

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on October 22, 2020 beginning at 12:30 p.m.
Ft. Union Room - State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also Present: Some attendees are listed on the attendance sheet available in the Commission files
This meeting was open through a call-in number so not all attendees are known
Members of the Press

Governor Doug Burgum called the Industrial Commission meeting to order at approximately 12:30 p.m. and the Commission took up Mill business.

NORTH DAKOTA MILL (“Mill”)

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of N.D.C.C. § 44-04-18.4 the Industrial Commission proceed into executive session to discuss commercial information including the North Dakota Mill’s marketing strategies and sales plans. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the executive session would be recorded. He reminded the Commission members and those present to limit their discussion to the announced topic during the executive session, which was anticipated to last 15 minutes. It was noted that upon conclusion of the executive session the Commission would reconvene in open session. Commission members, their staff, and employees of the North Dakota Mill were instructed to participate using the directions they had been given. The executive session began at 12:35 p.m.

NORTH DAKOTA MILL EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Leslie Bakken Oliver Governor’s Office
Reice Haase Governor’s Office
John Schneider Department of Agriculture
Vance Taylor State Mill (Phone)
Cathy Dub State Mill (Phone)
Karlene Fine Industrial Commission Office
Andrea Pfennig Industrial Commission Office

The North Dakota Mill executive session ended at 1:01 p.m. and the public was invited to rejoin the meeting.

Mr. Vance Taylor, North Dakota Mill President and CEO, presented the First Quarter Report as follows:

*North Dakota Mill
Review of Operations
1st Qtr. Ended 9/30/20*

SUMMARY

The Mill experienced a profit of \$3,282,775 in the first quarter compared to a profit of \$3,122,191 last year.

	<i>Quarter</i>	
	<i>9/20</i>	<i>9/19</i>
Profits	\$ 3,282,775	\$ 3,122,191
Sales	80,226,268	76,975,187
Cwt. Shipped:		
Spring	3,605,953	3,481,316
% to Total	92.5%	93.4%
Durum	290,615	244,653
	<u>3,896,568</u>	<u>3,725,969</u>
Bulk Shipments	3,211,675	3,055,988
% to Total	82.4%	82.0%
Bag Shipments	645,687	635,308
% to Total	16.6%	17.1%
Tote Shipments	39,206	34,673
% to Total	1.0%	0.9%
Family Flour Shipments	163,039	101,026
% to Total	4.2%	2.7%
Organic Flour Shipments	40,673	28,026
% to Total	1.0%	0.8%
Wheat/Durum Bought:		
Spring/Winter	7,824,775	7,449,458
Durum	490,977	496,939
Total	<u>8,315,752</u>	<u>7,946,397</u>

Sales

Sales for the first quarter were \$80,226,268 compared to \$76,975,187 last year, an increase of 4.2%. The price of grain settled with suppliers at the Mill for the first quarter of the year was \$.06 per bushel lower than last year. Shipments of 3,896,568 cwts. in the first quarter are 170,599 cwts. above last year. Bag shipments of 645,687 cwts. are 1.6% above last year. Family flour shipments reached 163,039 cwts., an increase from last year's first quarter shipments of 101,026 cwts. Organic flour shipments were 40,673 cwts., an increase of 12,647 cwts.

Operating Costs

Operating costs for the first quarter were \$9,314,610 compared to \$8,778,444 last year, an increase of 6.1%. Total flour production for the first quarter was 5.3% above last year's first quarter. Operating cost per cwt. of production was \$2.40 per cwt., compared to \$2.38 last year, an increase of .08%.

Profits

The Mill had profits of \$3,282,775 in the first quarter compared to \$3,122,191 last year. This is an increase of 5.1%. Gross margins as a percent of gross sales for the quarter was 16.1%.

Risk Management Position

The table below shows our hedge ratio by futures month going forward. As the table indicates the Mill continues to be closely matched in the overall net position with some slight variations in monthly positions.

Position Report	
30-Sep-20	
Period	Hedge Ratio
Dec-20	1.1
Mar-21	1.2
May-21	1.2
Jul-21	1.1
Net Position	1.2

Governor Burgum commended the Mill team for good results in a difficult quarter.

Mr. Taylor presented an amendment to the FY 2021 Capital Budget for consideration, noting that an opportunity exists to increase the capacity of the Mill by 6,000 cwt. per day of durum products and by 4,000 cwt. per day of spring wheat flour with the purchase and installation of equipment using the latest technology into the existing G-Mill building. The additional milling capacity is necessary to meet the increasing demand of current customers and to facilitate continued growth of the business. The proposal would also convert the D-Mill from durum to spring wheat, adding an additional 1,000 cwt capacity for spring wheat. This will result in an increase of total Mill capacity of 11,000 cwt. This project will create additional demand for over 8,300,000 bushels of North Dakota spring wheat and durum. Details of the project are as follows:

- Project Cost: \$ 23,500,000
- Project Completion: July 1, 2021
- Payback in years: 5.3
- ROI: 18.69%

Governor Burgum complimented prior Commission members on their forethought of building the G Mill with extra capacity.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission amend the North Dakota Mill FY 2021 Capital Budget as follows:

- **Increase by \$23,500,000 for the purchase and installation of equipment to increase the Mill's capacity by 11,000 cwt. (increase of 3,000 cwt. of durum products and 8,000 cwt. of spring wheat flour)**

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA (“BND” or “Bank”)

Mr. Eric Hardmeyer, BND President and CEO, introduced the Bank of North Dakota Advisory Board members as follows: Mr. Gary Petersen, Chairman, Mr. Karl Bollingberg, Vice Chair, Ms. Pat Clement, Mr. Dennis Johnson, Mr. Pat Mahar, Ms. Christie Obenauer, and Ms. Jean Voorhees.

Governor Burgum welcomed the Bank of North Dakota Advisory Board (Board) to the joint meeting of the Commission and the Board and thanked the Board members for their dedication to the Bank of North Dakota and the State of North Dakota. The Board's work every month in meeting with the Bank's leadership team and providing advice on loans, policies, programs, management issues and the overall work of the Bank is greatly appreciated.

Governor Burgum invited Mr. Petersen, Chairman of the Board, to proceed with the items that the Board wished to discuss with the Commission.

Mr. Petersen thanked the Commission for this discussion opportunity and noted that the Board feels its role and responsibility is to bring items of concern and risk.

The Board identified the following areas of concern:

- Management succession
 - Three of BND's current officers will be retiring within the next 1-2 years. The succession planning process has identified successors who could likely take on a higher-level role. BND continues to experience increased competition for talent in the financial institution market and the risk of losing key successors to these outside entities is high.
 - What role can the Board play in assuring that succession planning is done well?
- Fair and equitable compensation for officers at BND
 - When compared to the proxy and financial industry survey data information, BND officer salaries fall significantly below a very conservative benchmark. This is also based on Board members' own professional experience as well as compensation surveys. Compression issues have also arisen between middle and senior management.
- Governance of BND
 - A review of roles and responsibilities of the Board would improve its efficiency and effectiveness.
 - Currently, the Board serves as the Audit Committee. This could be carried forward to more robust roles in areas of enterprise risk management, compensation, and finance.

Mr. Petersen expressed a desire for a conversation about how the Board can provide additional value to the Commission moving forward.

Mr. Bollingberg emphasized that the Board takes their role very seriously and is proud of what BND has accomplished. To continue advancing the Bank's high level of performance, BND will need talented people. There will be leadership change soon, and the Board is interested in knowing how the Board can help the Commission make a smooth transition that continues to keep the BND in its strong position.

Governor Burgum inquired where the Board sees opportunities to provide additional value regarding governance, highlighting risk management and mission driven projects/funds, the Bank's core banking business and the balance sheet and the off-balance sheet programs governance.

Mr. Petersen responded that the Bank's enterprise risk management is very robust. All areas of the Bank are reviewed, and this continues to be refined. One option that could be examined is adding a committee structure to the Board. Not all Board members would need to take a deep dive, but there could be an enterprise risk management committee that meets more regularly with the Bank's leadership team and delves more deeply into this area.

Mr. Johnson suggested modeling the governance structure after the public company model in which the Commission would take a role like that of stockholder where they would elect or appoint directors to a 1-

year term. The Board would become the main governance entity and could organize itself into committees such as audit, finance, etc. thereby sharing the workload by delegating responsibilities.

A question was raised as to whether the Board is considering this approach to the State's balance sheet as a whole or focusing on BND. Mr. Petersen indicated that the Board is focusing on the Bank. Identifying the best method to engage Board members with the Commission and have open dialogue.

Mr. Bollingberg stated that having a more comprehensive view would be helpful. However, the requirements of open meetings make it difficult to have those types of strategic discussions about the Bank and then how it would impact other state funds.

Commissioner Goehring expressed appreciation of the concepts presented and open dialogue. He commended the Board for their service, commitment and loyalty to the Bank. The Board members' expertise is a valuable resource for the Commission and Bank leadership. He agreed that it may be difficult to recruit/retain leadership because the State's benefit package looks entirely different from benefit packages in the private sector. A question was raised regarding whether the Board would be able to fulfill those duties if a different structure were utilized noting that Board members are not currently compensated.

Mr. Mahar emphasized that it is difficult to find qualified personnel, noting that there is tremendous competition for quality financial and banking staff in the region.

Mr. Petersen indicated that this conversation is in its infancy and requested guidance if this is something that the Commission wishes the Board to explore.

Attorney General Stenehjem also expressed appreciation for the work of the Board, noting that the Commission has increased the responsibilities of the Board over the years. That increased responsibility has been done because of the Commission's awareness of the Board members' expertise. He agreed that compensation can be an issue, noting that many agencies, including his own, have the same problem and the economic situation doesn't help. The Commission has tried to address this at the Bank, but it may need to be revisited. A specific measure that should be investigated further is keeping the Bank strategic planning confidential. There is current precedent since the Mill and Lignite Research Council can keep that confidential. Legislation would be required and this may be something that should be looked at now.

Mr. Bollingberg stated that while the easiest thing would be to do nothing, that may not be in the best interest of the Bank long term. The Board has a passion for both the Bank and the State and is willing to put in the time to get the Board and the Bank functioning at the highest level possible.

Ms. Obenauer echoed that the Board is committed and passionate. She indicated that there's never been a more profound time of change in the banking industry than right now. To that end, the role that BND plays is incredible and the innovative programs it offers are especially beneficial to community banks. It is critical to have the best of the best leading BND as it responds to the evolution of the banking community. The evolution is not slow and BND is great at pivoting to assist their local partner banks.

Ms. Clement stated that regarding governance, structuring like a corporate board would allow the Board to be more effective and efficient allowing for a deeper dive into topics. She stated that an incentive program can be a rewarding way to compensate employees. She would like BND to have the opportunity to put together an incentivization plan. She commended the Bank employees for their work—they are very talented.

Ms. Voorhees noted that as a new member, getting accustomed to the issues the Board addresses has been a lot of content to take in. A committee structure may help address this.

Governor Burgum summarized the key takeaways from the conversation, including the following:

- BND has great leadership that has produced excellent results. Losing three leaders could jeopardize the Bank’s performance.
- Compensation is an issue and profit sharing may be an option. This has worked for the Mill and there is a precedent. There may be openness to this option.

Governor Burgum emphasized that compensation and compression is not just an issue for the Bank. NDIT supports BND on cybersecurity. We’ve been able to recruit IT experts that are at a point in their careers where they want to do things to make a difference in the world, and not just work for a paycheck. That type of commitment can be found in other state agencies. In comparison the Bank’s compensation is closest to market rates.

Regarding governance, it was noted that North Dakota Century Code states the Commission defines duties of the Board, so there may be some flexibility for modifying the duties and committee structure of the Board. However, moving the Commission to a stockholder position would likely not be in alignment with the law.

Attorney General Stenehjem indicated that if the Board feels the open meeting law needs to be amended his office would be willing to work on draft legislation regarding the ability to keep Bank marketing plans confidential.

In response to a question, Attorney General Stenehjem noted that the Commission used to meet regularly with the Board. The discussion today has been beneficial. The consensus of the Commission was that when they can meet face to face, a separate meeting with the Board should be scheduled so that sufficient time is given to consult with the Board. Ms. Fine will look at scheduling this meeting.

Governor Burgum thanked the Board again for their efforts. BND’s relationship with local bankers and local bankers’ relationship with their communities and businesses makes a difference which was very evident in disbursing CARES/COVID funding this past year.

The Board members left the meeting at this time.

Mr. Hardmeyer presented a draft 2021 Holiday Schedule for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following Bank of North Dakota 2021 Holiday Schedule:

**BANK OF NORTH DAKOTA
2021 HOLIDAY SCHEDULE**

The 2021 holidays will be observed by the Bank of North Dakota and the Federal Reserve Bank of Minneapolis and its Helena Branch on the following dates:

New Year’s Day	Friday, January 1
Martin Luther King Jr. Day	Monday, January 18
Presidents Day	Monday, February 15
Memorial Day	Monday, May 31
Independence Day	Monday, July 5*

Labor Day	Monday, September 6
Columbus Day	Monday, October 11
Veterans Day	Thursday, November 11
Thanksgiving Day	Thursday, November 25
Christmas Day	Saturday, December 25**

*Actual holiday is Sunday, July 4th

**BND will be open Friday, December 24th. We will have a skeleton crew. Employees who work Friday can choose to take another day off.

Note: According to NDCC 1-03-01.1 state offices close at noon on Christmas Eve Day when it falls on a Monday-Thursaday.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer, Mr. Tim Porter, Mr. Todd Steinwand and Mr. Kirby Evanger presented the third quarter Performance Highlights.

Net income is \$111.3 million, \$5.7 million under budget. Net interest income is \$3.6 million under budget. Lower interest rates created compression. At the start of the year, \$400,000 per month was budgeted for provision for credit losses. It was increased to \$1 million per month in March at the start of the pandemic and then increased to \$2 million a month in July. If continued at the current rate, roughly \$12 million more will have been placed in the provision for credit losses at the end of the year than what had originally been anticipated for the year.

There has been tremendous volume regarding loan originations, both on and off the balance sheet. Ag loans were double, with the Farm Disaster Program driving volume. Residential mortgages were strong due to Covid impacts in the secondary market. SELF and other administered loans programs also increased in volume. The YTD numbers are already above a normal year in terms of number and volume.

The Consolidated Loan Portfolio is up \$215 million for the year, with the commercial portfolio up \$142 million, the farm portfolio up \$127 million, and the student loan portfolio up \$8 million.

Regarding credit quality, there is currently an allowance of \$106 million on the portfolio, which is 2.24% and the North Dakota average is 1.29%. The percentage of non-guaranteed loans is 3.42%. Because BND is mission based, a higher allowance is needed and currently, 8% of the allowance is unallocated. Nonperforming loans have increased. Adversely classified loans have decreased, but are still higher than the North Dakota average.

Total portfolio delinquencies were 2.5%. Commercial delinquencies were 1.37%, of which .74% were delinquent over 90 days. This is higher than the North Dakota average of 1.07%. BND has provided payment modifications to 243 borrowers totaling \$468 million as a response to the economic impact of the pandemic. Residential delinquencies were 10.27% of which 6.5% were delinquent over 90 days. The majority are FHA loans and 99.6% are federally guaranteed loans. The six-month deferral of student loans is over, and the delinquent rate may rise in the coming months as collection resumes.

Despite the recent economic tumult, contributions into the College Save program have remained strong, keeping pace with prior years. North Dakota residents have achieved ~\$211 million in college savings with over 30,000 accounts.

Mr. Hardmeyer presented the Bank of North Dakota Advisory Board August 20, 2020 nonconfidential meeting minutes.

PUBLIC FINANCE AUTHORITY (“PFA”)

Ms. DeAnn Ament, PFA Executive Director, presented the following Drinking Water State Revolving Loan Fund (DWSRF) loan application for consideration.

City of Beach – \$1,575,000

The project will improve the water distribution system and water quality in the southeast part of the City with the replacement of aging service lines.

The requested term is 30 years. The City will issue \$1,575,000 improvement bonds payable with special assessments. After loan forgiveness of \$1,144,000, the net loan will be \$431,000. The average net annual payment will be \$18,140. 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 has 471 residential connections and 118 commercial connections. Each connection pays a monthly base rate of \$13. The City anticipates raising the monthly user base rate by \$11 to \$24 over the next four years. When fully implemented, the rate increases will annually generate \$77,748 which should be enough to cover all operating expenses.

With \$1,658,292 of outstanding improvement bonds (including this funding request) and an estimated population of 1,019 the improvement bond debt is \$1,578 per person. Currently, there are approximately 59 parcels to be assessed for the project. The average annual assessment per parcel will be approximately \$307.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:

**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 Beach (the “Political Subdivision”) has requested a loan in the amount of \$1,575,000 from the Program to expand capacity to new and existing water service areas, and design for expansion of the water treatment facility; 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.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament reported on the following loans approved by the Public Finance Authority Advisory Committee.

City of Beulah – \$165,000 increase, \$510,000 total

This Clean Water State Revolving Fund (CWSRF) loan is a \$165,000 increase to the previously awarded \$345,000 loan. The project will remove, store, bag, and dispose of lime sludge that has built up in the wastewater pond system. The requested loan term is 30 years. The City will issue revenue bonds payable with sewer user fees.

City of Aneta – \$400,000

This DWSRF loan will provide \$400,000 towards a \$783,000 project. CDBG will provide a \$383,000 grant. The project will replace three blocks of water main that need immediate replacement. The requested loan term is 30 years. The City will issue revenue bonds payable with water user fees.

NORTH DAKOTA BUILDING AUTHORITY (“Authority”)

Ms. Ament introduced Ms. Mindy Piatz, Brady Martz, to report on the North Dakota Building Authority June 30, 2020 independent audit.

Ms. Piatz reported that there was an unmodified, clean opinion. No deficiencies were identified regarding internal controls. There were no issues in completing the audit. Overall, it is a clean audit.

Ms. Ament reported on the North Dakota Building Authority 2020 Series A Bond Sale. The Authority competitively sold the \$88,585,000 Facilities Improvement Series 2020A Bonds on October 15, 2020. The Bonds were issued to finance the acquisition, improving, equipping, or construction of certain facilities for the State Board of the Higher Education as provided in House Bill No. 1003 and Senate Bill No. 2297 enacted by the Sixty-sixth Legislative Assembly. Bond proceeds will also be used to provide funds to capitalize interest on the Bonds and to pay costs of issuance. The Authority received five bids. The projects locked in an interest rate of 2.33% and the term is 20 years.

Ms. Ament noted that the Ag Products Research project was not able to raise the required match and so were not included in the bond issue.

The State's ratings were reaffirmed: "Aa1" from Moody's and "AA+" from S&P Global Ratings. Moody's Investors Services, Inc. affirmed the Authority's outstanding "Aa2" credit rating and S&P Global Ratings also affirmed the Series 2020A Bonds "AA" credit rating prior to the receipt of bids.

HOUSING FINANCE AGENCY ("HFA" or "Agency")

Mr. Dave Flohr, HFA Executive Director, presented a resolution authorizing the issuance of Multifamily Revenue Bonds not to exceed \$7 million for consideration. Fargo Housing and Redevelopment Authority (FHRA), a North Dakota Housing Authority, is proposing the new construction of 84 units of senior housing to be developed as a twin 4 percent/9 percent transaction. The 4 percent transaction, known as Fargo Elliott Place Four, for which tax-exempt bonds will be issued, will consist of 52 units. This project is one aspect of the decommissioning of the Lashkowitz High Rise. Onsite supportive services will be provided 24/7 by Tami's Angels and Valley Senior Services.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the issuance of Multifamily Revenue Obligations (Fargo Elliott Place) in an amount not to exceed \$7,000,000 and approve the following resolution:

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY REVENUE OBLIGATIONS
(ELLIOTT PLACE)**

A RESOLUTION AUTHORIZING A BORROWING, AND REPAYMENT THEREOF, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,000,000; APPROVING A FUNDING LOAN AGREEMENT, A PROJECT LOAN AGREEMENT; AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Industrial Commission of North Dakota (the "Commission") acting in its capacity as the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent mortgage loans for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to borrow on a non-recourse limited obligation basis from PNC Bank, National Association (or such other financial institution as is approved by the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency) (the "Lender") an aggregate principal amount not to exceed \$7,000,000, the proceeds of which will be used to finance a mortgage loan for the acquisition, construction and equipping of the Elliott Place Four, a 52-unit affordable housing development located in Fargo, North Dakota (the "Project"); and

WHEREAS, the borrowing by the Agency will be pursuant to a Funding Loan Agreement among the Agency, the Lender and Wilmington Trust, National Association, as fiscal agent (the "Fiscal Agent") (the "Funding Loan Agreement"), and the agreement to repay such borrowings shall be reflected in non-recourse revenue debt obligations (collectively, the "Obligations") to be issued to the Lender pursuant thereto, which Funding Loan Agreement and Obligations will be in substantially the forms attached hereto as Attachment A, subject to the terms, conditions and limitations established herein and in the Funding Loan Agreement; and

WHEREAS, the proceeds of the borrowing will be used to finance a loan (the "Loan") to Fargo Elliott Place Four LLLP, a North Dakota limited liability limited partnership, or a similar affiliate of Fargo Housing and Redevelopment Authority ("FHRA"), a North Dakota Housing Authority, (the "Borrower"), pursuant to

a Project Loan Agreement, by and among the Agency, the Borrower and the Lender (the “Project Loan Agreement”) in substantially the form attached hereto as Attachment B; and

WHEREAS, the interest on the Obligations is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the “Code”), and to ensure that the Obligations maintain their tax exempt status, the Borrower will enter into a Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), which will be in substantially the form attached hereto as Attachment C.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Findings. The Commission hereby finds and determines that:

- (a.) the Project financed through the issuance of the Obligations constitutes a “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and
- (b.) the Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of the Project; and
- (c.) that the Project will be of public use and will provide a public benefit.

Section 2. Approval of Funding Loan Agreement. The Funding Loan Agreement is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the Funding Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Funding Loan Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 3. Authorization of Obligations. The issuance, execution and delivery of the Obligations to the Lender is hereby authorized and approved. The final principal amount and terms of the Obligations shall be determined by any Authorized Officer, subject to the following conditions:

- (a.) The Obligations shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from Loan payments and any other moneys pledged under the Funding Loan Agreement as required by the Project Loan Agreement.
- (b.) The Obligations shall: mature no later than 50 years from their date of issuance, each bear interest at a fixed rate no greater than 6.00%, be in an aggregate principal amount not to exceed \$7,000,000 and have the other terms and provisions (including provisions with respect to prepayment prior to maturity, if any) as described to the Commission and definitively set forth in the Funding Loan Agreement upon execution and delivery as aforesaid in Section 2 hereof.
- (c.) The Obligations shall be executed and delivered substantially in the respective forms set forth in the Funding Loan Agreement, with such additions, omissions and changes as are required or permitted by the Funding Loan Agreement.
- (d.) The Obligations shall be executed in the name of the Commission by the manual or facsimile signature of any of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Such Obligations shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Fiscal Agent.

Section 4. Approval of Project Loan Agreement. The Project Loan Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Project Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Project Loan Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 5. Approval of Regulatory Agreement. The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person,

such approval to be evidenced conclusively by such execution of the Regulatory Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 6. Ratification of Prior Actions. All action previously taken by any Authorized Officer and any officers, employees, agents, members or staff of the Agency, acting alone or acting with others, within the authority granted herein, with respect to the Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement, the Obligations and a public hearing with respect to the issuance of the Obligations is hereby approved, confirmed and ratified.

Section 7. Execution of Tax Documents. Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Obligations, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

Section 8. Additional Actions Authorized. Any Authorized Officer and any other officer, employee, agent, members or staff of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Funding Loan Agreement, the Project Loan Agreement, or the Regulatory Agreement and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

Section 9. Authorization of Authorized Officers. Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Obligations which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

Section 10. Effective Date. This Resolution shall become effective immediately.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr reported that on September 29, 2020, NDHFA issued a Declaration of "Official Intent" to issue Multifamily Revenue Bonds in the amount not to exceed \$7,000,000. The proceeds of the bonds will be used for the construction of Souris Heights, a 54-unit apartment complex located at 1400 35th Avenue NW, Minot.

The issuance of tax-exempt bonds is required in order for a project to qualify for a non-competitive 4% tax credit allocation. Beyond Shelter, Inc., a North Dakota Non-Profit Corporation, is proposing the new construction of 54 units of senior housing on the North side of Minot. The area is part of the City's National Disaster Resiliency (NDR) plan and the project received an award of NDR funds. The project is being developed in partnership with Minot Housing Authority who will serve as property manager once completed. Onsite supportive services will be provided by Money Follows the Person, Minot Commission on Aging, Ward County Social Services, and Minot Community Action.

It was noted that the appointment of a public hearing officer is needed for the public hearing for the Multifamily Bond Issuance related to the Fargo Elliott Place Four project.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Dave Flohr, Housing Finance Agency Executive Director, be named as the Industrial Commission's public hearing officer for the public hearing scheduled for November 2, 2020 for the issuance of Multifamily Revenue Bonds and approve the publication of the Notice of Public Hearing on October 23, 2020 in accordance with Internal Revenue Code Section 147(f). On a roll call vote, Governor Burgum,

Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr presented the North Dakota Housing Finance Agency Housing Finance Program Bonds Home Mortgage Finance Program 2020 Series B (Non-AMT) not to exceed \$150,000,000 Supplemental General Authorization Resolution for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the Housing Finance Agency Home Mortgage Finance Program 2020 Series B (Non-AMT) Not to Exceed \$150,000,000 Supplemental General Authorization Resolution as follows:

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS
HOME MORTGAGE FINANCE PROGRAM
2020 Series B (NON-AMT)
Not to exceed
\$150,000,000**

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the “Commission”), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the “General Resolution”) under which Wilmington Trust, National Association, Minneapolis, Minnesota, was appointed successor trustee (the “Trustee”), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned Bonds (the “Bonds”) pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the “Program”) contemplated by the Act in furtherance of the Program for the provision of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2020 General Authorization Resolution adopted by the Commission on January 21, 2020 (the “General Authorization Resolution”), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into agreements for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Agency wishes to authorize the issuance of not to exceed \$150,000,000 in aggregate principal amount of the Bonds upon the terms stated herein and in the 2020 Series B Bond Resolution (as defined below) and to use the proceeds thereof in furtherance of the purposes of the Program; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, with such co-managers and selling group members as an Authorized Officer may

specify, as the purchasers of the Bonds (the “Underwriters”) have caused to be prepared and presented to the Commission the proposed forms of the following documents (unless otherwise indicated) (collectively, the “Bond Documents”):

- A. 2020 Series B Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2020 Series B Purchase Contract by and between the Commission and the Underwriters, attached hereto as Attachment B; and
- C. Preliminary Official Statement, with respect to the Bonds attached hereto as Attachment C; and

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer (each an “Authorized Officer”), jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to establish the final rates and terms of the Bonds and to complete the transaction described herein, and in the Bond Documents.

NOW BE IT HEREWITH RESOLVED:

1. The Agency is hereby authorized to issue, execute, sell and deliver the Bonds, in substance as provided in the 2020 Series B Bond Resolution and in the final forms of the Bond Documents as approved by an Authorized Officer, provided that the Bonds meet the following conditions:
 - A. The Bonds: (i) shall be sold, issued, executed and delivered at such time as an Authorized Officer shall determine, in one or more series, in an aggregate principal amount not to exceed the amount set forth in the preambles to this Resolution; (ii) shall bear interest at fixed rates determined by an Authorized Officer, provided, however that such rates shall not exceed 4.50% per annum; (iii) shall be subject to redemption prior to maturity, at prices and otherwise as determined by an Authorized Officer to be in the best interests of the Agency; (iv) shall have long term ratings no lower than the long term rating on the bonds outstanding under the General Resolution immediately prior to the issuance of the Bonds; and (v) shall mature not later than January 1, 2053.
 - B. The Bonds shall be issued as bonds the interest on which is exempt from federal income taxation, unless otherwise determined by an Authorized Officer.
 - C. The Bonds shall not constitute debt of the State or any political subdivision thereof. Neither the faith and credit nor the taxing powers of the State or any political subdivision thereof may be pledged to the payment of the principal of or interest on the Bonds.
 - D. The Bonds shall be special limited obligation revenue bonds of the State payable solely from the revenues and assets pledged therefore under the General Resolution and the 2020 Series B Bond Resolution.
2. The forms and substance of the Bond Documents and any other documents that an Authorized Officer deems necessary or desirable to effect the issuance of the Bonds are hereby approved, with such changes, variations, omissions and insertions as an Authorized Officer shall approve. The execution of the applicable Bond Document by such Authorized Officer shall constitute conclusive evidence of such approval.
3. The Preliminary Official Statement, in substantially the form submitted to this meeting, with such changes, omissions, insertions and revisions as an Authorized Officer shall deem advisable, is hereby authorized, and the furnishing of the information in the Preliminary Official Statement and in a final Official Statement for the Bonds, and the use of such Preliminary Official Statement and final Official Statement by the Underwriters in connection with the offering of the Bonds to the public, are hereby approved. Any Authorized Officer is hereby authorized to execute and deliver to the Underwriters the final Official Statement for the Bonds in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes therein as are approved by such Authorized Officer. The execution of one or more copies of the final Official Statement by an Authorized Officer shall constitute conclusive evidence of such approval.
4. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the issuance and sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr requested authorization to pursue declassification of the HFA Chief Financial Officer position. He noted that this position must have a wide range of financial skills and knowledge to maximize the business operations of the Agency to enable it to meet its public mission. The knowledge and skills needed is equal to a CFO at a private sector financial services institution. Due to the unique financial skills required by the Agency's CFO position it is necessary for the Agency to compete with the private sector and other state housing finance agencies for skilled individuals. Because of this, it would be valuable to have this position declassified to allow for proper compensation.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorize the Housing Finance Agency Executive Director to submit a request to the HRMS Division and the State Personnel Board to un-classify the HFA Chief Financial Officer position. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr presented for approval a draft Memorandum of Understanding with the Department of Commerce regarding administration of the HOME program. The Memorandum had been prepared to formalize the compensation of services being offered by HFA to the Department of Commerce until such time as the administration of the HOME program is acted on by the Legislature. Mr. Flohr noted that the HOME program is often used with the HFA programs and there are opportunities for efficiencies.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the Housing Finance Agency entering into the following Memorandum of Understanding with the Department of Commerce:

The Partnership

Commerce and HFA enter into this MOU to begin a partnership in administration of the HOME program in anticipation of the ND Legislature approving the full program transfer to HFA starting on July 1, 2021.

HFA will:

- **Review HOME policies, procedures, reporting requirements, to ensure integration with existing HFA programs in anticipation of program transfer on July 1, 2021.**
- **Provide support to the best of its ability to HOME staff as requested by Commerce.**
- **HFA will request reimbursement for costs incurred by HFA staff and HFA workspace utilized by Commerce HOME staff as agreed in advance.**
- **Maintain HFA time sheets with total hours devoted to direct HOME activities.**

Commerce will:

- **Maintain responsibility for all fiscal and HOME reporting requirements.**
- **Maintain supervision of 2 FTE.**
- **Responsible for all HOME tasks.**
- **Responsible for fiscal management of HOME funds.**
- **Reimburse HFA for HFA staffing costs for any time devoted to direct HOME program activities as approved and agreed upon in advance by Commerce. Planning and Housing Development division staff will direct bill any hours spent working in the HOME program. NDHFA staff currently track all time in timesheet format. Possible time devoted to working on policy and procedures, transferring current spreadsheets into NDHFA tracking sheets, division of HOME program duties as necessary such as underwriting multifamily projects.**

Commerce and HFA will:

- **Work together to transfer all program responsibilities to HFA by July 1, 2021 or as soon as possible after July 1, 2021.**
- **Work to ensure IT integration.**
- **Work to ensure all relevant documents are transferred to HFA.**
- **Work to ensure all necessary tasks are completed with HUD.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

RENEWABLE ENERGY PROGRAM

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented the Renewable Energy Council's recommendations regarding two amendment requests.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission grant the budget modification no increased cost request from eSmart Systems US, Inc. and authorize the Industrial Commission Executive Director/Secretary to amend Contract No. R-038-048 "Fargo's Smart Energy Ramp" as follows:

Matching Funds

Remove:

\$45,000 from Labor – Other Project Sponsor's Share

Add:

\$85,000 to Labor – In-Kind Match

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission grant the budget modification no increased cost request from Packet Digital and authorize the Industrial Commission Executive Director/Secretary to amend Contract No. R-040-051 "Portable Solar Array Modules Phase II" as follows:

NDIC Funds

Remove:

\$11,424.09 – Supplies

\$54,150.00 – Professional Fees & Services

\$65,574.09

Add:

\$61,056.15 – Salaries

\$ 4,337.73 – Fringe Benefits

\$ 180.21 – Postage

\$65,574.09

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

ADMINISTRATION

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the September 3 and September 22, 2020 non-confidential meeting minutes for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the September 3 and September 22, 2020 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

LIGNITE RESEARCH PROGRAM

Mr. Jason Bohrer, Lignite Research Council Chairman, and Mr. Mike Holmes, Lignite Research Program Director, presented the Lignite Research Council Executive Committee's recommendation to amend the scope of work and increase funding up to \$250,000 for FY20-092-228: "Drill Stratigraphic Test Well & Determine Feasibility of Central ND Geology to Safely and Permanently Store Carbon Dioxide", submitted by Midwest Ag Energy.

The project began drilling this past week and will be in the Deadwood Formation next week. The additional funds will enable the project to core the full Deadwood formation, providing the optimal information to the lignite industry.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Lignite Research Council Executive Committee and approve the amendment request for the Midwest AgEnergy project – Drill Stratigraphic Test Well & Determine Feasibility of Central ND Geology to Safely and Permanently Store Carbon Dioxide and authorize the Industrial Commission Executive Director/Secretary to execute an amendment to Contract FY20-092-228 with Midwest AgEnergy. The amendment will provide up to \$250,000 of match funding for additional costs (based on actual coring costs) to obtain a full core of the Deadwood Formation which will increase the total Industrial Commission Lignite Research Program commitment up to \$3,638,000 (Advanced Energy Technology) and the total project costs up to \$7,456,000 contingent upon verification of Midwest AgEnergy providing the additional match on a 1 to 1 basis. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

STATE ENERGY RESEARCH CENTER ("SERC")

Mr. Tom Erickson, EERC, presented the State Energy Research Center's first Annual Report. SERC was established under SB 2249 to complete exploratory energy research (fundamental, transformational ideas to shape the future energy portfolio of North Dakota), provide a rapid response to critical North Dakota issues and provide an educational and outreach program. At the request of the Commission, SERC may conduct research to address emerging issues. SERC has an appropriation of \$5 million/biennium with a sunset clause in four years. It is funded through a contract with the Commission, with reporting requirements to the Commission and the interim Energy Development and Transmission Committee.

Mr. Erickson reviewed the process that is used to select projects for funding. He provided some examples of projects that have been funded, including research on the ability to take cleaned coal and make graphene dots. Two patents have been filed around the technology. There has also been research to increase ethanol production without using more corn, which could have an economic impact up to \$600,000 per year. Both

projects have gone on to find funding from other sources, such as federal funds, to take the research to the next level.

In regards to the Education and Outreach portion of their funding eleven students (nine from UND one from NDSU and one from BSC) participated in the Energy Hawks programs—over a ten-week period the students immersed themselves in all things ND energy and developed a series of collaborative research white papers. A higher education gathering was held and during that gathering the need for a central source of energy information to support the community and educators was identified. SERC created a system called E-portal with the intent that regardless of whether you are at Bismarck State or Williston or UND you can track energy information through a single website. The portal is still being populated with information from the higher education institutions.

Mr. Erickson stated that SERC has reignited invention and innovation by EERC researchers and the effect is significantly greater than \$5 million. There have been six new invention disclosures in FY20. In addition, over 20 activities were initiated focused on serving North Dakota, and there has been expanded collaboration across North Dakota institutions of higher education. All funds have been allocated this biennium.

Mr. Erickson noted, that in response to a request from the Commission, SERC had undertaken the task of Assessing North Dakota's Energy Future (Phase I) and has brought together a team of experts and developed a model taking into consideration oil and gas, coal, wind, energy storage, transmission, ethanol and biodiesel. Using the model, they are able to assess how economic, social and environmental drivers will impact each of these industries and Assure Affordable, Reliable Energy, Maintain and Expand Jobs, Maintain a Healthy Environment and Maintain and Grow State, Tribal and Local Tax Revenues. As per the contract with the Commission, he will be presenting a detailed report and the results of this work at a future Industrial Commission meeting.

The Commission thanked Mr. Erickson for the excellent report and his leadership during the initial year of SERC.

OIL & GAS RESEARCH PROGRAM

Ms. Fine presented the Oil and Gas Research Council's recommendation regarding the Underground Storage of Produced Natural Gas Project (Contract G-049-092) for consideration.

Mr. Charlie Gorecki, Director and Chief Executive Officer, Energy and Environmental Research Center (EERC), provided a presentation about the work that has been done to date and plans to move forward. The goal of the project is to demonstrate various produced gas injection concepts, including temporary gas storage in saline formations, gas injection into a conventional oil field, and gas injection into the Bakken/Three Forks. This will provide key information to the state, oil and gas industry, and other interested parties to assess the techno-economic viability of produced gas storage and/or injection into the subsurface.

The EERC partnered with XTO Energy on an assessment of two gas injection concepts, including temporary produced gas storage in the Broom Creek Formation and produced gas injection in the Bakken/Three Forks for enhanced oil recovery (EOR). Due to the oil price decline, XTO decided to put the projects on hold indefinitely. Mr. Gorecki stated that the key findings from the work that was done, including recommendations for consideration during the next legislative session, are being summarized and a report will be issued soon.

Mr. Gorecki noted that EERC is proposing a path forward that entails using the allocated funds to partner with two large publicly traded companies and two smaller private equity-backed companies on various gas storage/injection pilot projects. The diverse injection scenarios proposed by each company would build knowledge of the technical and economic feasibility of various produced gas storage/injection approaches in the Williston Basin.

In response to questions, Mr. Gorecki and Mr. John Harju, EERC Vice President for Strategic Partnerships, indicated that some gas would go into the formation water, but would act like a piston. A decision has not been made as to whether to use salt water or fresh water.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to approve the modifications requested by the Energy and Environmental Research Center (EERC) to the Underground Storage of Produced Natural Gas Project (Contract G-049-092) as follows:

- **Accept the update from the EERC on the work that has been completed on the legislatively directed produced natural gas storage study,**
- **Approve the proposed plan for additional work with new partners who will provide the required match funding, and**
- **Extend the contract into the 2021-2023 biennium.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Under other business, Ms. Fine noted that the Commission previously approved a non-match contract with the EERC in the amount of \$500,000 to be used for Emerging Issues. The Commission has previously used \$133,523.60 for the Evaluation of Subsurface Produced Gas Injection and \$64,000 for the Lightning Strike Study. She reported that the EERC has been asked to assist with gathering information on the viability of salt caverns for storage prior to the upcoming legislative session. Because of this, she requested that the Commission utilize the remaining dollars in the Emerging Issues Contract G-000-004 for the EERC to conduct the following work:

Evaluation of the technical feasibility of the development and operation of salt caverns for the geologic storage of natural gas liquids and/or natural gas. An attendant review and evaluation of North Dakota's existing regulatory framework in the context of the unique nature of salt cavern development and operations will be conducted. Peer jurisdictions' regulatory frameworks will be evaluated for potential utility and insight. A report summarizing the effort will be completed by the end of calendar year 2020, and EERC will be available for any North Dakota Industrial Commission and/or legislative briefing requested through the coming legislative session. The total cost will not exceed \$302,476.

Discussion was held regarding the project. There is potential to create caverns that would be able to hold ethane and other petrochemicals with a recovery rate of almost 100%. The depth would be ~9,000 -10,000 feet, which is deeper than the Bakken. The study would focus on the geo-mechanical requirements rather than on the location of where the salt caverns would be created. There are some properties in North Dakota that are unique from other locations.

Regarding the regulatory framework for underground storage there may be some direction from the Northwest Landowners case, however, this is a different scenario. This is a cavern that is created with a much higher value type of storage. However, 100% ownership may be challenging and a regulatory framework like unitization may be needed.

Mr. Helms stated that this is a critical piece of information to move forward. He hopes EERC will provide a recommendation of how it should look in statute and regulations. It will be considered pore space. The regulations for these caverns won't be as rigorous as Class 6 wells that are used for carbon storage. The wells will be Class 2 wells. Mr. Harju responded that a statutory/regulatory review will be a key piece of the work that will be conducted.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that \$302,476 of the Emerging Issues Contract G-000-004 with the Energy & Environmental Research Center be used to evaluate the technical feasibility of the development and operation of salt caverns for the geologic storage of natural gas liquids and/or natural gas with a report summarizing the work being completed by December 31, 2020 and EERC staff being available for presentations to the Commission and the Legislature. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

DEPARTMENT OF MINERAL RESOURCES ("DMR")

Mr. Lynn Helms, DMR Director, presented draft comments on United States Forest Service (USFS) revisions to its regulations governing federal oil and gas resources on National Forest System lands for consideration.

The comments support the intent of the revisions, and they outline the difference between acquired lands and those that have always been part of the federal estate. However, the proposed rule intends to streamline the process, but falls short. The recommendation would be to create a system in coordination with the Bureau of Land Management (BLM) rather than creating a standalone system that enables USFS to do their work at the same time as BLM.

Mr. Helms clarified that this would be a nationwide change that would treat acquired lands separately from those that have always been part of the federal estate. Sometimes the USFS rules would apply and sometimes they would not depend on the method in which the land was acquired and how the title was transferred. In the case of Bankhead Jones, if there were limitations placed on USFS management by the acquisition, those would be recognized and become part of the Reasonably Foreseeable Development Scenario and part of the leasing decision process. A large amount of the Dakota Grasslands are Bankhead Jones acquired lands.

Mr. Helms indicated that reserving section lines is not addressed in the proposed rule. Discussion was held about ongoing litigation regarding this issue. It was noted that the draft comments would be revised on page 2 recommending reservation of section lines on acquired lands be recognized in rulemaking. The comments will be reviewed by Mr. Matt Sagsveen from the Attorney General's office and recirculated for signature.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the following comments supporting United States Forest Service revisions to its regulations governing Federal oil and gas resources on National Forest System lands and direct the Industrial Commission Executive Director/Secretary to submit the comments prior to November 2, 2020.

USDA-Forest Service
Attn: Director-MGM Staff
1617 Cole Boulevard, Building 17
Lakewood, CO 80401

<http://www.regulations.gov>

Proposed Rule link

RIN 0596-AD33

Dear Sirs:

Re: Revisions to 36 CFR, Parts 214, 228, 261

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the Proposed Rule Changes as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces more than 525 million barrels of oil and 1 trillion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations under North Dakota Century Code Title 38 and N.D. Administrative Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The NDIC supports the intent of these proposed changes to streamline and reduce redundancies, to improve agency efficiency, and better align Forest Service regulations with those used by the Bureau of Land Management (BLM). We agree that better alignment is most practically achieved by the Forest Service aligning its single subpart regulation with the BLM's more extensive oil and gas regulations in 43 CFR, subchapter C, parts 3000 through 3190. We are concerned that Section 228.103 includes a leasing analysis and consent decision process. The rule does not explain how the new Forest Service process will fit with the BLM process. If the intent of the revised rule is to improve efficiencies, the rule should include one process performed in concert that will satisfy both the Forest Service and the BLM statutory authorities. For example, the agencies should have one Reasonably Foreseeable Development Scenario that incorporates decision making by both agencies. NDIC is also concerned that Section 228.103 (c) would authorize the Forest Service to make a leasing decision after their leasing consent analysis is complete. We are concerned that this takes away the BLM's authority to lease federal minerals, if the Forest Service adds their own decision analysis to what BLM already requires.

The NDIC also supports the recognition that this rulemaking only affects Federal oil and gas resources on National Forest System land and does not affect nonfederal (i.e. reserved and outstanding private) oil and gas resources. Some lands that the Forest Service acquired are subject to previously reserved or outstanding rights (See Forest Service Manual Chapters 5470, 2830 and 2710). Reserved rights are legal rights in property that the seller retains at the time the property is conveyed to the United States. Reserved rights may be made subject in the deed of conveyance to the Secretary of Agriculture's rules and regulations. When reserved rights are made subject to the Secretary's rules and regulations, the exercise of reserved rights generally requires a special use authorization, a plan of operation, or some other appropriate legal authorization. Outstanding rights, sometimes called valid existing rights (VERs), are legal rights in property owned by third parties other than the United States' grantor. Outstanding rights are those rights which have been severed and purchased by third parties before the United States' acquisition. The United States has limited control over outstanding rights except to prevent undue degradation or nuisance to adjacent surrounding National Forest System land. However, decisions by the Forest Service on leasing minerals should consider potential impact of matters like surface stipulations that will move impacts to non-Forest Service managed surface even though the lowest impact would have been development on the federal surface.

The NDIC respectfully requests that the proposed amendments to Section 228.104 be expanded to provide for waivers, exceptions, or modifications of lease stipulations to recognize North Dakota section line rights of way (NDCC 24-07-03) on lands acquired by the United States obtained by deed through purchase or gift, or through condemnation proceedings after North Dakota statehood in 1889.

The NDIC supports the proposed amendment's adherence to the statutory language in the Mineral Leasing Act of 1920 (30 U.S.C. 181, et seq.), the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100-203, the Reform Act), the Mineral Leasing Act for Acquired Lands of 1947, the Weeks Act of 1911, the Bankhead Jones Farm Tenant Act of 1937 (30 U.S.C. 351-359), the Energy Policy Act of 2005 (Pub. L. 109-58), Subtitle F, sections 361, 362, and 390, and the 2007 Forest Service and Bureau of Land Management jointly established coordination procedures for review and analysis of permits to drill (including the SUPO portion, in Onshore Order 1).

The proposed amendments modified as recommended could have significant beneficial impacts on North Dakota's ability to administer its oil and gas regulatory programs.

Sincerely,

North Dakota Industrial Commission

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms presented draft comments to the US. Army Corps of Engineers on Dakota Access Pipeline Environmental Impact Statement for consideration, noting that comments were requested from DMR. The comments lay out ten items DMR thinks should be addressed in the scope. This language was taken from the Amicus Brief that was filed in the DC circuit regarding the lawsuit. Mr. Helms noted that the impact to all tribes in North Dakota should be considered.

It was noted that there has been confusion about where the pipeline is located. It may be beneficial to clarify that the pipeline does not go through the reservation. The concern is that if the pipeline were to leak it would impact the reservation. The consensus was that DMR's comments will be limited to areas under DMR's jurisdiction related to oil and gas. Mr. Helms will connect with the Public Service Commission and any other state agencies that may have an interest to determine if those agencies are submitting comments.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following comments regarding the United States US. Army Corps of Engineers scope of the Dakota Access Pipeline Environmental Impact Statement and direct the Industrial Commission Executive Director/Secretary to submit the comments prior to October 26, 2020.

U.S. Army Corps of Engineers
Omaha District
Attn: CENWO-PMA-C (DAPLNOI)
1616 Capitol Avenue
Omaha, NE 68102

NOW-DAPL-EIS@usace.army.mil

Subject: "Scoping Comments, Dakota Access Pipeline Crossing"

Dear Sirs:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the scope of the Environmental Impact Study (EIS).

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces more than 525 million barrels of oil and 1 trillion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations under North Dakota Century Code Title 38 and N.D. Administrative Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The NDIC supports USACE consideration of the four alternatives identified in your letter of September 25, 2020 and does not recommend consideration of other alternatives.

The NDIC recommends the following issues be included in the scope of the EIS:

- 1) The ability of alternative oil transportation resources to accommodate the oil currently transported through DAPL.**
- 2) The environmental impact of oil transportation shifting from DAPL to rail transportation.**
- 3) The potential that loss of DAPL transportation will result in wells being shut-in.**
- 4) The potential loss of jobs that would result from increased oil transport costs. Specifically, social and economic impacts of job losses among Native Americans from all tribal nations.**
- 5) The potential negative impact on supporting industries such as third-party oil gathering companies, local natural gas gathering, processing, and transmission providers, and Native American owned oilfield service companies within all tribal nations.**
- 6) The environmental impact of investment shifting from gas gathering, processing, and transmission infrastructure to alternative oil transportation infrastructure.**
- 7) The potential that oil and gas operators will leave North Dakota or not fully develop North Dakota leases. Specifically, social and economic impacts of reduced development and lost recovery of mineral resources owned by all Native American allottees and tribal nations.**
- 8) The negative fiscal impact on the State and other stakeholders from a transition to more expensive methods of transporting oil.**
- 9) The impact on oil and gas tax revenue and the resulting impact on the State's economy, state government services, and local government services.**
- 10) The social and economic impacts of reduced funding of state and local government services.**

Sincerely,

North Dakota Industrial Commission

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided an update on the Bakken Restart Task Force programs. To date, \$14.5 million has been spent with 142 wells plugged (nearly 50% of what had been planned for plugging); with 10 wells reclaimed and reclamation on 43 wells in progress. The weather should not delay well plugging. Of the 326 wells that have been confiscated, the reclamation of roughly 174 wells is being planned for next year at a cost of \$13 million. There is currently \$20 million in the Abandoned Well Plugging Site Restoration Fund. Due to reimbursements from CARES Act funds, the balance at the end of the year is expected to be \$26 million and can be used for those wells that are being deferred until next year. On an average day, 1,000 people are

at work plugging wells and 700 people are employed reclaiming well sites. These people would otherwise be on unemployment. Maps were provided showing the number of the wells and well sites in each county.

Mr. Helms reported that he has submitted a proposal that will be presented to the Emergency Commission tomorrow that would repurpose \$16 million of CARES Act funds that the Commission has already received. Not all of the reclamation funds will be able to be used due to weather. These proposed dollars would be used to complete “DUC” (Drilled but Uncompleted) wells in North Dakota by reimbursing up to \$200,000 in water acquisition and disposal costs per hydraulic fracture completion of up to 80 DUC wells by December 30, 2020. These would be DUC wells that are uneconomic to complete at the current oil prices. This would support 1,200 jobs in North Dakota while also stabilizing production and the revenues coming into the State.

Mr. Helms presented graphics that outline the proposed use of the repurposed CARES funds and the benefits to North Dakota. Some of the expected benefits include:

- Increase the number of Frac crews by 5 to 10 operating in North Dakota.
- Completion of up to 80 DUC wells.
- Support up to 500-1,000 frac crew jobs.
- Those completed wells will generate 150-200 long-term jobs.
- Stabilize production at 1.25 million barrels a day through the middle of next year.

The first year of just one new well completion has the potential to generate:

- \$800,000 in Extraction Taxes (benefiting Legacy Fund, education and water infrastructure).
- \$800,000 in Production Taxes (benefiting Legacy Fund, counties, cities, schools, research and outdoor heritage).
- \$200,000 in Sales Taxes (benefiting state general fund, counties, and cities).
- \$2.9 million in Royalty Payments.
- \$1.1 million in Salaries & Wages.
- Benefits to every North Dakota citizen.

Mr. Helms noted that the program would have a strong return on investment as 80 wells at a cost of \$16 million has a nearly immediate return of \$11 million. Governor Burgum requested a slide be prepared that would demonstrate the revenue for all 80 wells.

Mr. Helms provided a slide regarding North Dakota Water Use and Completions. He noted that this information is being provided because water usage is the non-sales tax portion of the fracking—it does not pay sales tax. It is a North Dakota centric resource—North Dakota companies/entities provide the frac water; North Dakota companies dispose of the flowback water, so it is going to generate additional jobs and economic returns. By limiting the dollar amount on each frack job it is incentivizing operators to be careful about how much water they use in these 80 frac jobs. It was noted that this program would be beneficial to the Western Area Water Supply Authority (WAWSA) as well as independent water operators—some of those operators buy water from WAWSA and some have their own water supplies for sale.

Mr. Helms noted that the next slide includes a pie chart which shows that 5% of CARES Act funding will go into these three oil and gas industry programs as compared to the GDP of the oil and gas industry in North Dakota (2019 numbers) and the State’s revenue yield. By spending 5% of CARES funding on these job creation programs it is supporting about 9% of the State’s GDP and 52% of the State’s revenue. It is hard to beat this level of return on investment. Governor Burgum requested that the slide be modified to

state “52% of State of ND tax revenues.” GDP is in the other corner and it is important to clarify the difference.

Mr. Helms noted that the operator will need to demonstrate that it is truly a DUC well that would not be completed at current prices and that it is hooked up to gas capture. Additionally, it will need to provide where the water is coming from. Those are three things that have been identified so far as the criteria for approving a grant. There will have to be justification that goes into these grant applications to demonstrate the operator is meeting the requirements.

In response to a question, it was noted that the Emergency Commission had previously approved \$33.175 million for the plugging of orphaned and abandoned wells and \$33.175 million for the reclamation of the well sites. It is anticipated that nearly the entire amount of \$33 million will be utilized for plugging, but \$16 million will not be used for reclamation because of weather conditions prior to December 30, 2020. It is this \$16 million that he is requesting be repurposed for the DUC proposal.

Commissioner Goehring indicated that he has heard other states have secured CARES Act funds past the December 30, 2020 deadline if there is work in progress, or contracts in place. Mr. Helms indicated that he was not aware of that as an option but would pursue additional information to see how that can be done. Mr. Helms stated there could be approximately \$900,000 remaining of the \$66 million+ if the entire \$16 million that is being repurposed for DUC well completions is distributed in grants.

Commissioner Goehring indicated that he initially had concerns about how this proposal would impact the marketplace at this time, but after understanding how the pandemic has impacted the oil and gas operations in North Dakota and how the operators can manage the production and hearing the discussion today and the safeguards that are being proposed, he is supportive of this proposal moving forward to the Emergency Commission.

After discussion, it was moved by Agriculture Commissioner Goehring and seconded by Attorney General Stenhjem to support the Emergency Commission request to repurpose CARES Act funds in the amount of \$16 million to incentivize the completion of DUC wells in order to maintain employment for workers in the oil industry and stabilize oil production. On a roll call vote, Governor Burgum, Attorney General Stenhjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided an update on the following ongoing litigation.

Case No. 05-2019-cv-00085/Northwest Landowners Association vs. State of North Dakota, et al.

Oral arguments will be held on October 29th in Bottineau County. The case is contesting whether the pore space legislation passed in 2019 session is constitutional. The plaintiff will need to demonstrate that there is no situation in which the legislation could be deemed constitutional. It is anticipated that this case will ultimately be appealed to the North Dakota Supreme Court.

BLM Waste Prevention Rule

The District Court in Wyoming found the rule was inappropriate. The Judge in his decision also addressed North Dakota’s split estate situation extremely well. He found that the federal government cannot use language that it has had in its rules for decades that were interpreted to just deal with oil and gas measurement to take over control of state and private minerals that happen to lie within a communitized area. It was critical that North Dakota be engaged.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of N.D.C.C. § 44-04-19.1 and 44-04-19.2 the Industrial Commission enter executive session for the purpose of attorney consultation on Department of Mineral Resources business. The purpose of this executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings in:

- **Civil Case No. 31-2020-CV-00198 – Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board of University and School Lands and ND Industrial Commission**
- **Civil Case No. 31-2020-CV-00199 - Northern Oil and Gas, Inc. vs Bruin (et al); Board of University and School Lands and ND Industrial Commission**
- **Case No. 27662 – NDIC v. Vast**
- **Case No. 27985 – NDIC v. Samson**

and upon conclusion of the DMR executive session and the Bank of North Dakota executive session, the Industrial Commission remain in executive session for the purpose of reviewing a confidentiality request under the authority of North Dakota Century Code 54-17.5-06 and 44-04-19.2(1) (Lignite Research Program). On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the Commission was meeting in executive session to consult with DMR staff and the Commission's attorney(s). Upon conclusion of DMR business, the Commission would meet with Bank of North Dakota management pursuant to N.D.C.C. 6-09-35. Following the Bank executive session, the Commission would take up the Lignite Research Program confidentiality request. Only the Commission members and their staff will be in all the executive sessions. DMR staff and counsel with the Attorney General's staff would participate in the DMR session and BND staff would participate in the Bank session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion during these executive sessions must be limited to those items listed on the agenda. The executive sessions in total were anticipated to last 70 minutes. It was noted that any formal action by the Commission regarding the confidential items listed on the agenda would occur after reconvening in open session. Results of those actions were available by contacting the Industrial Commission Executive Director/Secretary following adjournment of the meeting.

Commission members, their staff, DMR staff, and attorney(s) were asked to join the executive session at this time as per the invitation to the Teams meeting and the public was asked to leave the room.

The executive session began at 4:10.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

DMR Personnel Present (Remotely):

Lynn Helms
Bruce Hicks

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
John Schneider	Department of Agriculture
David Phillips	Attorney General's Office (remotely)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The DMR executive session ended at 5:02 p.m. The BND executive session began at 5:03 p.m.

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present (Remotely):

Eric Hardmeyer	Bank of North Dakota
Kirby Evanger	Bank of North Dakota
Todd Steinwand	Bank of North Dakota

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
John Schneider	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The BND executive session ended at 5:35 p.m. The Lignite Research Program executive session began at 5:35 p.m.

LIGNITE RESEARCH PROGRAM EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
John Schneider	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

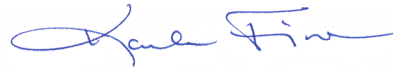
The Lignite Research Program executive session ended at 5:36 p.m. and the Commission reconvened in open session. It was noted that during the DMR executive session, guidance was provided to the

Commission's counsel regarding the matters listed on the agenda. During the BND executive session, a motion was made to approve two loans. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission grant the Institute for Energy Studies' confidentiality request and determine that pages 32-36 of the "Lignite-Derived Carbon Materials for Lithium-Ion Battery Anodes" application is confidential. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 5:37 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary