Mr. Paine's unparalleled experience and commitment to scientific excellence make him a valuable asset as a technical consultant for coal-related projects in this grant proposal.

### **Technical Consultant**

Isaac Orr is the Vice President of Research at Always On Energy a Policy Fellow at the Center of the American Experiment, focusing on energy and environmental issues such as mining and electricity policy. Prior to this role, he was a research fellow at The Heartland Institute, specializing in energy and environmental policy. Before joining The Heartland Institute, he worked as an aide in the Wisconsin State Senate. Orr has extensively written on topics like hydraulic fracturing, frac sand mining, and electricity policy, with his work appearing in publications like The Wall Street Journal, USA Today, and The Washington Times. He holds a degree from the University of Wisconsin Eau Claire, with studies in political science and geology, earning awards for his undergraduate geology research.

Orr has also produced multiple energy markets modeling studies for the ND Transmission Authority covering the impact of EPA's Mercury and Toxic Standards and the Greenhouse Gas Rule, along with the production of reports analyzing energy legislation in Minnesota and other states.

## **MANAGEMENT**

*A description of **how** the applicant will manage and oversee the project to ensure it is being carried out on schedule and in a manner that best ensures its objectives will be met, **and a description of the evaluation points to be used** during the course of the project.*

Efficient project management is critical to the success of the Regulatory and Litigation Support Project. This process ensures that resources are effectively allocated, tasks are executed on schedule, and communication among team members and stakeholders remains seamless. The project management framework will be driven by clear goals, timelines, and communication channels to enhance collaboration and deliver measurable results. The project team's deep knowledge of the lignite industry will be strategically integrated into the regulatory and litigation support efforts, ensuring that industry assets and priorities are effectively represented.

### **Key Project Management Activities**

#### **1. Coordination and Oversight:**

- Jonathan Fortner, serving as the Project Manager/Policy Advisor, will oversee day-to-day operations, ensuring tasks are aligned with project

objectives. He will coordinate efforts across various tasks, monitor progress, and address any challenges to keep the project on track.

**2. Technical and Strategic Support:**

- Mike Holmes, as the Technical Advisor, will provide expertise on technical aspects of the project, ensuring that data collection, analysis, and reporting are scientifically sound and technically accurate.
- Jason Bohrer, acting as the Policy Advisor, will contribute strategic insights on legislative and regulatory policies, tying industry knowledge to effective regulatory strategies.

**3. Administrative Management:**

- Angie Hegre, the Project Administrator, will handle administrative tasks, including preparing reports, maintaining documentation, and ensuring compliance with project timelines and deliverables.

**4. Reporting and Communication:**

- The project team will prepare and submit biannual reports, final reports, and other required documentation to the North Dakota Industrial Commission (NDIC) and relevant stakeholders.
- Written and oral presentations will be developed to communicate project activities and findings to industry partners, regulatory bodies, and policymakers.

**5. Stakeholder Engagement:**

- Effective communication channels will be maintained with industry partners, legal experts, and state agencies (such as the Attorney General's Office, Department of Environmental Quality, and the Public Service Commission). This engagement ensures that regulatory strategies are aligned with industry goals and that stakeholder feedback is incorporated into project execution.

## **Evaluation Points for Project Management**

To ensure the success of the Regulatory and Litigation Support Project, the following evaluation points will be used to measure progress, efficiency, and effectiveness throughout the course of the project:

**1. Task Completion & Timeline Adherence**

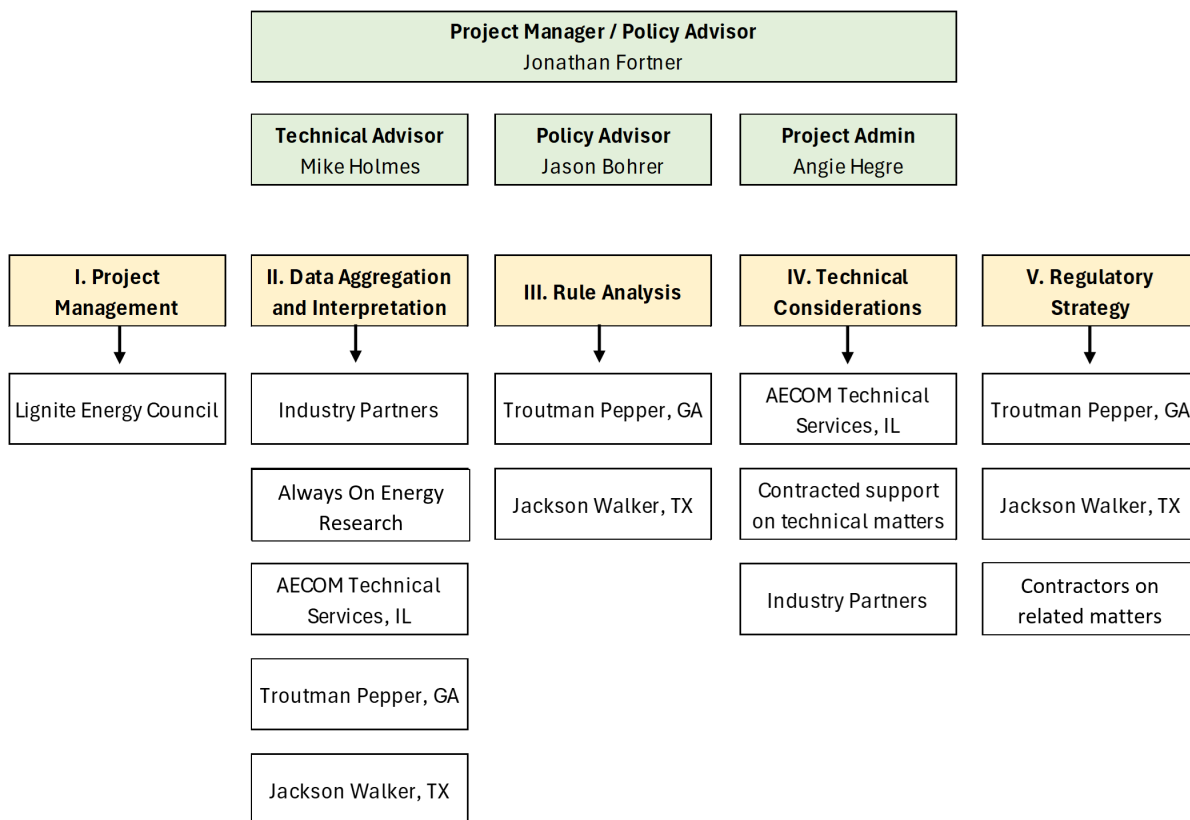
- Regular tracking of milestones to ensure tasks are completed within established deadlines.
- Periodic progress reviews to identify and address any delays or obstacles.

**2. Regulatory & Litigation Impact Assessment**

- Evaluation of legal and regulatory strategies developed under the project to determine their effectiveness in addressing industry challenges.

- Review of stakeholder feedback and industry response to ensure alignment with project objectives.
- 3. Quality & Accuracy of Analysis**
- Assessment of the thoroughness and accuracy of legal and technical analyses conducted by the project team.
  - Peer review of findings to ensure data integrity and policy relevance.
- 4. Stakeholder Engagement & Communication Effectiveness**
- Monitoring the level and effectiveness of communication with key stakeholders, including industry partners, legal experts, and government agencies.
  - Measuring responsiveness to stakeholder inquiries and concerns.
- 5. Compliance & Reporting**
- Ensuring all reports, presentations, and documentation required by the North Dakota Industrial Commission (NDIC) and other stakeholders are submitted on time.
  - Verifying that reporting meets regulatory requirements and provides actionable insights.
- 6. Resource Utilization & Budget Management**
- Assessing the efficient use of allocated resources, including personnel and financial expenditures.
  - Conducting periodic budget reviews to ensure alignment with project objectives and avoid overspending.
- 7. Adaptability & Risk Mitigation**
- Reviewing the project's ability to adapt to evolving regulatory landscapes and emerging legal challenges.
  - Evaluating the effectiveness of risk mitigation strategies in addressing potential regulatory or litigation hurdles.

See description of project management under “Project Description, C. Regulatory and Litigation Support Project Task Summaries.” Also see Organizational Chart in Appendix 3.



## **TIMETABLE**

*Please provide a project schedule setting forth the starting and completion dates, dates for completing major project tasks/activities, and proposed dates upon which the interim reports will be submitted.*

The Regulatory and Litigation Support Project will begin under this contract on April 1, 2025, and end on March 31, 2027. Semiannual project reports will be submitted to the NDIC as mentioned in the “Project Description” section.

## Regulatory and Litigation Support Project Schedule with Milestones and Deliverables

TASK	2025												2026												2027		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Task 1.0 Project Management</b>																											
1.1 Reports	X					X						X						X							X		
1.2 Administration and Support																											
<b>Task 2.0 Data Aggregation and Interpretation</b>																											
2.1 Draft Public Comments																											
2.2 Review Public Comments																											
<b>Task 3.0 Rule Analysis</b>																											
3.1 Review and Analysis of Proposed and Finalized Federal Rules																											
<b>Task 4.0 Technical Considerations</b>																											
4.1 Technical Considerations																											
<b>Task 5.0 Regulatory Strategy</b>																											
5.1 Coordination of Regulatory Strategy																											
5.2 Legal Strategies																											

### Summary of Milestones and Deliverables Key:

Contract Award / Project Start: April 1, 2025

Semi Annual Report due dates

Completion / Project End Date: March 31, 2027

Schedule As Assigned

X
X
X
X

## **BUDGET**

Because this project is applying for the unmatched dollars provided by the legislature in HB1014 and set aside for **“for litigation that may be necessary to protect and promote the continued development of lignite resources”** we are only providing an estimate of industry contributions that will occur in coordination and collaboration with this project.

<b>Project Associated Expense</b>	<b>NDIC Grant</b>	<b>NDIC Loan</b>	<b>Total Direct Project Costs</b>		<b>Estimated Industry direct and in-kind</b>
Labor	\$735,000		\$735,000		\$2,000,000
Technical Modeling	\$400,000		\$400,000		
Travel	\$15,000		\$15,000		\$50,000
Facilities and Administration	\$175,000		\$175,000		
<b>Total</b>	<b>\$1,325,000</b>		<b>\$1,325,000</b>		<b>~\$2M</b>

1.0	Project Management	24 months	\$175,000
2.0	Data Aggregation and Interpretation	24 months	\$400,000
3.0	Rule Analysis	24 months	\$175,000
4.0	Technical Considerations	24 months	\$175,000
5.0	Regulatory Strategy	24 months	\$400,000
	Totals	24 months	<b>\$1,325,000</b>

## **CONFIDENTIAL INFORMATION**

The Regulatory and Litigation Support Project involves a combination of public and confidential data. While the request for proposal and any interim progress reports are considered public information and will be made available accordingly, the deliverables and products generated under the project's tasks are subject to confidentiality.

These deliverables may include, but are not limited to:

- **Project Strategies:** Detailed plans, approaches, and methodologies developed to address regulatory and litigation challenges.

- **Technical Considerations:** Specialized analyses, evaluations, and recommendations that reflect proprietary methods and processes.
- **Financial Data:** Cost analyses, funding strategies, budgetary details, and other sensitive financial information relevant to the project.
- **Proprietary Information:** Any intellectual property, trade secrets, or unique insights developed as part of the project's execution.

Given the sensitive nature of these materials, we request that all project-related strategies, technical documentation, financial data, and proprietary insights be treated as confidential. The confidentiality of this information is critical to ensure continued cooperation, protect competitive interests, and preserve the integrity of the project's outcomes.

We appreciate your acknowledgment and adherence to this confidentiality request, as it ensures the project partners' ability to collaborate effectively while safeguarding sensitive information.

## **TAX LIABILITY**

I, Jason Bohrer, certify that the Lignite Energy Council is not delinquent on any tax liability owed to the State of North Dakota.

Jason Bohrer, President  
Lignite Energy Council

## **PATENTS/RIGHTS TO TECHNICAL DATA**

*Any patents or rights that the applicant wishes to reserve must be identified in the application. If this does not apply to your proposal, please note that below.*

Does not apply to this proposal.

## **STATE PROGRAMS AND INCENTIVES**

*Any programs or incentives from the State that the applicant has participated in within the last five years should be listed below, along with the timeframe and value.*

## **MATCHING FUNDS**

Although this funding request does not mandate matching funds, significant contributions will be provided by private industry partners in the form of specialized work hours. While these in-kind contributions are not to be shown as formal cost share to the project, they consist of critical efforts to successful project execution in response to federal regulatory threats. The in-kind contributions will come from employees with expertise in legal, environmental, and technical disciplines, demonstrating a considerable investment by industry stakeholders to advance the project's goals. These work hours will support the development of strategic approaches, technical documentation, and legal defenses, thereby reinforcing the state's ability to effectively respond to federal regulatory and legal challenges.

Additionally, industry partners are expected to contribute substantial financial resources to help build and maintain the administrative record necessary for litigation support. This financial commitment underscores the collaborative nature of this state-industry partnership, wherein both public and private entities are aligned in addressing complex regulatory issues and protecting the state's lignite industry.

This project continues a long-standing tradition of cooperation between North Dakota's state agencies and the lignite industry. By combining state resources with industry expertise and investment, the project ensures a robust, strategic, and unified approach to navigating federal regulatory and legal landscapes. This synergy not only enhances the project's overall effectiveness but also strengthens North Dakota's commitment to supporting a resilient and sustainable lignite industry.

## **Appendix 1**

### **The Regulatory and Litigation Support Project April 1, 2025 – March 31, 2027 (24 months)**

#### **Project Management**

Management fees for the Regulatory and Litigation Support Project include the LEC providing offices, travel, rent, printing, postage, and equipment. The LEC also provides direction, administration, and technical support for the Regulatory and Litigation Support Project. The project team will write the necessary reports and facilitate communication among the critical partners including the NDIC, Lignite Research Council, lignite industry, ND Legislative Assembly, Congressional Delegation, national, regional, and state associations, federal and state agencies, and the public.

**\$175,000**

#### **Data Aggregation and Interpretation**

Building the administrative record is essential for achieving workable solutions through the regulatory process or litigation and ensuring the health of the lignite industry. This task involves collecting comprehensive environmental, technical, and legal information to assess the impacts of proposed rules on lignite mining and power generation. It includes gathering data on environmental impacts, technical feasibility, and legal conflicts with federal and state laws. The task also involves drafting detailed, evidence-based public comments to articulate industry concerns and propose balanced solutions.

**\$400,000**

#### **Rule Analysis**

Thorough analysis of proposed rules and regulations impacting the lignite industry is crucial. This task involves examining the details of regulatory changes, understanding their implications, and identifying potential challenges or opportunities for the industry. This budget includes the consultant fees and expenses.

**\$175,000**

#### **Technical Considerations**

The Regulatory and Litigation Support Project will delve into the technical aspects of the lignite industry, considering the unique characteristics of generating units and mines. This includes evaluating the physical properties of lignite and assessing the applicability and readiness of available technologies. This budget includes the consultant fees and expenses and the cost of education materials.

**\$175,000**

### **Regulatory Strategy**

Developing an effective strategy is key to navigating the complex regulatory landscape. This involves formulating approaches and tactics to address regulatory requirements, ensure compliance, and advocate for industry interests in the regulatory process. This budget includes the consultant fees and expenses and the cost of education materials.

**\$400,000**

**Total:**

**\$1,325,000**

## Appendix 2

### Regulatory and Litigation Support Project Schedule with Milestones and Deliverables

TASK	2025												2026												2027		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Task 1.0 Project Management</b>																											
1.1 Reports	X					X						X						X							X		
1.2 Administration and Support																											
<b>Task 2.0 Data Aggregation and Interpretation</b>																											
2.1 Draft Public Comments																											
2.2 Review Public Comments																											
<b>Task 3.0 Rule Analysis</b>																											
3.1 Review and Analysis of Proposed and Finalized Federal Rules																											
<b>Task 4.0 Technical Considerations</b>																											
4.1 Technical Considerations																											
<b>Task 5.0 Regulatory Strategy</b>																											
5.1 Coordination of Regulatory Strategy																											
5.2 Legal Strategies																											

#### Summary of Milestones and Deliverables Key:

Contract Award / Project Start: April 1, 2025

Semi Annual Report due dates

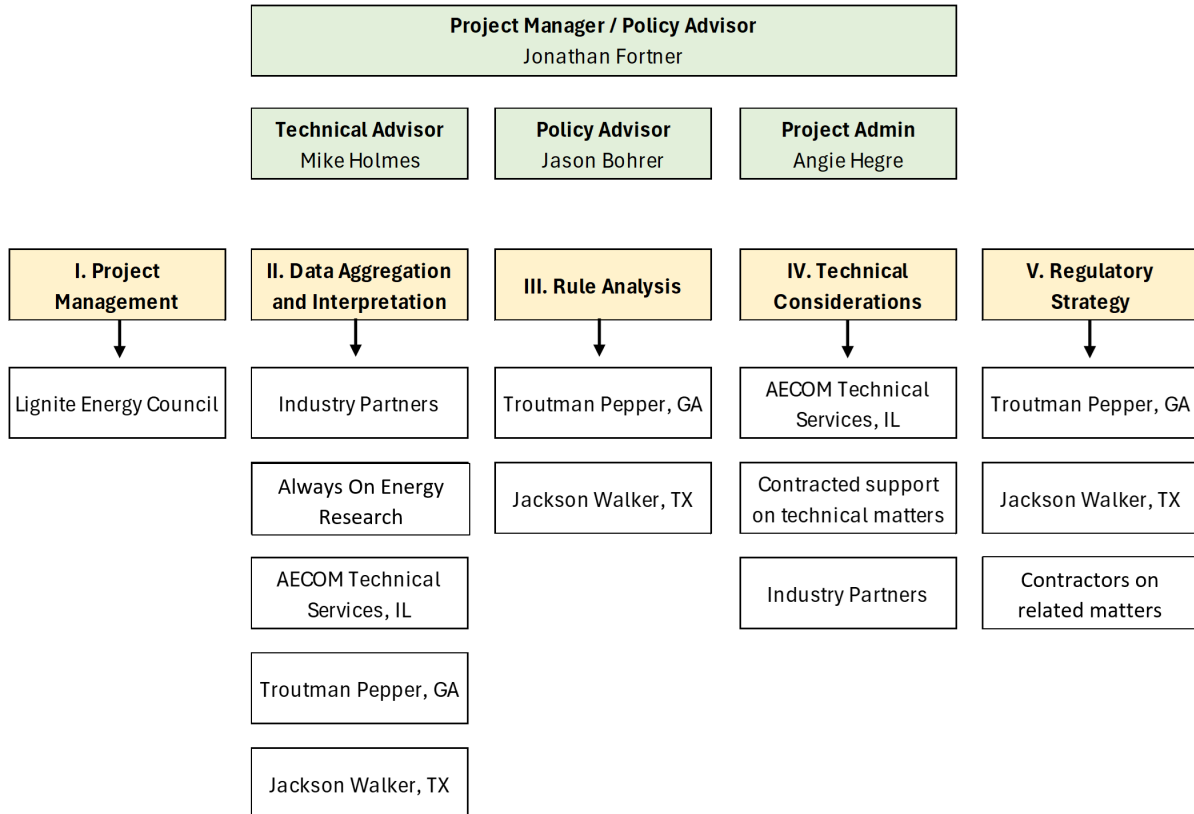
Completion / Project End Date: March 31, 2027

Schedule As Assigned

X
X
X
X

## Appendix 3

### Organizational Chart



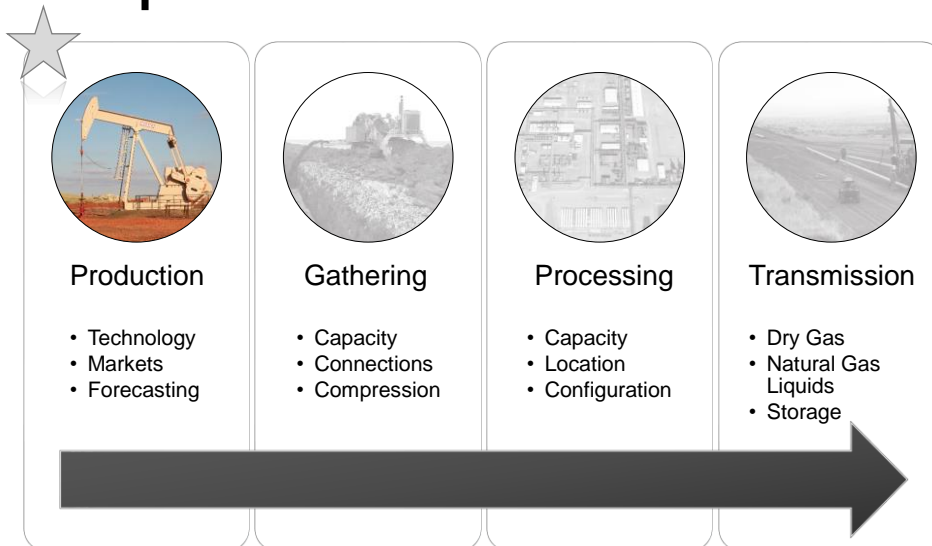
# ***Natural Gas Infrastructure Update***

**Justin J. Kringstad**  
*Geological Engineer  
Director  
North Dakota Pipeline Authority*

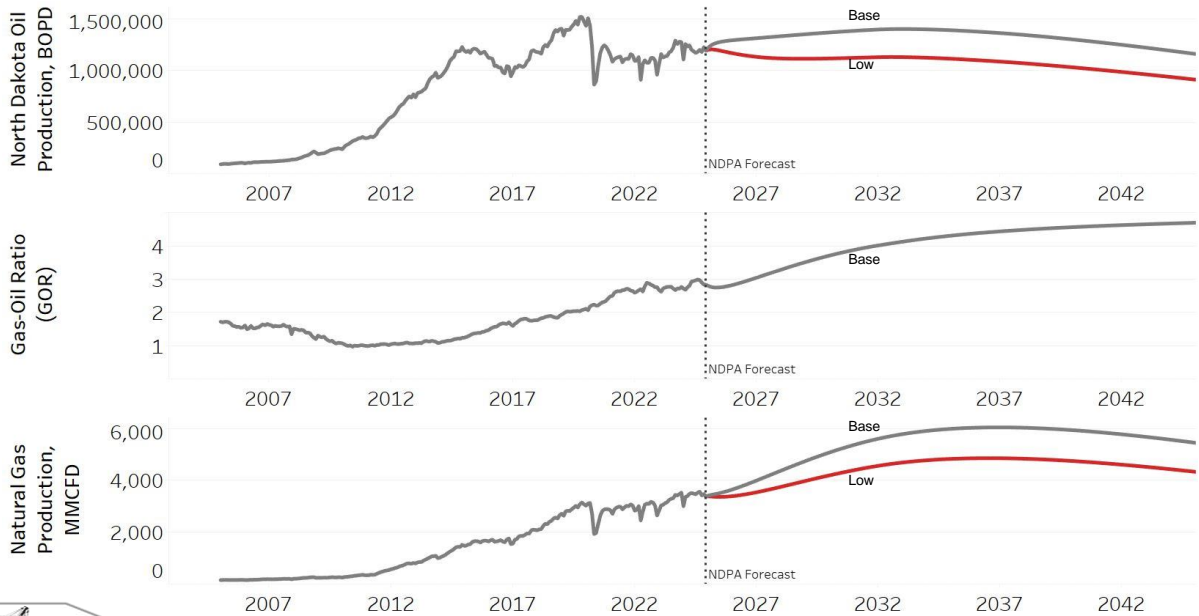


March 25, 2025

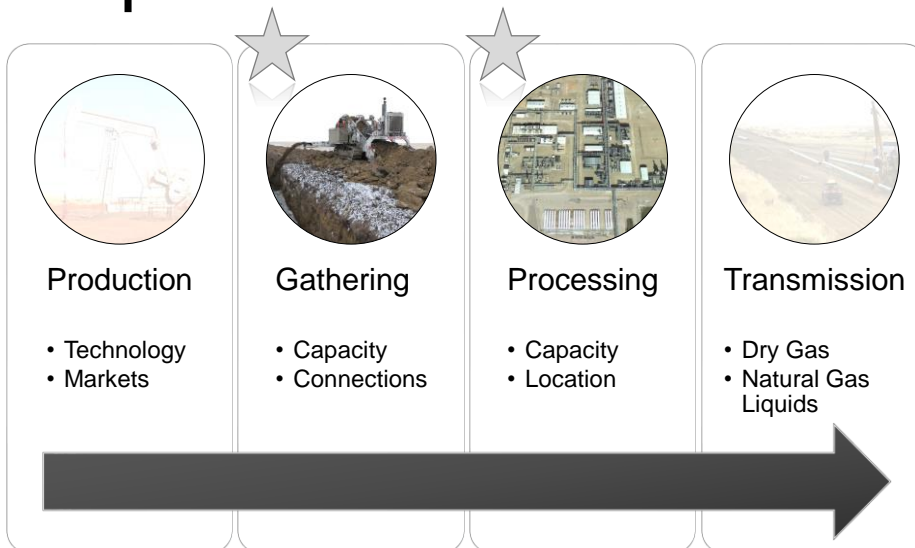
## **A Complete Natural Gas Solution**



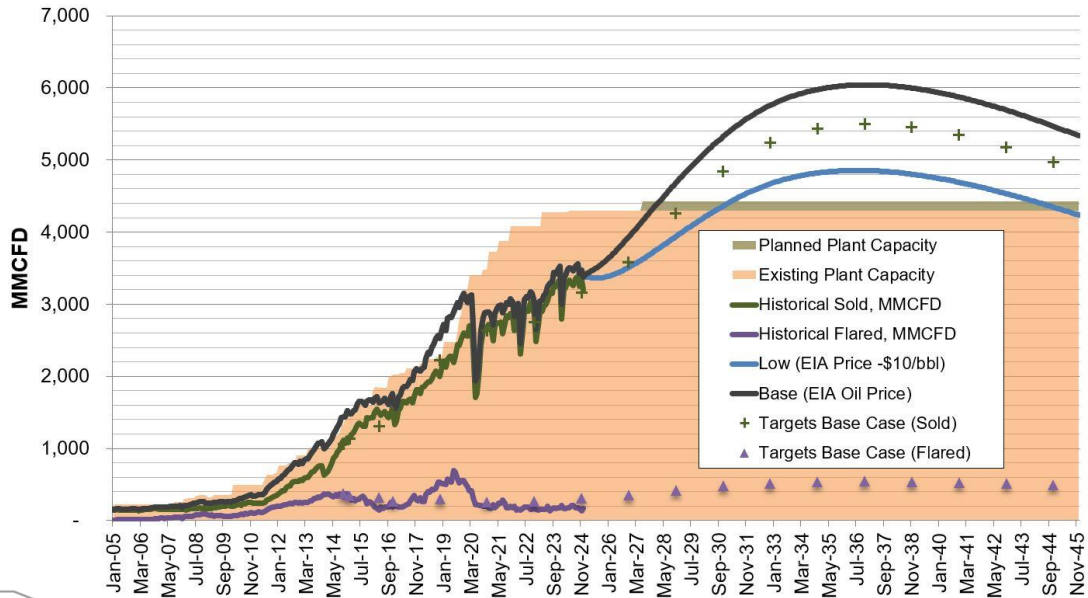
# ND Production Forecast: EIA Price Deck



## A Complete Natural Gas Solution



# North Dakota Gas Processing Outlook



Justin J. Kringstad - North Dakota Pipeline Authority

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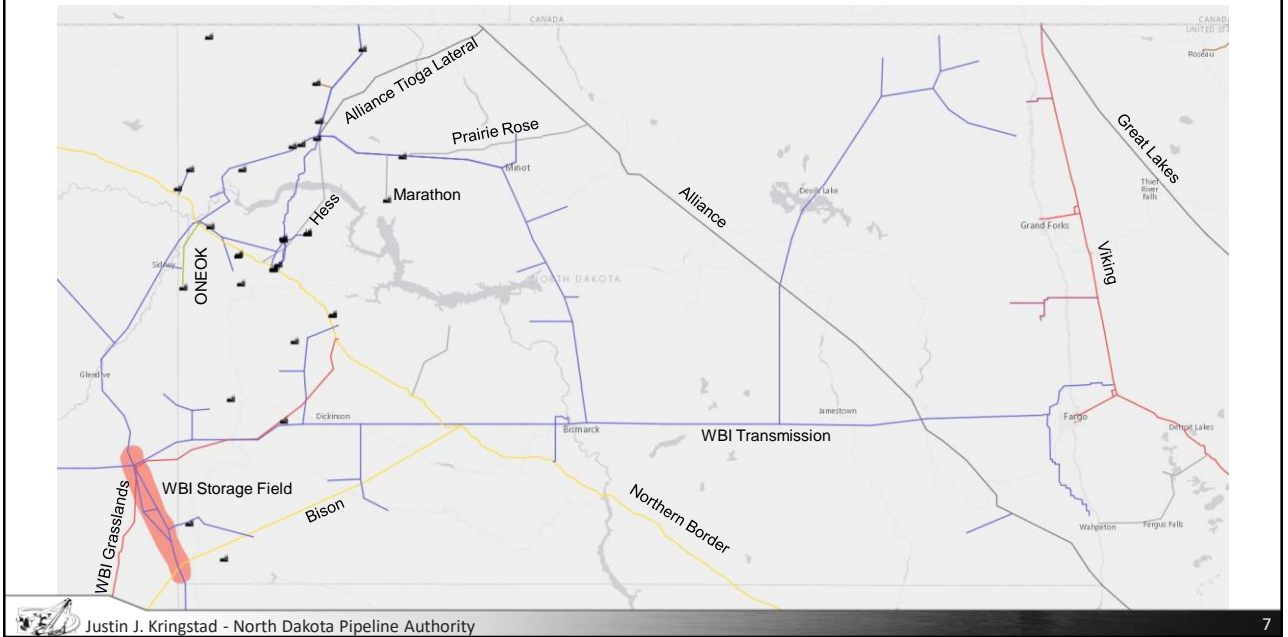
## A Complete Natural Gas Solution



Justin J. Kringstad - North Dakota Pipeline Authority

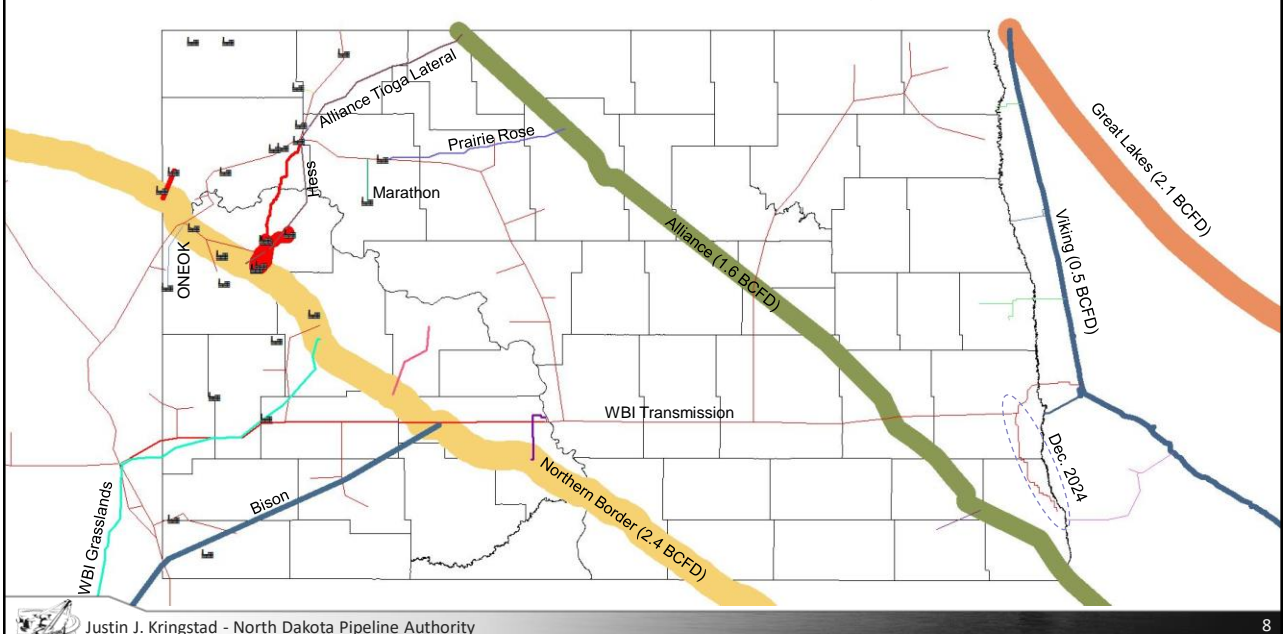
6

# Major Residue Gas Pipeline Infrastructure



7

# Residue Gas Pipeline Capacity Visualization



8

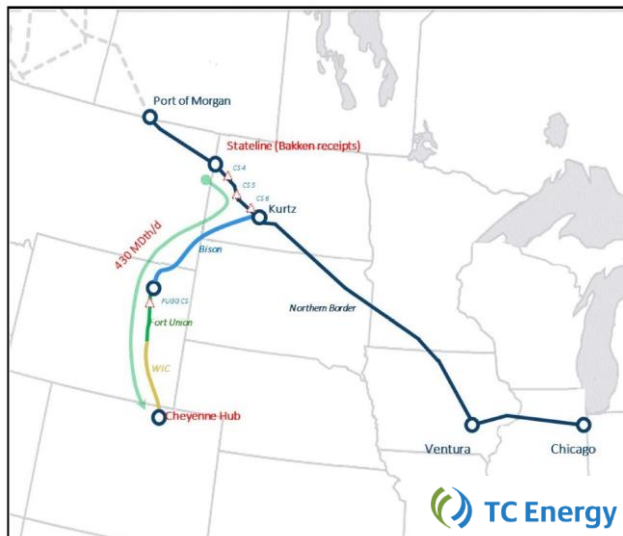
The chart displays the market share of two major oil-producing regions in Canada, the Williston Basin and the Canadian market, from November 2013 to November 2024. The Y-axis represents the Northern Border Market Share as a percentage, ranging from 0% to 90% on both the left and right sides. The X-axis shows time in years, with labels for November of each year from 2014 to 2024.

The Williston Basin Market Share (red line) starts at approximately 25% in late 2013, rises to about 45% by early 2014, and then fluctuates between 35% and 50% until late 2018. From late 2018, it shows a significant and steady increase, reaching nearly 90% by late 2024. The Canadian Market Share (grey line) starts at approximately 75% in late 2013, drops to about 55% by early 2014, and then fluctuates between 50% and 65% until late 2018. From late 2018, it shows a significant and steady decrease, reaching about 30% by late 2024.

Year	Williston Basin Market Share (%)	Canadian Market Share (%)
Nov 2013	25	75
Nov 2014	45	65
Nov 2015	40	60
Nov 2016	35	65
Nov 2017	45	55
Nov 2018	50	50
Nov 2019	70	30
Nov 2020	85	20
Nov 2021	75	25
Nov 2022	85	15
Nov 2023	85	20
Nov 2024	80	30

0

# TC Energy / Kinder Morgan: Bakken xPress Project



## Project Highlights

- Non-binding open season April 4 - May 6, 2022
- Binding Open Season: June 1-30, 2023
- Three compressor upgrades in North Dakota
- Reverse the idle Bison Pipeline (30" – 302 Mile)
- Capacity 300,000 Dth/Day (430,000 Offered)
- March 2026 targeted in-service date
- Fort Union Gas Gathering and Wyoming Interstate Company provide further transport to Cheyenne hub.
- Seeking commitments 10yrs or Longer
- \$555 million: \$347 Replacement/\$208 Expansion

## Proposed Rates

- NBPL/Bison \$0.45/Dth + Fuel/Elec to WIC/FUG Interconnect
- WIC/FUG to Cheyenne \$0.30/Dth + Fuel/Elec
- Anchor Shipper Minimum: 50,000 Dth/Day

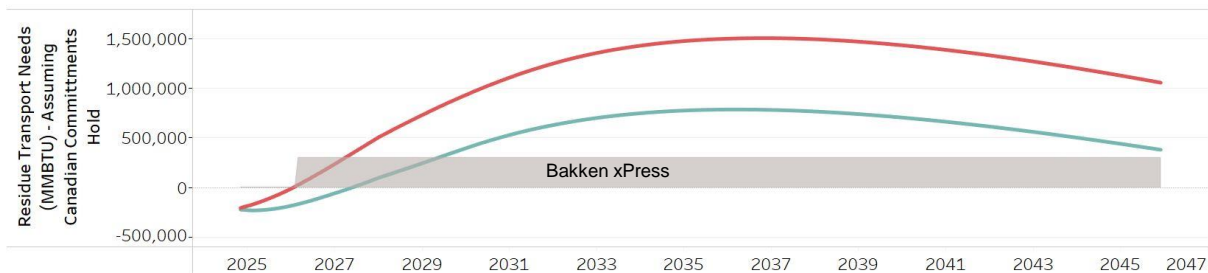


Justin J. Kringstad - North Dakota Pipeline Authority

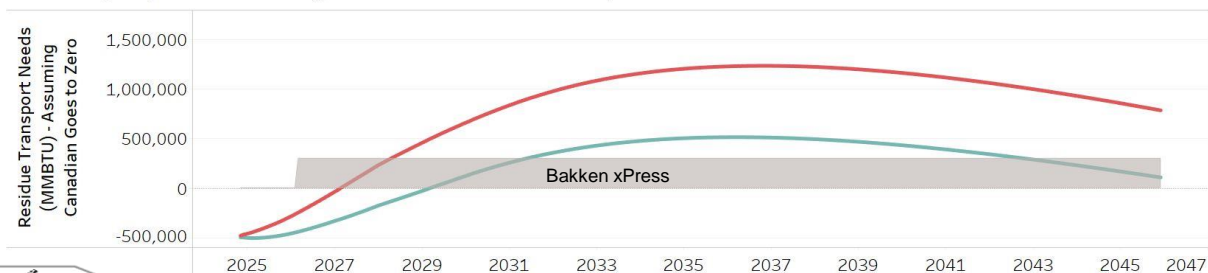
11

## Residue Capacity Needs : Glen Ullin 1,100 BTU

Residue Capacity Need: Port of Morgan at Contract Level: Glen Ullin BTU 1,100



Residue Capacity Need: Port of Morgan Goes to Zero: Glen Ullin BTU 1,100



Justin J. Kringstad - North Dakota Pipeline Authority

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# Options Beyond 2027: The 5 “C’s”

## Construction (Interstate)

- Long-haul Pipe to New or Expanded Markets

## Compete

- Price Canadian Volumes to Flow Elsewhere

## Compression

- Increase Capacity on Existing Interstate Systems

## Consumption

- Intra Region Gas Demand Expansion

## Contraction

- Reduce E&P Activity to Meet Limited Gas Options



# WBI Energy: Proposed Bakken East Project



## Natural Gas Pipeline Project Highlights

- Non-binding open season Dec 16 – Jan 31, 2025
- 375 Miles: 30" & 24" Pipe
- Proposed Capacity 760,000 Dth/Day
- Phase 1 (West) : Nov 2028 targeted in-service
- Phase 2 (East) : Nov 2029 targeted in-service
- Seeking commitments 20yrs or Longer

## Estimated Rates

- \$0.85 to \$0.90/Dth + Fuel/Electric/Commodity
- Anchor Shipper Minimum: 100,000 Dth/Day
- Foundation Shipper Minimum: 250,000 Dth/Day



# Intensity Infrastructure Partners Proposed Pipeline



## Natural Gas Pipeline Project Highlights

- Non-binding open season Feb 3 – Mar 7, 2025
- 136 Miles: 42" Pipe
- Proposed Capacity 1,500,000 Dth/Day
- January 2028 targeted in-service
- Seeking commitments 20yrs or Longer

## Estimated Rates

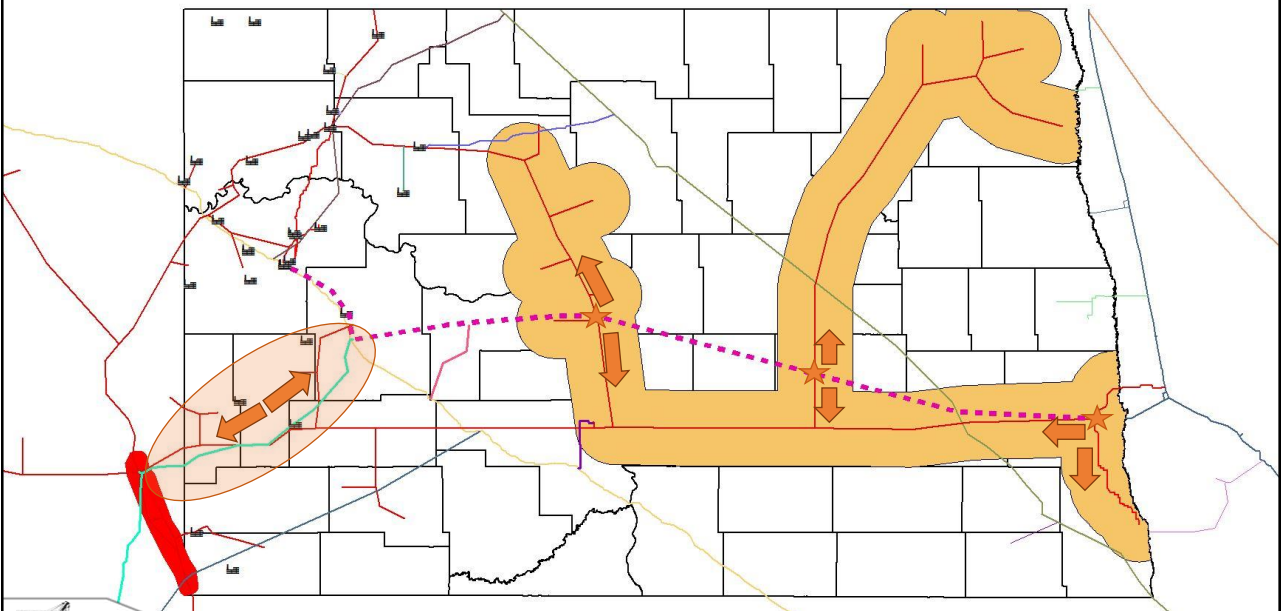
- \$0.50/Dth + Fuel/Electric/Commodity
- Anchor Shipper Minimum: 100,000 Dth/Day
- Foundation Shipper Minimum: 250,000 Dth/Day



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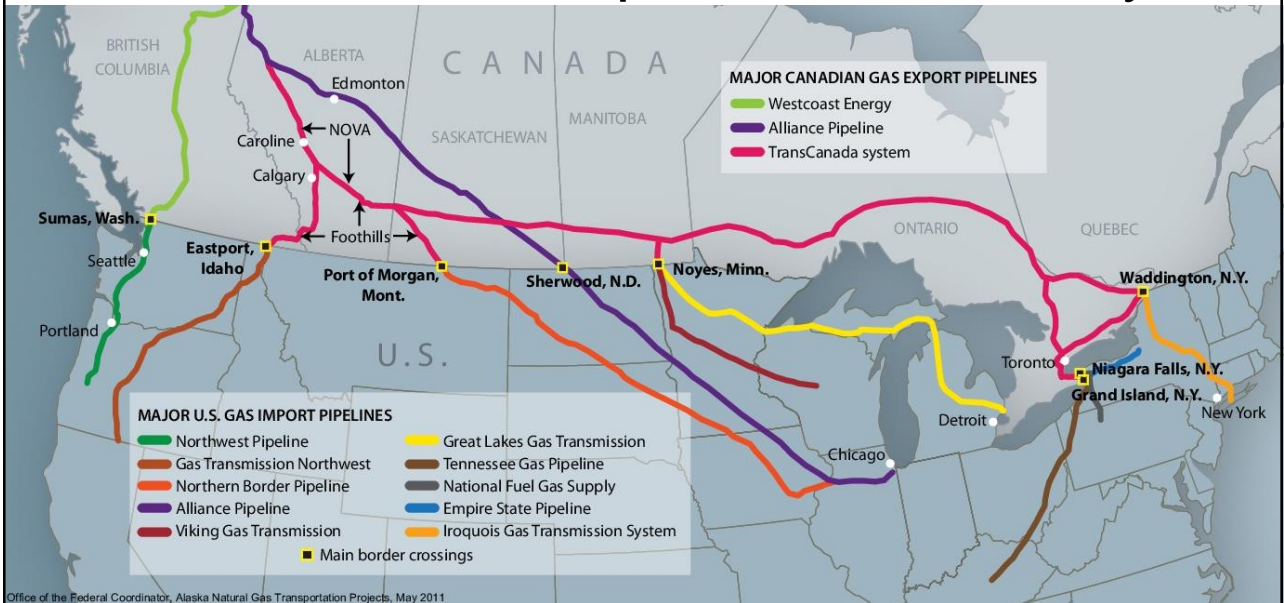
# Going East: Benefits Could Extend Beyond Route(s)



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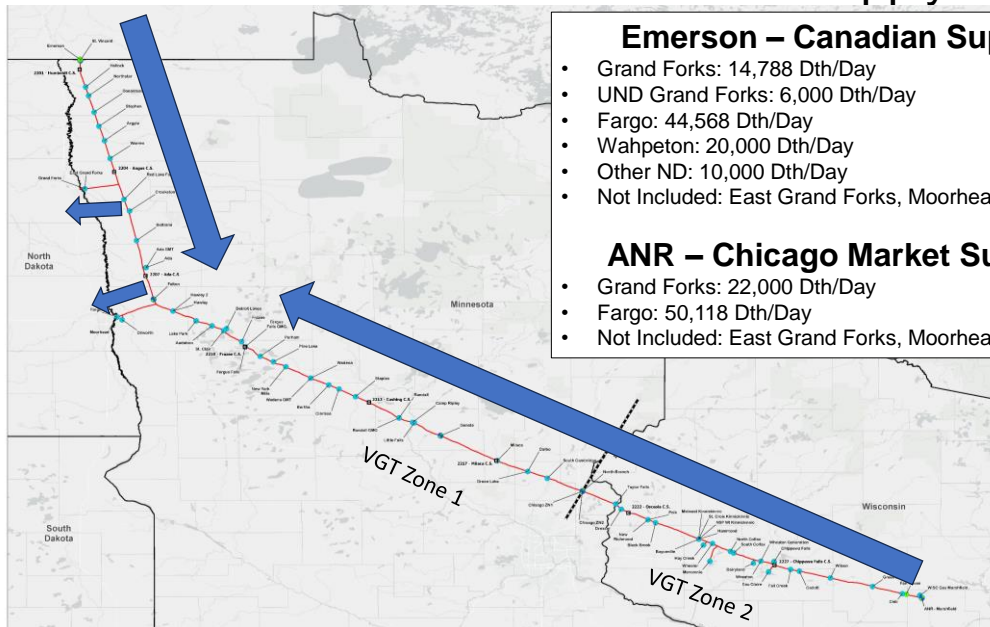
# Canadian Gas Pipeline Connectivity



JJ Kringstad - North Dakota Pipeline Authority

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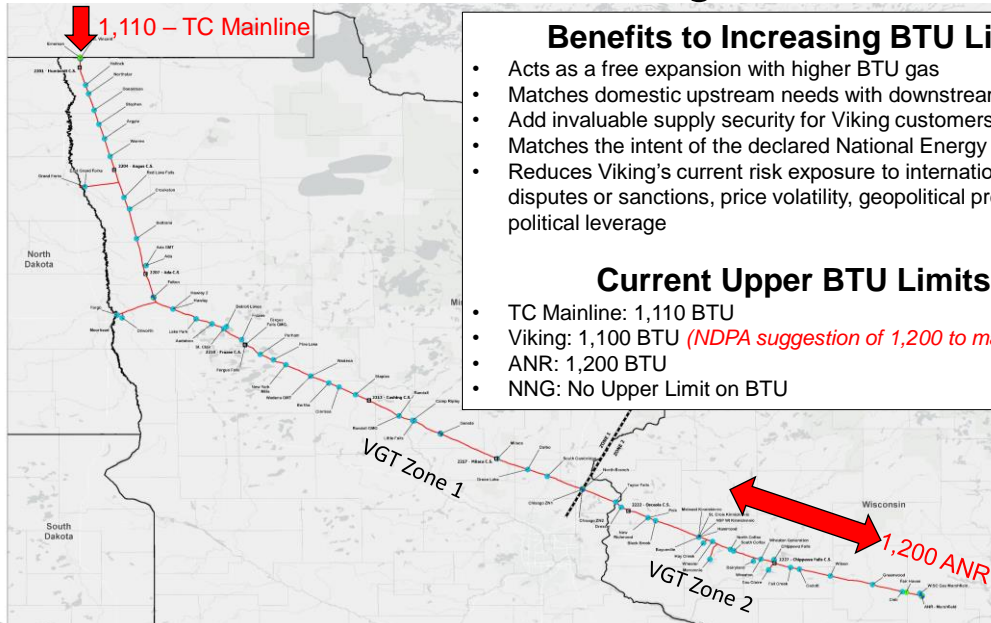
## Current Eastern North Dakota Gas Supply



Justin J. Kringstad - North Dakota Pipeline Authority

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# The Need to Modernize Viking's BTU Limit



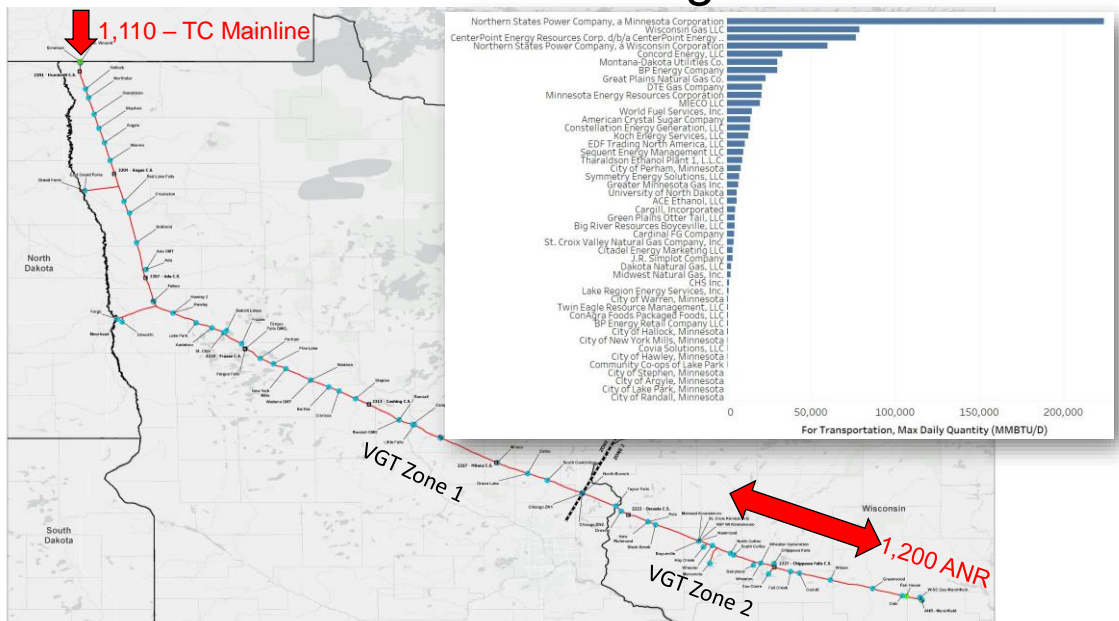
## Benefits to Increasing BTU Limit

- Acts as a free expansion with higher BTU gas
- Matches domestic upstream needs with downstream BTU limits
- Add invaluable supply security for Viking customers
- Matches the intent of the declared National Energy Emergency
- Reduces Viking's current risk exposure to international trade disputes or sanctions, price volatility, geopolitical pressure and political leverage

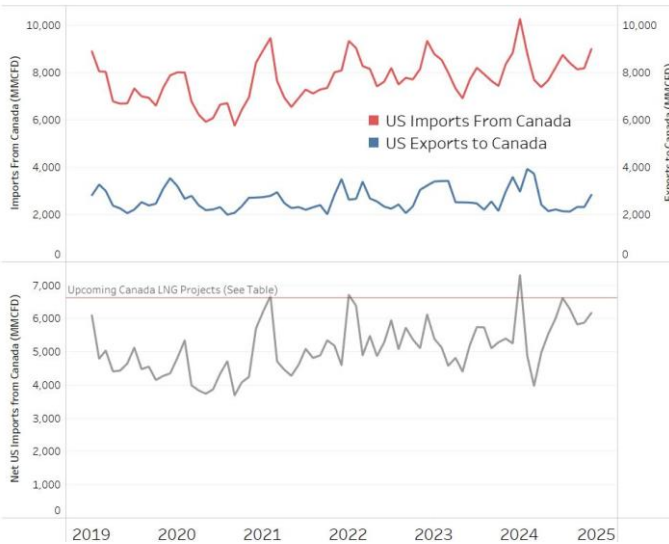
## Current Upper BTU Limits

- TC Mainline: 1,110 BTU
- Viking: 1,100 BTU (*NDPA suggestion of 1,200 to match peers*)
- ANR: 1,200 BTU
- NNG: No Upper Limit on BTU

# The Need to Modernize Viking's BTU Limit



# United States Canada Gas Movements & LNG



Projects proposed and under construction		
Project	LNG Export Volumes, Million Tonnes per Annum (MTPA)	LNG Export Volumes, Billion Cubic Feet per Day (Bcf/d)
<b>Export Licence - 40 years</b>		
LNG Canada Phase 1 Kitimat, BC	14	1.84
LNG Canada Phase 2 Kitimat, BC	14	1.84
Woodfibre LNG Squamish, BC	2.1	0.28
Kai Lisims LNG Gingolk, BC	12	1.58
<b>Export Licence - 25 years</b>		
Tilbury LNG Phase 2 Delta, B.C.	2.5	0.33
Cedar LNG Kitimat, BC	3	0.39
<b>Yet to apply for an Export Licence</b>		
Summit Lake PG LNG Prince George, BC	2.7	0.36
<b>Export Licence Not applicable (n/a)</b>		
Tilbury Marine Jetty Delta, BC	n/a	n/a
<b>Total</b>	<b>50.3</b>	<b>6.62</b>



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## Driving Forces for New Gas Pipelines



Supply Push



Demand Pull



System  
Reliability/Security



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# Who Signs Up For Project Capacity?

Shippers



Producers/Midstream



Marketing Firms



Industrial Consumers/LDC



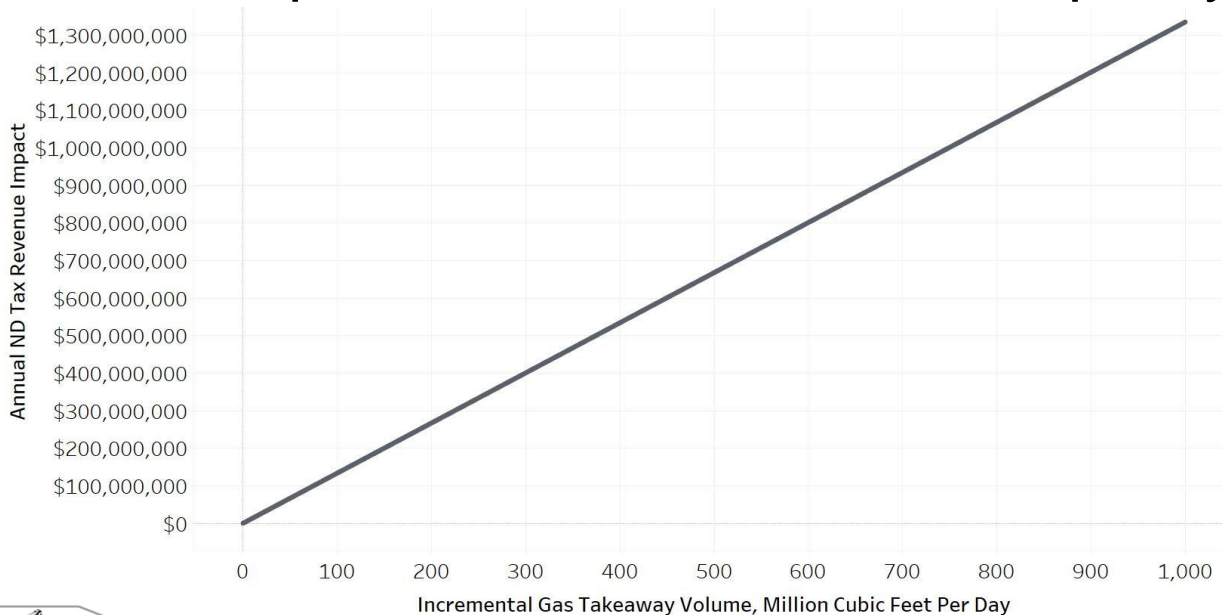
State of North Dakota (PA/IC)



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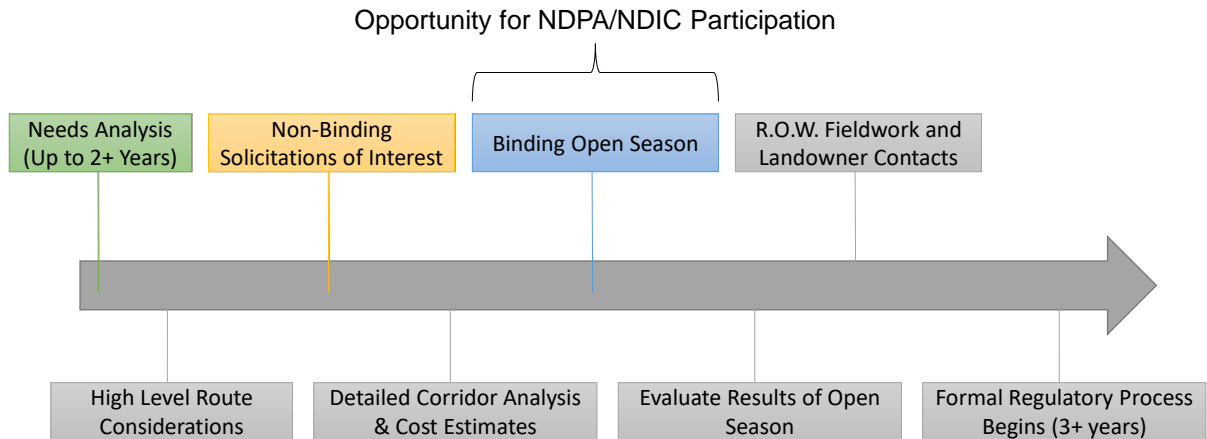
## ND Tax Impact of Incremental Gas Capacity



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Oil & Nat Gas Taxes Only - Assumes \$70/BBL Avg. Wellhead Oil Price 24

# Early Stages of Pipeline Development

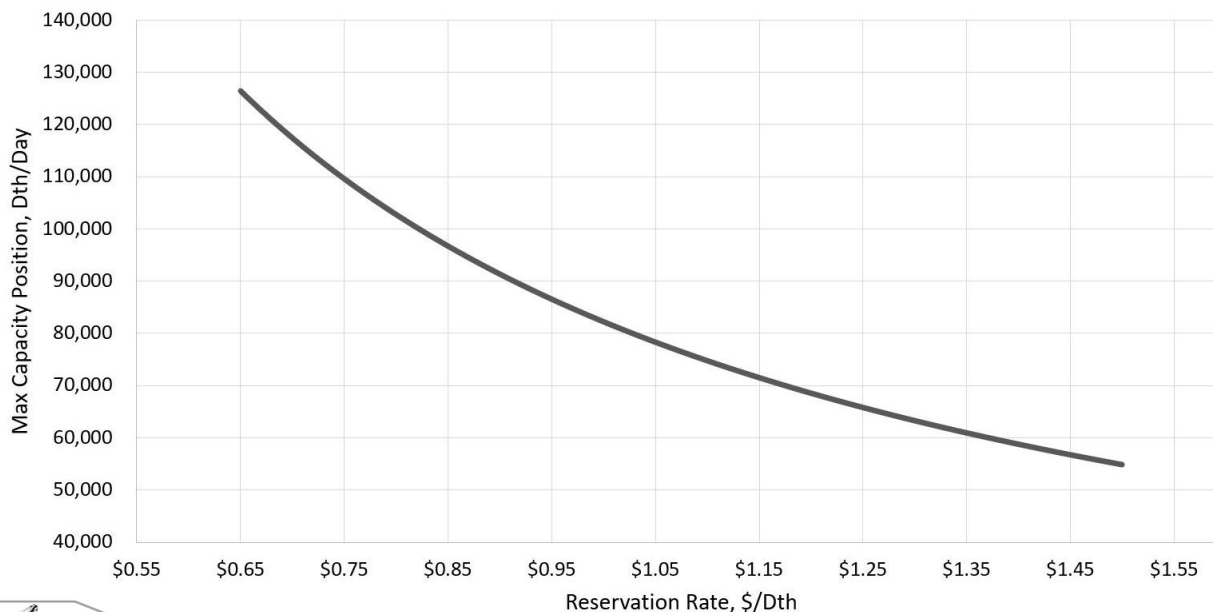


## Pipeline Authority Century Code— 54-17.7-04.

3. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems, including interconnection of pipeline systems, within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota. If the authority acquires, purchases, holds, uses, or leases capacity positions, the authority shall sell, transfer, release, or dispose of the capacity positions at intervals that are no more frequent than monthly and in an amount that is equal to or greater than the market rate, but only if the sale, transfer, release, or disposal of the capacity positions is sufficient to cover the expenses and obligations incurred. The authority's contract obligations for the capacity positions are limited to the capacity rates, charges, and terms.



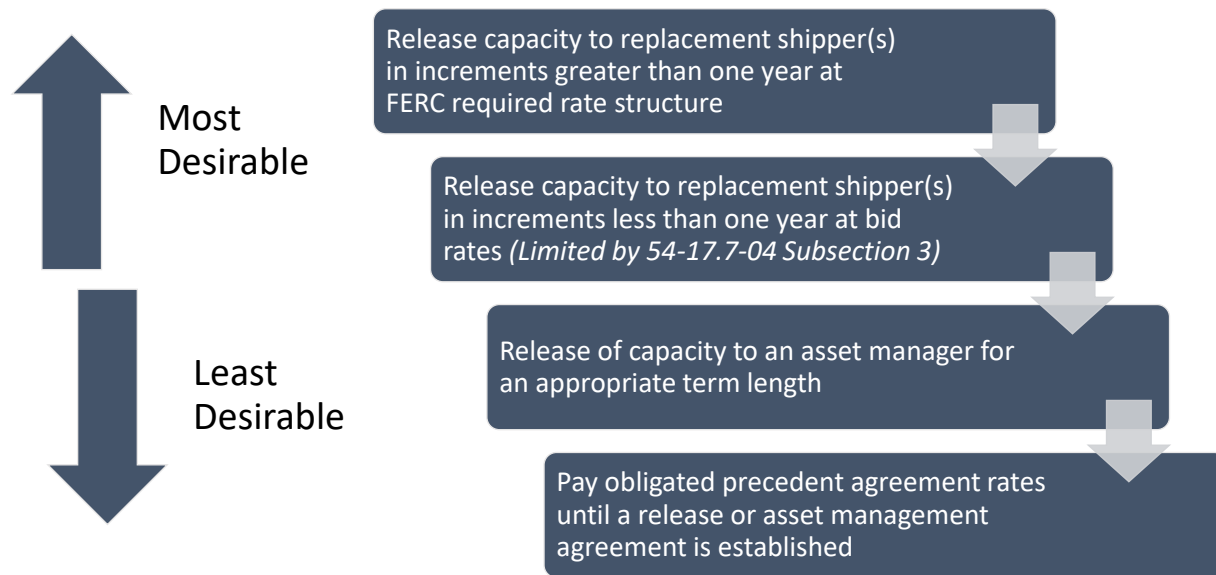
# Capacity and Reservation Rate at \$30M/Yr



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## How Will NDPA Manage Contracted Capacity?



Justin J. Kringstad - North Dakota Pipeline Authority

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# Options Beyond 2026: The 5 “C’s”

## Construction (Interstate)

- Long-haul Pipe to New or Expanded Markets

## Compete

- Price Canadian Volumes to Flow Elsewhere

## Compression

- Increase Capacity on Existing Interstate Systems

## Consumption

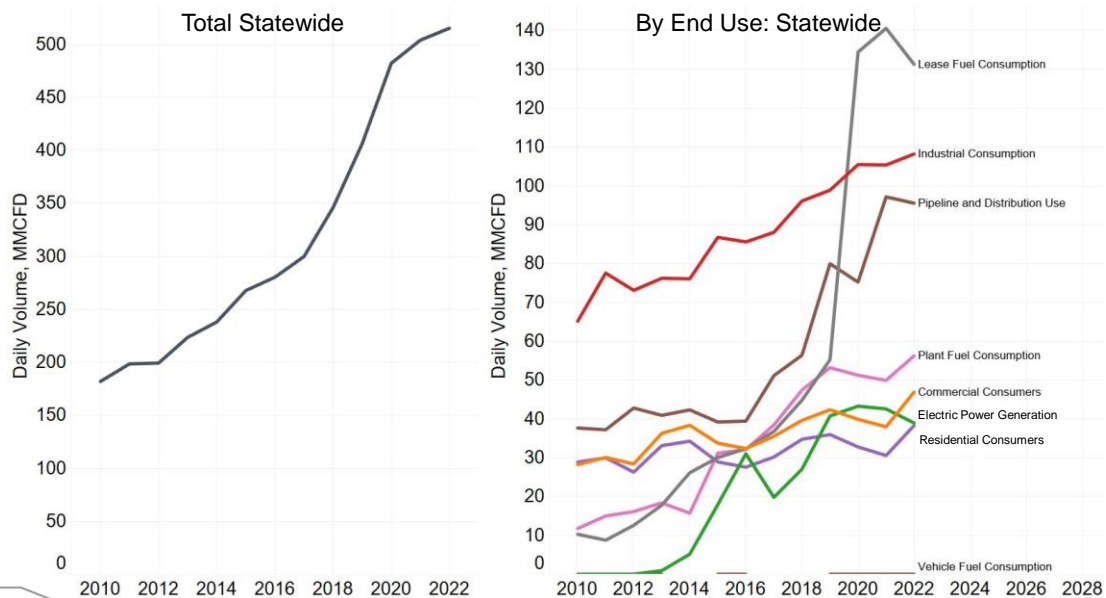
- Intra Region Gas Demand Expansion

## Contraction

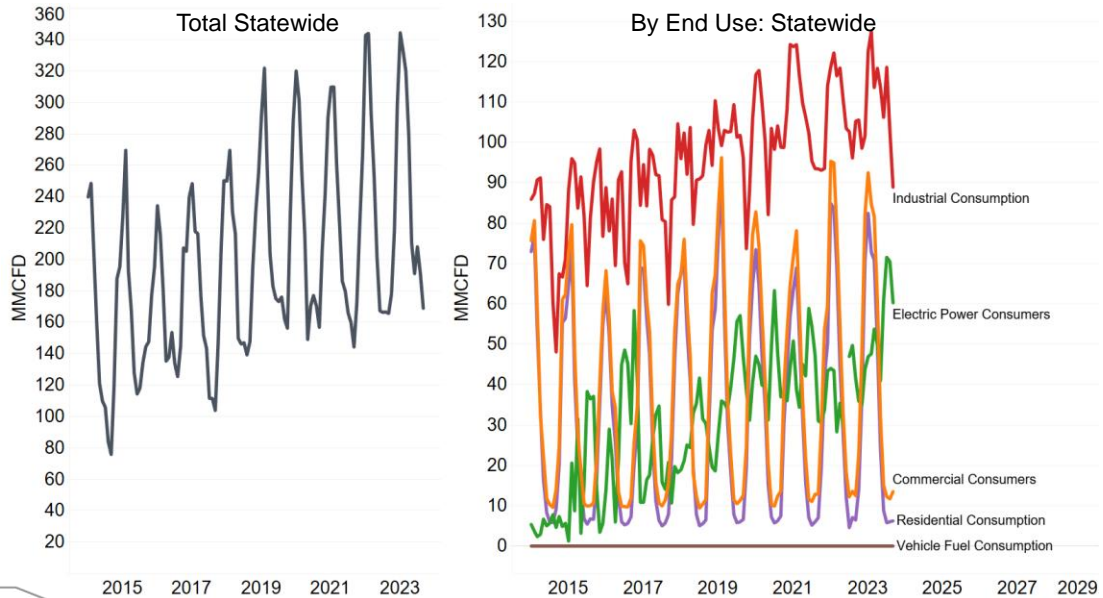
- Reduce E&P Activity to Meet Limited Gas Options



# North Dakota Gas Consumption (Annual)



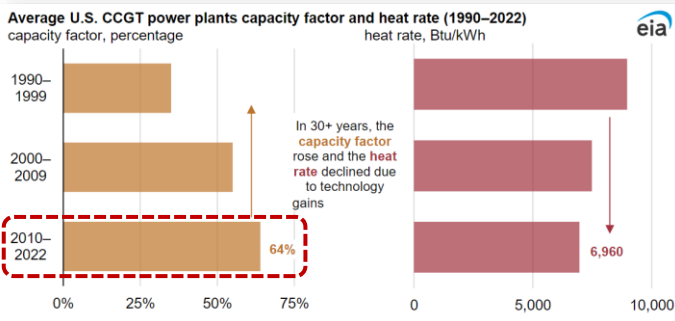
# Non-Midstream Consumption (Monthly)



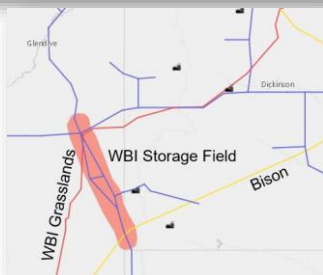
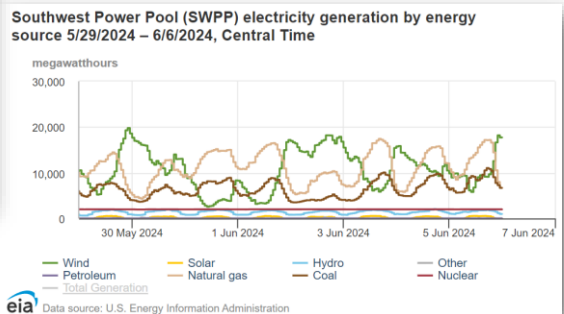
Justin J. Kringstad - North Dakota Pipeline Authority

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## Intermittent Gas-Fired Generation Challenging to Match Oilfield Output



Gas-fired demand can fluctuate hourly, daily, and weekly, depending on system load, weather, etc.

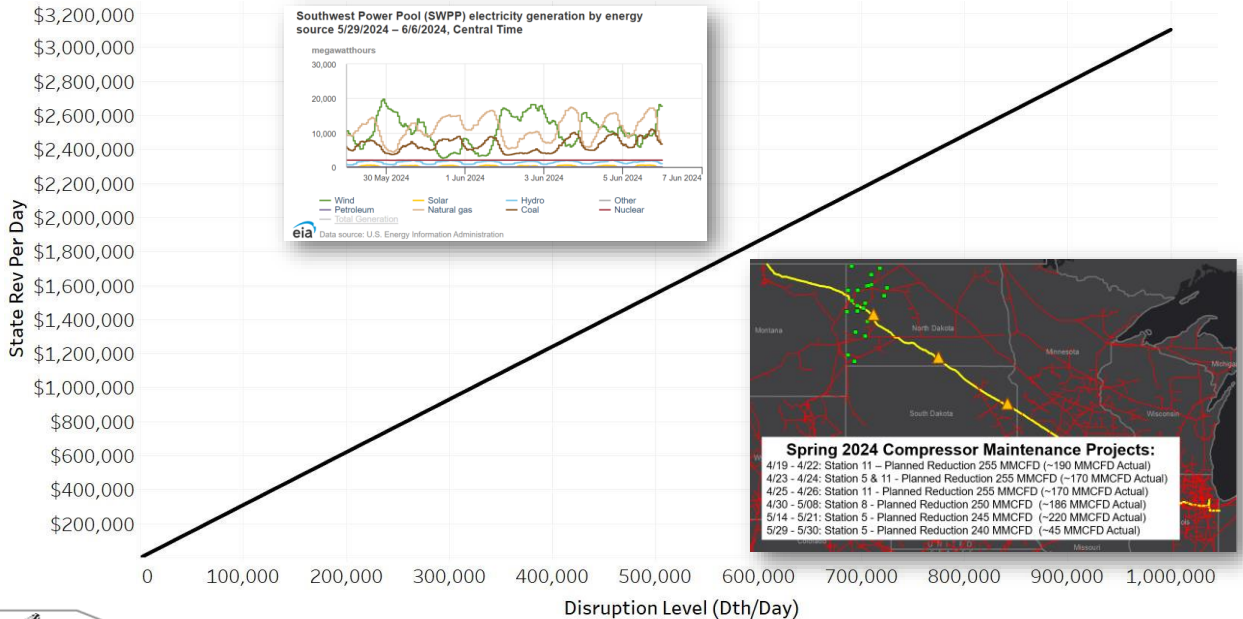


Regional gas storage could provide a balancing solution for intermittent generation, but who pays for the required expansion?

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## Gas Disruptions Could Be Costly Without Alternatives



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## Options Beyond 2026: The 5 “C’s”

### Construction (Interstate)

- Long-haul Pipe to New or Expanded Markets

### Compete

- Price Canadian Volumes to Flow Elsewhere

### Compression

- Increase Capacity on Existing Interstate Systems

### Consumption

- Intra Region Gas Demand Expansion

### Contraction

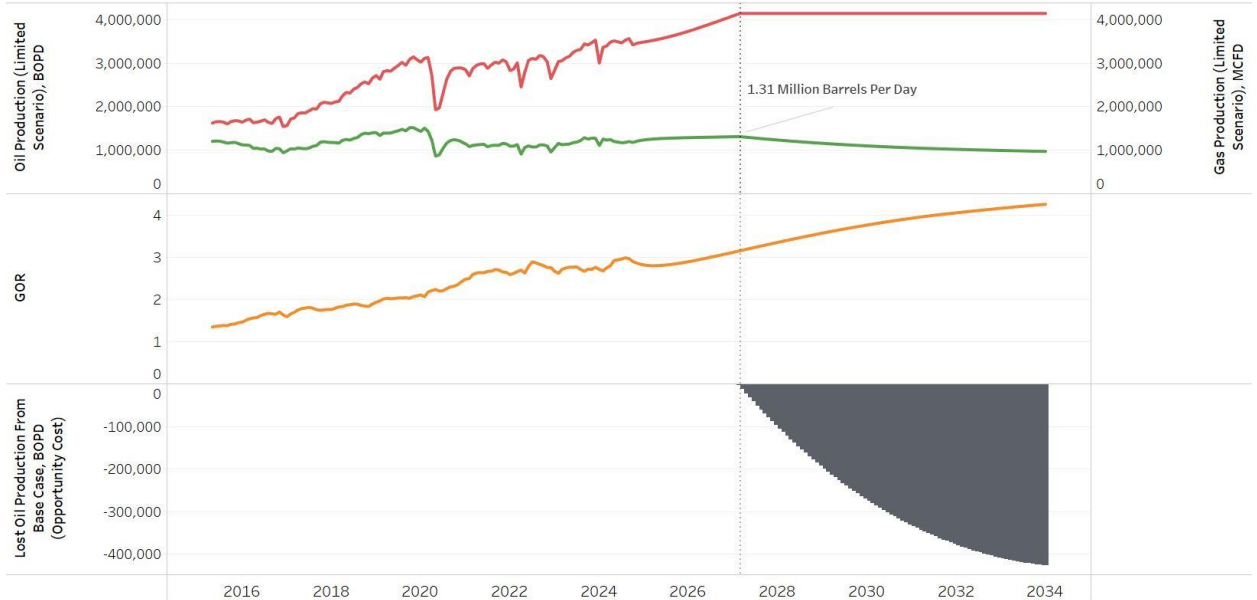
- Reduce E&P Activity to Meet Limited Gas Options



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## Gas Limitations Could Force Oil Production Down As GOR Rises



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Assumes NB Canadian Flows at 271,000 MMBTU & 1,100 BTU (Dec-2024) 35

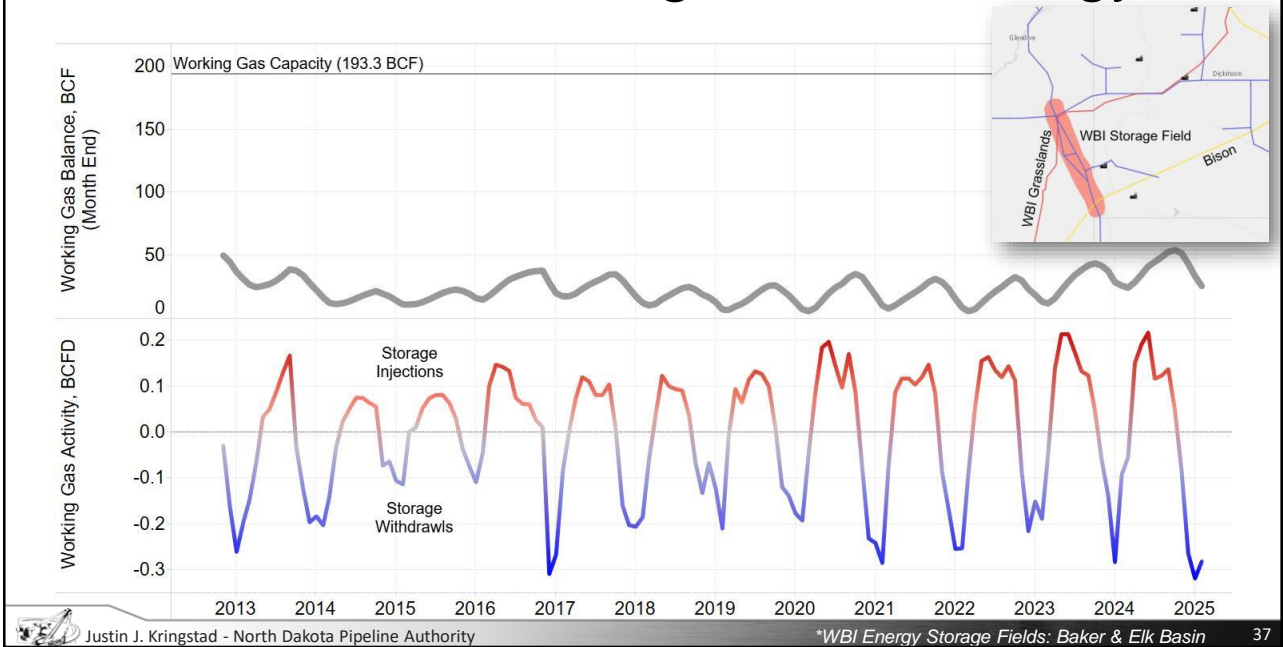
## Regional Natural Gas Storage



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# Residue Gas Storage – WBI Energy\*



## Contact Information

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North Dakota Pipeline Authority

600 E. Boulevard Ave. Dept. 405  
Bismarck, ND 58505-0840

Phone: (701)220-6227  
E-mail: [jjkringstad@ndpipelines.com](mailto:jjkringstad@ndpipelines.com)



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Minutes of a Meeting of the Industrial Commission of North Dakota

Held on February 19<sup>th</sup>, 2025, beginning at 11:30 a.m.

Governor's Conference Room – State Capitol

Present: Governor Kelly Armstrong, Chairman

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known.

Agency representatives joined various portions of the meeting.

Governor Armstrong called the meeting of the Industrial Commission to order at approximately 11:35 a.m.

Ms. Karen Tyler took roll call, and Governor Armstrong, Commissioner Goehring, and Attorney General Wrigley were present.

Governor Armstrong invited the room to stand and join the Commission in saying the Pledge of Allegiance.

**NORTH DAKOTA MILL AND ELEVATOR**

Mr. Vance Taylor presented the Q2 FY 2025 Operating Results.

Activities in the 2<sup>nd</sup> Quarter of the year resulted in a profit of \$5,634,934 compared to \$4,293,278 last year. For the six months ending December, there was a profit of \$10,758,537 compared to \$9,840,127 last year. Sales for the 2<sup>nd</sup> Quarter were \$124,191,771 compared to \$130,874,725 last year. Operating costs for the 2<sup>nd</sup> Quarter were \$13,815,722 compared to \$11,866,253 last year.

Ms. Cathy Dub presented for consideration of approval a Capital Project.

**Roll Chill Grinding, Corrugating and Roll Journal Machine**

**\$800,000**

This project includes the purchase and installation of a CNC roll grinding machine and a CNC roll corrugating machine. This will increase the ability to recondition the roll chills that are taken out of service during normal operation and will lessen their reliance on outside vendors supplying this service, saving on roll machining costs of approximately \$200,000 per year. The fabrication of the roll journals is a new undertaking for the Mill to complete in-house, as they do not currently have this capability.

Purchasing and installing this new equipment will allow the Mill to have the capabilities to complete all their own roll reconditioning in-house, without needing to rely on a third party to complete this work for them.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the proposed North Dakota Mill and Elevator capital project to purchase and install a CNC roll grinding machine and a CND roll corrugating machine at an**

**estimated cost of \$800,000, in order to move roll re-conditioning in-house and reduce down-time and expense associated with offsite services.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Taylor gave a legislative update. The following bills are being tracked: SB 2014

Under other business, Mr. Taylor mentioned that they will be holding a meeting to discuss Union Contracts in the near future.

**It was moved by Attorney General Wrigley that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-19.1, and 44-04-19.2, the Industrial Commission enter executive session for the purpose of Bank of North Dakota confidential business and the discussion of exempt attorney work product.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

**The Commission is meeting in executive session regarding Bank of North Dakota confidential business pursuant to N.D.C.C. 6-09-35 and 44-04-19.2 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, Commission staff, and BND staff will participate in this executive session.**

**Following the Bank of North Dakota Executive Session, the Commission is meeting in executive session to pursuant to 44-04-19.1 and 44-04-19.2 to discuss the item on the agenda related to exempt attorney work product and an open records request. Only Commission members, their staff, and Commission staff will participate in this executive session.**

**Any formal action taken by the Commission will occur after it reconvenes in open session.**

**Governor Armstrong reminded the Commission members and those present in the executive session that the discussion must be limited to the announced purposes. The executive session is anticipated to last approximately one hour and will begin at 11:53 a.m.**

**Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-19.1, and 44-04-19.2.**

---

## **BANK OF NORTH DAKOTA EXECUTIVE SESSION**

### **Industrial Commission Members Present**

Governor Kelly Armstrong

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

### **BND Members Present**

Don Morgan

Kelvin Hullet

Kirby Evanger

Others in attendance

Jacy Schafer	Governor's Office
Chris Joseph	Governor's Office
Karen Tyler	Industrial Commission Office
Jordan Kannianen	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

**CONSIDERATION OF WAIVER OF THE EXEMPTION FOR ATTORNEY WORK PRODUCT THAT IS  
EXEMPT UNDER N.D.C.C. SECTION 44-04-19.1**

**Industrial Commission Members Present**

Governor Kelly Armstrong  
Attorney General Drew H. Wrigley  
Agriculture Commissioner Doug Goehring

Others in attendance

Matt Sagsveen	Attorney General's Office
Courtney Titus	Attorney General's Office
Jacy Schafer	Governor's Office
Chris Joseph	Governor's Office
Karen Tyler	Industrial Commission Office
Jordan Kannianen	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

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The executive session ended at approximately 1:10 p.m. and the Commission reconvened in open session.

Between the Bank of North Dakota executive session and the Attorney Work executive session, the Commission took a brief recess from 12:22pm to 12:57pm.

During the Bank of North Dakota executive session, the Commission discussed those items listed on the agenda under Bank of North Dakota confidential business. No formal actions were taken.

During the second executive session, the Commission provided direction on the exemption for certain attorney work product that is exempt pursuant to 44-04-19.1. No formal actions were taken.

**BANK OF NORTH DAKOTA**

Mr. Don Morgan presented for consideration of approval a BND Officer Designation.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the request of BND President Don Morgan, made pursuant to**

**NDCC 6-09-02.2 and BND operating policy, to appoint Mr. Rick Geloff, CPA, as an officer of the Bank of North Dakota.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Morgan and Mr. Kelvin Hullet gave a legislative update. The categories of bills that BND is tracking varies from Fintech/Crypto, Revolving Loan Funds, Carbon Capture, Energy, Agriculture, Pipelines, and Property Tax.

Mr. Morgan presented the Non-Confidential Committee and Advisory Board Minutes for December 18<sup>th</sup> and 19<sup>th</sup>, 2024 meetings for the Commission member's review.

#### **NORTH DAKOTA PUBLIC FINANCE AUTHORITY**

Ms. DeAnn Ament presented for consideration of approval the following Loans:

- i. **City of Jamestown – Clean Water - \$2,790,000** – The purpose of this loan is to close the existing Cell 4A and open a new Cell 4B in the northcentral portion of the approved project area. PFAS would continue to be trucked from the leachate pond to the lagoon. The requested loan term is 20 years, and the City will issue revenue bonds payable with sanitation and solid waste fund revenues. The average annual payment will be \$102,198.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Clean Water State Revolving Fund Loan request of \$2,790,000 for the City of Jamestown.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

A RESOLUTION WAS MADE

#### **RESOLUTION APPROVING LOAN FROM CLEAN WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Jamestown (the "Political Subdivision") has requested a loan in the amount of \$2,790,000 from the Program to close the existing municipal solid waste landfill Cell 4A and open a new Cell 4B in the north central portion of the approved project area; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: February 19, 2025

- ii. **City of New Town – Clean Water - \$5,114,000** – The purpose of this loan is to complete Phase 2 of replacement of water mains, sanitary sewer mains, and storm water infrastructure. The requested loan term is 30 years, and the City will issue revenue bonds payable with city sales tax fund revenues. The average annual payment will be \$214,147.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Clean Water State Revolving Fund Loan request of \$5,114,000 for the City of New Town.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

A RESOLUTION WAS MADE

RESOLUTION APPROVING  
LOAN FROM CLEAN WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of New Town (the "Political Subdivision") has requested a loan in the amount of \$5,114,000 from the Program for phase two replacement of water mains, sanitary sewer mains and storm water infrastructure; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: February 19, 2025

- iii. **City of New Town – Drinking Water - \$4,009,000** – The purpose of this loan is to complete Phase 2 of replacement of water mains, sanitary sewer mains, and storm water infrastructure. The requested loan term is 30 years, and the City will issue revenue bonds payable with city sales tax fund revenues. The average annual payment will be \$184,724.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Drinking Water State Revolving Fund Loan request of \$4,009,000 for the City of New Town.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

A RESOLUTION WAS MADE

RESOLUTION APPROVING  
LOAN FROM DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the “Program”) pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the “Indenture”), between the North Dakota Public Finance Authority (the “NDPFA”) and the Bank of North Dakota (the “Trustee”); and

WHEREAS, the City of New Town (the “Political Subdivision”) has requested a loan in the amount of \$4,009,000 from the Program for Phase 2 replacement of water mains, sanitary sewer mains and storm water infrastructure; and

WHEREAS, NDPFA’s Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: February 19, 2025

Ms. Ament presented a Memo of State Revolving Fund Loans Approved by the PFA Advisory Committee pursuant to policy:

- i. City of Turtle Lake – Clean Water - \$452,000 – The purpose of this loan is to rehabilitate the manholes to eliminate infiltration and inflow, and to install three blocks of new sanitary sewer main. This will ensure services are properly connected to the main line, making maintenance easier and more efficient. The requested loan term is 30 years, and the City will issue revenue bonds payable with sewer user fees. The average annual payment will be \$18,931.

Ms. Ament gave a legislative update. The following bills are being tracked: SB 2014, HB 1537, HB 1577, HB 1016, HB 1176, SB 2151, and SB 2372.

#### **NORTH DAKOTA BUILDING AUTHORITY**

Ms. Ament presented for consideration of approval the appointment of Joe Morrisette, OMB Director, as a new Authorized Officer for NDBA.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission name Joe Morrisette, Director of the Office of Management and Budget, as an Authorized Officer of the North Dakota Building Authority, and rename DeAnn Ament, Executive Director of the Public Finance Authority and Karen Tyler, Executive Director of the Industrial Commission as Authorized Officers of the North Dakota Building Authority.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **INDUSTRIAL COMMISSION OF NORTH DAKOTA DESIGNATION OF AUTHORIZED OFFICERS**

WHEREAS, the Industrial Commission of North Dakota, acting as the North Dakota Building Authority (the Commission), pursuant to and in accordance with N.D.C.C. Chapter 54-17.2, has issued evidences of indebtedness, and

WHEREAS, the Commission has previously named Susan Sisk, Director of the Office of Management and Budget, DeAnn Ament, Executive Director of the Public Finance Authority and Karen Tyler, Industrial Commission Executive Director as its Authorized Officers: and

WHEREAS, Joe Morrisette was named Director of the Office of Management and Budget on December 15, 2025;

THEREFORE, BE IT RESOLVED:

1. The Commission names Joe Morrisette and renames DeAnn Ament and Karen Tyler as its Authorized Officers to do all things necessary and convenient jointly or severally to carry out and perform the obligations of the Commission as required under any outstanding North Dakota Building Authority documents and as set out in N.D.C.C. Chapter 54-17.2 effective February 19, 2025.

Dated this 19th day of February, 2025.

## **DEPARTMENT OF MINERAL RESOURCES**

Mr. Ed Murphy presented a Geological Survey Quarterly Report.

### Wilson M. Laird Core and Sample Library

During the fourth quarter of 2024, geologists from three oil companies, the Geological Survey, the Energy and Environmental Research Center, as well as graduate students from the University of Saskatchewan and the University of North Dakota studied 16,316 feet of core. A total of 3,679 feet of core was photographed generating 4,328 standard photographs and 10,625 feet of core was photographed with a tripod generating 540 photographs for the subscription site.

### Handheld X-Ray Fluorescence Analyzer

In 2022, a handheld x-ray fluorescence analyzer was purchased with funds from the Williston Basin Petroleum Conference to be used primarily to analyze cores and samples in the core library. To date, the analyzer has been used to detect critical minerals in cores and cuttings from weathered and non-weathered Precambrian rocks in the Red River Valley, to evaluate salt mineralogy in the Opeche Formation, and to examine the clay content and overall mineralogy of the middle Three Forks reservoir to understand the lateral variation in oil charge within the unit.

### The Oil Potential of the Middle Three Forks Formation

The Geological Survey released two studies (Report of Investigation nos. 135 and 136) at the end of December regarding the oil potential of the middle (2nd bench) Three Forks Formation authored by

Tim Nesheim and Ted Starns. A total of 593 oil wells in fifty-one 1,280-acre spacing units were studied in and around McKenzie County. By comparing the production in spacing units with similar geology, completion techniques, etc., they were able to quantify the impact that the addition of middle Three Forks wells, at the proper well spacing, made to the overall oil production of that spacing unit. As a result, they estimated that 600 plus middle Three Forks wells could be drilled within the 275,000-acre development area that they identified with the potential to add up to 400 million barrels of oil that would not otherwise be produced. Their study determined that middle Three Forks co-development added to long-term oil production rather than producing the same amount of oil, but just at a higher rate.

### Phase III Landslide Project

The Geological Survey began a landslide mapping program in 2003 with one geologist mapping landslides when not busy with other projects. In 2018, the program was accelerated when three additional surface geologists were assigned to it along with the addition of the exploration tools of Google Earth and LiDAR. In late 2022, the North Dakota Geological Survey finished the Phase II mapping program, becoming one of the first to map landslides across the entire state at a scale of 1:24,000. Phase III of the landslide mapping program compares two LiDAR coverages (such as the 2008 and 2018 coverages in the Red River Valley) to look for elevation changes characteristic of slope failure. The NDGS anticipates completing Phase III mapping of the oil fields in North Dakota by October of this year.

### Proppant Sand Project

In 2009, the Geological Survey began sampling sandstones in 11 counties across western and central North Dakota. Samples were obtained from 45 localities with the goal of finding a local source of frac sand to be used in oil wells in the Williston Basin. While some of the sandstones approached industry standards, none met industry specifications. In 2018, the oil industry revised their specifications and looked for a finer sand grain. NDGS focused sampling on the major windblown deposits in eastern and central North Dakota, collecting 87 sand samples from 75 locations and generating 28 maps and reports on these deposits. As a result of this work, industry started up five sand pit operations, one in McHenry County (now closed) and four in Mercer County.

### Alumina-Rich Claystones for Ceramic Proppant

Ceramic proppant was an important component of Bakken completions in and around 2010. The primary components of ceramic proppant are bauxite (an aluminum-rich rock) and kaolinite. The Geological Survey initiated a study in 2011 to determine if two alumina-rich claystones in North Dakota could be used to manufacture ceramic proppant. Throughout the 2011 field season into January 2012, 237 claystone samples were collected from 61 sites spread across 10 counties in southwestern and west-central North Dakota. The majority of these rock samples (219) were collected from two, bright-white paleosols (the Bear Den Member of the Golden Valley Formation and the Rhame bed at the top of the Slope Formation). Thirteen additional claystone samples were collected from the Sentinel Butte, Bullion Creek, and Camels Butte Member of the Golden Valley Formation. The alumina concentrations of the Bear Den Member and the Rhame bed ranged from 6-34% in individual samples.

### Critical Minerals Drilling Project

Fifty-three sites (53 pilot holes and 30 core holes) were drilled from September 3 – 20 and October 9 in six counties in western North Dakota. The average hole depth was 133 feet, and the average core length was 32 feet. Coring was concentrated on coals and organic-rich mudstones in the lower half of, or just beneath, two ancient soil horizons that are 1,000 feet apart stratigraphically (the Bear Den Member of the Golden Valley Formation and the Rhame bed at the top of the Slope Formation).

NDGS spent more than 400 hours choosing 75 potential drill sites across 10 western counties. One of the greatest challenges going into the drilling project was the possible difficulty intercepting either the Bear Den Member or the Rhame bed in drillholes. The targeted weathering zone was encountered in 37 of our 53 sites. Of the 16 sites where NDGS did not drill into the targeted zone, nine were the result of glacial erosion having removed the Bear Den Member, two resulted from removal of the paleosols by channel sandstones, and a modeling error caused a miss at five drill sites – although one of these sites contained a thin coal enriched in rare earth elements. The lack of subsurface control in many of these areas made it even more difficult to predict if any lignites would be encountered with the 20 – 30-foot-thick zone being targeted at each drill site. Fortunately, enriched lignites were encountered at 14 of the drill sites.

A handheld x-ray fluorescence (xrf) analyzer was used in the field to determine yttrium concentrations in samples and core to guide the coring program. NDGS work has shown that yttrium typically accounts for 10% of the rare earth element concentrations in North Dakota coals. In the lab, yttrium readings were taken at 5,100 points to determine which core samples should be submitted for critical mineral analysis. Based on those results, 242 core samples were submitted.

Mr. Murphy presented a report on the 2024 Geological Strategic Plan and also presented for consideration of approval the Geological Survey proposed 2025 Strategic Plan.

The 2024 Geological Strategic Plan contained 86 one-year goals, and 76 were completed as planned. In addition to those 76 original projects, they also completed 30 new projects for a total of 106 completed projects.

The 2025 Geological Survey Strategic Plan contains 86 one-year goals and 69 long-term goals. These goals impact Subsurface Assessments, Core and Sample Library, Geothermal Assessments, Lignite Assessments, Geological Mapping, Mineral Resource Mapping, Geologic Hazards Mapping, Paleontological Activities, State Fossil Collection, State Rock and Mineral Collection, Geologic and Palaeontologic Reviews of Infrastructure Projects, Regulatory Activities, Outreach Activities, Survey Web Page, Computerized Geologic Database, and Information Dissemination.

**It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission approve the Department of Mineral Resources Geological Survey 2025 Strategic Plan.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Nathan Anderson gave a legislative update. DMR is currently tracking 54 bills, but the following 17 are of highest priority: SB2014, HB1210, HB1292, HB1295, HB1306, HB1414, HB1429, HB1434, HB1573, SB2285, SB2313, SB2320, SB2322, HB1089, HB1459, HB1483, HB1574.

## **NORTH DAKOTA TRANSMISSION AUTHORITY**

Mr. Claire Vigesaa presented a NDTA Annual Report on the status of Electric Grid in North Dakota and an update on the DOE Transmission and IJJA Grid Resiliency Grant programs.

### Resilience of the Electric Grid

- The ND Transmission shall deliver a written report on the status of the resilience of the electric grid to the legislative council and the industrial commission by Sept 1, 2022, and annually thereafter.
- This report also serves as a section of the North Dakota State Energy Security Plan

### Threats to the Electric Grid

- Extreme Weather Events
- Changing Generation Fuel Mix
- Resource Adequacy (**Public Policy**)
- Supply Chain Interruptions
- Aging Infrastructure
- Physical Attacks
- Cyber Attacks

### RTO Planning

- Reliability
- Congestion Relief – Economic Relief
- Generation Interconnections
- Transmission Service Requests
- New Load Requests

### Challenges

- Unprecedented Demand Growth
- Transmission Planning – Complex at Best
- Energy Policy & Long-term Planning/Investment
- Landowner Fatigue - Siting
- Supply Chain Management

### Recommendations

- Strengthen Resource Adequacy
- Enhance Infrastructure Resilience

- Centralize Supply Chain Management
- Implement Cybersecurity Measures
- Prioritize Maintenance of Aging Infrastructure
- Establish Continuous Resilience Assessment

#### DOE Transmission Grants

- Minnesota Power Allete – HVDC Modernization \$ 50.0 million
- MISO/SPP (Joint Target Interconnection Queue) \$464.0 million
- North Plains Connector (Grid United-MN Power) \$700.0 million
  - TSED Grant Mott Community Center \$ 14.3 million
  - TSED Grant Amidon Fire Hall \$ .7 million
- MDU (Hettinger to Elgin 115kV upgrade) \$ 15.6 million
- Otter Tail Power (System automation) \$ 19.6 million

#### IIJA Grid Resilience Formula Grant

- IIJA NDTA Formula Grant FY22/23\* \$ 7.5 million
- IIJA NDTA Formula Grant FY24\* \$ 3.8 million
- Application submitted for FY25\* \$ 3.6 million
- One more potential app for FY26

\*Plus 15% State Match

- Requesting 15% State Match for FY24/FY25/FY26
- Est \$583,000/yr or \$1,750,000 total

#### Grant Awards FY22/FY23/FY24

- Capital Electric Cooperative \$ 321,930
- Otter Tail Power Company \$4,432,088
- Northern Plains Electric Cooperative \$ 586,000
- McKenzie Electric Cooperative \$2,843,075
- Burke-Divide Electric Cooperative \$ 550,000
- City of Lakota \$1,707,109
- Verendrye Electric Cooperative \$ 314,250
- KEM Electric Cooperative \$ 620,000
- City of Valley City \$1,053,000

Ms. Karen Tyler presented for consideration of approval a Commission Statement of Support for Transmission Development in North Dakota.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission author a statement of support for planned electrical transmission infrastructure projects in the state and after review by Commission member communication directors, directs the Administrative Office to distribute for media publication.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Vigesaa gave a legislative update. The following bills are being tracked: SB 2014, HB 1258

### **LEGAL UPDATE**

- A. Challenges to State Law:
  - i. NW Landowners v. State
- B. Challenges to Federal Rules:
  - i. EPA Mercury and Air Toxics Rule (DC Cir)
  - ii. EPA Carbon Rule (DC Cir)
  - iii. EPA Methane Tax Rule (DC Cir)
  - iv. EPA Methane OOOO Rule (DC Cir)
  - v. EPA PM2.5 Rule (DC Cir)
  - vi. EPA WOTUS Rule (DND)
  - vii. EPA/DOT Vehicle Mandate Rules (DC Cir; CA6)
  - viii. BLM Venting and Flaring Rule (CA8)
  - ix. BLM Conservation Rule (DND)
  - x. CEQ NEPA Phase 2 Rule (DND)
- C. Interventions to Defend Against Federal Actions:
  - i. DAPL Operations (DDC)
- D. Other Federal Actions of Concern:
  - i. BLM Resource Management Plan
- E. Other States' Actions of Concern:
  - i. Minnesota Carbon-Free Power Plan
  - ii. New York Climate Superfund Law
  - iii. State Tort Lawsuits Targeting Fossil Fuel Use

### **OFFICE OF THE INDUSTRIAL COMMISSION**

Ms. Tyler presented for consideration of approval the January 28, 2025, Industrial Commission meeting minutes.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the January 28, 2025, Industrial Commission meeting minutes.**

**On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Jordan Kannianen gave a legislative update. The following bills are being tracked: SB 2014, SB 2143, SB 2159, SB 2170, SB 2188, SB 2256, SB 2285, SB 2302, SB 2321, SB 2323, SB 2335, HB 1025, HB 1027, HB 1258, HB 1278, HB 1442, HB 1459, HB 1483, HB 1539, HB 1554, and HB 1592.

With no further business, Governor Armstrong adjourned the meeting of the Industrial Commission at 2:50 p.m.

North Dakota Industrial Commission

Brenna Jessen, Recording Secretary

Karen Tyler, Executive Director

Jordan Kannianen, Deputy Director