

Staff Report for 2023 State Board of Equalization

File No.: 2023-GRANT-NODLAND

Prepared By: Property Tax Division

County or City: Grant County

Appellant: Chad (Jillian) Nodland

Issue: Appeal of Residential Property Valuation

Summary: Mr. Chad Nodland is appealing the valuation of the residential property value of \$235,000 on parcel number 05678100 located at 30 Bluegill Bluffs, Cabin Area 3, Lot number 30, Lake Tschida, ND.

Analysis:

Recommendation:

600 E. BOULEVARD AVE., DEPT 127
BISMARCK, ND 58505-0599

WWW.ND.GOV/TAX | TAXINFO@ND.GOV NORTH DAKOTA





Appellant Information – State Board of Equalization

County or City: Enter County or City Name
 Appellant: Enter Appellant Name
 Type of Appeal: Choose One

Please complete this form in its entirety. The information provided will be taken into consideration when investigating and reaching a conclusion regarding the appeal presented. To provide ample time for investigation, all information to support the appeal (property information, pictures, income information, etc.) must be received by August 1, 2023, and is subject to open records. Please provide one questionnaire per property.

Please email or mail any supporting documentation to:

propertytax@nd.gov

or

The Office of State Tax Commissioner, Attn: Property Tax,
 600 E Boulevard Ave., Bismarck, ND 58505-0599

Information for Property Referenced in Appeal:

Address: 30 Bluegill Bluffs, Elgin ND
 Township Name:
 County: Grant County
 Parcel ID: 05678100
 Legal Description: A permit does not have a legal description, but it was provided previously as Attachment 2.

Appellant Contact Information:

Appellant Name: Chad Nodland, for Nodland Cabin Trust
 Address: 109 N 4th St, Suite 300, Bismarck ND 58501
 Phone Number: 701-226-4579 - cell
 Email Address: chadnodland@gmail.com

Answer the questions below that apply to the appeal:

Are you the owner of the property of this appeal? Yes No ¹
 (If No, please see the Consent to Release Financial Info)²

¹ The federal government is the owner of the property of this appeal. I have an interest in the appraisal because my family members and I are the beneficiaries of a trust which holds a permit allowing us to use the subject property during just over half of every year.

² The Freedom of Information Act (FOIA) should be all the consent you need to access federal government financial information. If there is something more you need, please let me know.

Did you receive a notice of increase letter from the city/township? (choose all that apply)

- Prior to After Township/City Equalization Meeting³
 Prior to After County Equalization Meeting
 No Notification Received

At which meeting(s) did you appeal your assessment? (choose all that apply)

- Township/City County⁴ N/A

****Please note NDCC § 57-13-04.3(a)(1)(2) requires appellants to appeal to the State Board of Equalization must have applied to both local and county boards.***

Has a recent appraisal been completed on the property?

- Yes (if yes, please attach) No

What grounds is your appeal based upon? Please check all that apply and provide supporting documentation for each selection.

- Factual error, that is, a data collection or clerical error.
 Equity and uniformity claim of discriminatory level of assessment.
 Belief that the valuation is inaccurate.
 Exemption, classification, or assessment limitation.

Please attach or email (propertytax@nd.gov) the following:

1. A detailed explanation of your appeal
2. Evidence to validate the assessment appealed
3. Consent to Release Financial Information, if required

Appeal Process:

- 1.) Appellant notifies the Property Tax Division of intent to appeal.
- 2.) Submit this form and all applicable documentation to propertytax@nd.gov by the date specified above.
- 3.) The State Board of Equalization meets on the second Tuesday in August to examine and compare the returns of the assessment of taxable property as submitted by North Dakota counties. This is locally assessed property. The board equalizes the property so that all assessments of similar taxable property are uniform and equal throughout the state. During this meeting, tax directors or other representatives from a county will speak, along with city representatives, and individual taxpayers.
- 4.) After the State Board meeting, your case will be assigned, and staff will reach out to schedule an onsite review of the property (when deemed applicable). While an interior inspection of the property is not required, interior reviews may affect the consideration of value. If denied an

³ There was no township meeting as there is no organized township so I was told the county meeting was a combined meeting or met the requirements for both.

⁴ See footnote 3.

interior review, we will assess from the exterior only. Staff will not be allowed to enter the property without the owner or a representative present.

- 5.) Generally, by the first Thursday of October, the property tax division staff will present their findings to the State Board of Equalization with a recommendation. The board deliberates and votes. You can attend this meeting; however, public comments are not accepted.

Grant County Tax Equalization Board Meeting on June 7, 2023
Testimony of Chad Nodland
30 Bluegill Bluffs
Parcel Number 05678100

My name is Chad Nodland. For a little over a decade now, I've been paying property taxes on a cabin permit for a cabin at Lake Tschida and am one of the people whose cabin permit has been re-appraised and whose tax assessed value has recently more than doubled. My cabin permit relates to a cabin in Cabin Area 3, and is Lot 30. Parcel Number 05678100. The 911 address is "30 Bluegill Bluffs".

Our cabin's tax assessed value last year was \$97,400. The new proposed assessed value is \$235,000. That's a proposed increase of nearly 250%.

I contacted the assessor to appeal both the specifics of this pending tax assessment increase, and also seek an explanation as to how Grant County has legal authority to tax a permit relationship I have with the Tri-City JJDA and/or the federal government. We went through most of my concerns about the specifics of the increase first. She said she was going to look into all of the issues I raised and would get back to me. Near the end of our conversation, I addressed to the assessor my legal question about the statutory/legal authority Grant County believes it has to tax a permit like the one I have, at all. When I started trying to explain the problem to her, she asked that I send her the information in writing. She told me she would forward it to all of the commissioners and to the States Attorney, that it would be discussed at the commission meeting the next day. I was left with the impression she or someone else would get back to me. I had been drafting a memorandum on the issues and so on May 2, 2023, I sent her my draft. Nobody from Grant County ever got back to me.¹ I've attached a copy of the email I sent to the Tax Assessor on May 2, 2023, as Attachment # 1.

Last week I finalized my memorandum and sent a copy of it to each of the commissioners, to the tax assessor and to the County's attorney by email noting that if anybody wanted to talk to me about it, that I'd be happy to visit. Having not heard from anybody, I am here today to question the amount of the tax being assessed on my permit. My position is that the amount should be – at most – 7/12 of this new Vanguard amount, but that the true appropriate tax assessed value should be \$0.00, and I'd like to explain why. But I'd also like for this board to consider the memo I emailed to the commissioners. I've attached a copy as Attachment #2. The version I sent to the Assessor, the commissioners and the county attorney last week is a digital version and it contains hyperlinks to supporting documents. You can get that from her

¹ States Attorney Grant Walker did call me this morning to discuss an unrelated matter, and we did briefly discuss today's meeting procedure, but nothing substantive.

or can access it online at this address: <https://tinyurl.com/TaxMemo>. I'm attaching a copy as Attachment # 2.²

Before addressing that, I'd like to address two specifics regarding our tax assessment. First, our permitted cabin does not have central air conditioning and I believe our assessment includes an assumption that we did. The assessor said she was going to do a "spot check" to confirm that we cool it using window units. We do, and I don't believe I've seen an adjustment for that yet. The cabin's only functioning air-cooling system – ever – has been three window air conditioning units; two on the main floor, and one in a small loft space.

Second, I believe your assessors at Vanguard were under the misunderstanding that we have some kind of ownership interest in these lots that allows us to be on the property 12 months of the year. That is not true. Under the terms of the permit (which you can access through a hyperlink in the memo I've linked to, above), we are trespassers if we go to our permitted lot during five months of the year. So, if there were to be a **legal** and reasonable tax assessment imposed on us, it would only be for 7/12 of what Vanguard has suggested it should be. If that was a mistake by them, perhaps it was an honest mistake that could quickly be corrected to many people's satisfaction.

Regarding the more substantive problem, I'd note that I used the word "**legal**" just a little bit ago. I've bolded and underlined the word "**legal**" in my written testimony and there is a reason for that. I want to talk about the question of whether it is **legal** for Grant County to assess taxes on a heavily restricted permit to use federal land during 7 months of the year where there are all the restrictions we deal with in these permits and where the County already received PILT money.

We live in a country and state that is based upon limited government. We have laws that tell us what the government can and cannot do. Property taxing authority is given to all counties, including Grant County, by a statute passed by the North Dakota State Legislature. That statute is NDCC § 57-02-03. That law gives counties the authority to tax "all property."

There are things that ARE "property" and there are things that ARE NOT "property." At Lake Tschida, your assessor – Vanguard – purports to be assessing the value of buildings on land separately from the land the buildings are on. Under North Dakota law – NDCC §§ 47-01-03, and -05 – and case law I've cited on page 7 of my memo (Strobel vs. Northwest G.F. Mutual Insurance Co), the buildings ARE part of the real estate and cannot be considered as separate property.

I want to talk about what IS property and what is NOT property. For example, land – real estate – is property. Improvements on land are generally an inseverable part of that same property. A car is property. An argument can be made that a lease is a property interest, though I think that's still debatable depending on a lot of things.

² One correction I would make to the memo is that it suggests the JDA's welcome center cost \$5 million. I believe the actual cost may have been roughly half of that.

What is NOT property is important here too. What is NOT property?

1. Ideas. An idea is not property. I have an idea that we should go out for coffee after this meeting. That is NOT property and is NOT something Grant County can tax.
2. Friendship. Friendship is not property. Grant County cannot start assessing taxes on people with cabins at Lake Tschida based on the number of friends they have.
3. Faith. My religion cannot be taxed by Grant County. It is not property. Grant County cannot start taxing Lutherans and Catholics and Methodists with cabins at Lake Tschida based on their religion under North Dakota law.
4. Permission. If you're a landowner and you give someone permission to hunt on your land, that is not property; even if you give them permission to put up a duck blind or other 4-walled hunting structure. Similarly, if you give someone grazing rights on your land during parts of the year, that is not property; it is permission. And if you give someone temporary permission to put a trailer or cabin on land, with the understanding the land owner can kick them off at any time with little notice, and with an agreement that the person with permission has to remove everything they brought there and return it to its original state, that is not property. It is permission. It is a permit.

The North Dakota Supreme Court has told us that permits are not property "in a constitutional sense." Lee v. ND Park Service, et al. 262 NW2d 467, 473 (ND 1977). When the Court uses the words "in a constitutional sense" they are saying permits are not property in a legal sense under our constitution. Property taxes cannot be imposed upon things that are not property; like permits.

There is a North Dakota Attorney General's Opinion that says a County can tax a person's **leasehold possessory interest** in real property owned by the government if the real property is not subject to payments in lieu of ad valorem (i.e. property) taxes. It is ND AG Opinion # 89-6. It was available for public viewing on the North Dakota Attorney General's website until earlier this week or last week, but you can still find it at a website called archive.org. Here is a link: <https://tinyurl.com/NDAG89-06>. I've also attached a copy as Attachment #3.

That AG Opinion is important for two reasons: (1) it talks about the taxability of **leasehold** interests. A leasehold interest is different from a permit. A permit, as I noted earlier, is just a terminable, temporary permission to use someone else's property. It is **less than** a leasehold interest. And (2) the AG Opinion talks about how such leasehold (non-ownership) interests are only taxable if the underlying property is not subject to payments in lieu of an ad valorem tax. A common acronym for such ad valorem tax payments is "PILT" or "Payments in Lieu of Taxes." Grant County does, in fact, receive PILT money for all of this Lake Tschida land. As such, the Attorney General has told you that you could not even send me a tax bill if I had leasehold interests in these lots, cabins or trailers. If you can't tax leased land that is subject to PILT payments, you surely can't tax land someone has a permit to use for part of the year when that land is subject to PILT payments.

These Lake Tschida cabin/trailer permits are not property. I cannot go to the bank and get a loan where the bank takes a mortgage (or other lien) against my "interest" in the land, because it is not – in fact – land I can put up for a mortgage. The hunter you permit to hunt on your land can't take

that permission to the bank and get a loan based on the permission. Because it's not property. I only have limited permission to use it part of the year. And it is very restricted permission. And it's terminable. And Grant County is already getting PILT money for it.

So it is my position that – at most – if Grant County really believes it has legal authority to tax a permit to use land subject to PILT payments like cabin permittees at Lake Tschida (including me), then the tax should only be, at most, for 7/12 of what your appraisers say it should be. At most.

But it is also my position that Grant County does not have – and has never had – legal authority to tax things that aren't property; especially things that are not property and the underlying property is subject to PILT payments received by the County. That includes permits to use federal land managed by a local job development authority for which the County receives PILT money. I'd ask you reduce the tax on our lot to \$0.00.

Thank you for your time and consideration.



Chad Nodland <chadnodland@gmail.com>

Concerns regarding constitutionality/legality of assessing property taxes against federal property in Grant County

Chad Nodland <chadnodland@gmail.com>

Tue, May 2, 2023 at 10:29 AM

To: jsteinmetz@nd.gov

Ms. Steinmetz:

This is to follow up on our phone conversation today during which I asked whether it was appropriate for Grant County to assess property taxes on federally owned property around Lake Tschida. You noted that the county is not taxing the land but is instead taxing the structures. You ask that I send you an email that includes the legal authorities I cited to you. You said you would present it to your county commissioners at their meeting tomorrow. You indicated you hoped the States Attorney would be there tomorrow as well so he could advise the Commission.

I've put together a draft memorandum regarding some of my concerns regarding the tax appraisal and am attaching it to this email. I'd like to hear back from you or someone else at Grant County regarding this matter. Can you please let me know when I might expect to hear back?

Also, please let me know if you have any questions.

Thank you.

Chad Nodland

Cabin Area 3, Lot 30
Lake Tschida.

 **MemoReCabinTax2023.04.29.pdf**
285K

ATTACHMENT # 1

MEMORANDUM

TO: Morton County

FROM: Chad Nodland

DATE: 2 June 2023

RE: Grant County property taxes assessed upon Lake Tschida federal land permittees

Executive Summary: The taxation of federal land permit holders at Lake Tschida is not legal. Grant County lacks authority to impose property taxes on cabin and trailer permittees; in fact, the taxation of the cabins and trailer permittees is a violation of the state and federal constitutions. Grant County needs to discontinue its practice of issuing tax assessments on Lake Tschida cabin and trailer permitted areas, and should start reimbursing the taxes it has collected.

Background/Detailed Version:

I have a shared interest in a cabin at Lake Tschida. The land adjacent to the water at Lake Tschida is all owned by the United States government and administered by the US Dept of the Interior, Bureau of Reclamation (BoR) as it was acquired through eminent domain many years ago for a variety of reasons including [a flood control project](#) involving a dam completed in 1949. Cabin permits were originally administered on the reservoir by North Dakota Game & Fish, but later administered by the BoR.

At some point several years ago (roughly 2009), a representative of BoR spoke at a permittee meeting and said BoR would prefer to have a local government entity collecting the permit fees and administering that money, doing improvements around the lake, instead of sending the permit fee money to Washington, D.C. That's when a new political subdivision "authority" was formed under [NDCC § 40-57.4-06](#), called the TriCities Joint Job Development Authority ("the JDA"). Today the JDA has an arrangement of some sort with the BoR to collect the permit payments from permittees and to spend that money on projects around the lake, etc. You can read more about that relationship [at this link](#), if interested. There is also info about this arrangement contained in one of the first paragraphs of the 26-page [Seasonal Recreational Use Permit](#) ("permit").

Permittees (i.e. people with cabins and trailers at Lake Tschida) accept the terms of the JDA/BoR permit which grants permission to temporarily construct and occupy cabin dwellings – which they may be forced to demolish when the permit terminates¹ – and there are a LOT of strings

¹ In the second full paragraph on page 2 of the permit document, it indicates that where continued cabin use is determined by the JDA or BoR to be "no longer in the public interest" or "if the cabin site is needed under emergency conditions, Permittees may be required to vacate the cabin site and remove their improvements." [Permit](#) at p. 2. Additionally, on page 12, paragraph

attached. Those strings – contained in the 26-page permit document – include, among **many** other things, that Permittees can't have a camper parked on our lot for more than a certain period of time; that we can't use fireworks of any kind as part of holiday celebrations; that Permittees can't cut down trees or even branches on trees on our permit-related lots without JDA permission; that Permittees cannot do any remodeling/construction without approval and a permit, that the permit can be terminated at any time to “meet the needs of” the BoR and/or the JDA, etc.... In the Permit, the JDA reserves the right for itself and the BoR “to have ingress, passage over, and egress from” all land subject to such permits “... for any purpose deemed necessary by [BoR] or [the JDA]”. [Seasonal Recreational Use Permit](#) (“Permit”) at ¶4(d). The permit does not even grant the permittees’ exclusive use of the permit land.

Permittees also are expressly prohibited (on page 3, ¶3, of the current permit) from being present on the cabin lots from October 31st to April 1st.²

13(i), says “[] Permittee assumes the risk that they may eventually be required to remove their improvements and vacate the premises if their cabin site is needed for other purposes.”

Furthermore, if the structure is demolished or destroyed and the Permittee does not notify the JDA in writing within 60 days that he/she intends to replace it, the permit terminates and Permittee is required to restore the land “to conditions similar to its original or natural appearance, as determined by [the JDA]” at his/her own expense. [Permit](#) at p. 13, ¶13(l).

Additionally, the Permit specifies that “The Permittee will be permitted 60 days after expiration or termination of the permit to remove any improvements or other private property thereon, subject to the provision of Articles 8 and 13(l), and restore the premises to a condition satisfactory to [the JDA] and [BoR]. Removal of such improvements or other property and restoration of the premises are the responsibility of the Permittee.” [Permit](#) at p. 20, ¶17(b)(11).

The Permit further indicates that any improvements left on the property become the property of the federal government. *Id.* If the federal government elects to restore the land its pre-cabin state, “... the Permittee is liable for all costs therefore.” *Id.* So, under the terms of the Permit, a Permittee might be forced to demolish all of the improvements, and to incur all expenses associated with restoring the land to its pre-cabin state. As these provisions in the Permit appear to conflict with North Dakota law (see, e.g. [NDCC § 57-02-04\(2\)](#)) regarding improvements becoming part of the land, the parties to the Permit seem to enter into an agreement inconsistent with state law. But this is not the only context in which this sort of permission is granted. (See, e.g., mineral extraction).

² This raises various questions, such as (1) “What is the Permittee’s interest in the subject federal land – and the structures on the land – between October and April of any given permit year?” and (2) “Assuming state law allows the County to assess a tax on the permits, is the Permittee’s assessed value adjusted based upon the fact he/she is expressly prohibited from being present on the subject land and may be considered a trespasser on the cabin/trailer lots during those five months?”

Cabin Area, Site Sec. T. N., R. W. This Permit does not convey any ownership interest in the land.

Year-long occupancy of a Cabin on the lot is prohibited. The Site shall not be used as a permanent, year-round residence. The lot and any Cabin on the lot may be occupied on a continuous basis only from April 1 through October 31 of each year and is subject to the following restrictions.

- a. In this Permit, “Occupancy” or “Occupied” shall mean the presence of any person on the lot for any amount of time during a daily period beginning at 12:00 a.m. and ending on 11:59 p.m. of the same day.

Permittees pay an annual permit fee that is approximately a couple thousand dollars, and the fee is increasing. Nearly none of that money goes toward paying for anything in our permitted, partial-year occupancy areas; the fees go to improvements in campgrounds, etc., in other areas around the lake. It also presumably went towards funding construction and maintenance of a brand new, \$5 million “[Welcome Center](#)” building where the JDA has its offices, a gift shop, an Event Facility, commercial kitchen for catered events and public restrooms. Permit fees also pay for construction and maintenance of camping area cabins rented commercially by the JDA³, shelters, restrooms in the camping areas, and private security apparently needed due to the lack of an adequate law enforcement presence.

One of the terms of the permit says the permit will be terminated “if the cabin site property taxes are not paid every year by the 15th of April.” [Current Permit at p. 20, paragraph 17(b)(7)]. This appears to be everything that purports to create any obligation on permittees to pay property taxes to Grant County.

I’m unsure of the date⁴, but it appears that some time in 2021 or 2022, Grant County hired a new tax appraisal company (Vanguard) to re-assess properties in Grant County for property tax purposes. This presumably included a directive to reassess the value of land used by Lake Tschida cabin and trailer permit holders. I haven’t seen the contract yet, but – based upon a review of the Grant County Commission minutes – it appears Vanguard has been paid at least \$190,000 for its appraisal work, so far. Someone at the HBA meeting this spring stood up and suggested this appraisal company is somehow a sketchy company and/or that they’re up to some fishy things, suggesting someone should look into the company and/or its work. I’m not sure about any of that and it’s not directly relevant to my main point.

What I do understand is that the appraised value of every (or nearly every) cabin permit at Lake Tschida was at least doubled and others were tripled, or more. A permittee has crunched the numbers and figured out that the total tax appraisal values of cabins in just two of the cabin areas [cabin area 2 & 3] is being increased from \$5,788,500 in 2022 to \$15,926,400 in 2023. Permittee tax liabilities – if they are determined to be legally imposed – would presumably double or triple in the near future based on these increased appraisal numbers. Permittees could be paying substantially more in property taxes than the owners of the nicest residential properties

³ This raises questions about whether the JDA “Welcome Center” and rental cabins are taxed by Grant County and, if not, why not?

⁴ I reviewed Grant County Commission meeting minutes going back about two years and did not see a reference to the county retaining Vanguard, though surely it did.

in Elgin, Carson and New Leipzig (the biggest towns in the county), many of which have numerous outbuildings, more acreage, and various government-provided services. The highest appraised value for a cabin/trailer at Lake Tschida appears to be over \$700,000 while the highest appraised value in the Elgin area appears to be less than \$400,000. While home-owners in the nearby towns benefit from numerous county services, cabin permittees get almost no services and are barred from occupying cabin lots five months of the year.

We see more state Game Wardens at Lake Tschida than we see Grant County deputies, and that is not saying much. The county does very little road maintenance in the cabin and trailer areas. In the Lake Tschida cabin and trailer areas, there are few or no paved roads, no schools, no bussing of cabin-dwelling students (because they can't at the cabins in the winter), no snow removal, no street lights, storm sewer, etc., etc., etc. The money permittees pay in taxes goes primarily to support "stuff" in towns 15, 20 or 30 miles away. Trailer permit holders – so far – have seen a smaller tax increase, but should anticipate Vanguard will come in and shock them with substantial real estate appraisals and then tax increases soon, too.

Permittees are not happy about these massive property tax increases. Some have been talking about trying to figure out how to convince Grant County to not hit everybody so hard with the anticipated, absurd tax increases. Others have asked if there's some way to get more county services in exchange for our taxes. We've been paying our couple thousand a year in property taxes over the years, but we can see, pretty clearly, that those oppressive tax obligations will soon triple, and continue to increase, though there is no sign on the horizon that the county intends to provide services to the cabin and trailer areas. Upset permittees can't vote the responsible county commissioners out of office because so few of us have the required residency (because we can't live there five months of the year). We are being taxed without being represented. We can see, too, that the next step might be that our JDA permit payments will double or triple, because the JDA has told us our permit payment amounts are based, in part, on the fair market value of the land.

Here's where I split with these other permittees, a little. They might be right about challenging the amount of the increase, but there's more.

First, these permits do not convey a property interest to the Permittees; they grant a highly restrictive "permission," not unlike a license. As is noted in the Permit document itself, the BoR "...has responsibility and jurisdiction over all Federal lands at Heart Butte Reservoir." Permit at ¶1. Under the terms of the Permit, BoR "...may take actions that may be inconvenient, costly, or adverse to the Permittee. These actions may or may not be consistent with or approved by the [JDA]. The Permittee's rights under this Permit are limited, are not guaranteed in perpetuity, and may be canceled at any time to meet the needs of the United States or [the JDA]. *This Permit does not convey title to the land being used by the Permittee.*" *Id.* (emphasis added).

As noted in the Permit itself, the rights given to Permittees under the terms of the Permit are limited and do not involve the conveyance of an interest in property. The Permittee, in fact, may be responsible for all costs associated with removing any improvements to the land when the permit is terminated. See Fn. 1, *supra*. The Permit merely grants permission – during seven months of the year – for a permittee to use the permitted property, with extensive restrictions on

that use. A review of the case of Lee v. North Dakota Park Service, et al., 262, NW.2d 467 (N.D. 1977) is instructive. Though that case did not involve a county's claimed authority to tax a permit or license, it did involve the question of whether a person holding a federal permit to use land held any property interest whatsoever. Here's what the Court wrote in Lee:

In Tidwell v. State ex rel. Herman, 21 Ariz.App. 3, 514 P.2d 1260 (1973), the State instituted eminent domain proceedings to condemn a right of way for highway purposes across certain patented land. The husband and wife, the Owners of a grazing permit, contended that the construction of the highway through the grazing land which was fenced in deprived them of the full use of the grazing permit they received from the United States Government. The court, in denying damages, said that **the permit from the federal government was a mere license and gave them no estate or property right in the land.** 98 C.J.S. Woods and Forests § 11(g); Acton v. United States, 401 F.2d 896 (9th Cir.1968), cert. den. 393 U.S. 1121, 89 S.Ct. 1003, 22 L.Ed.2d 128 (1969). **The license, being a mere permissive use, is not property in a constitutional sense.** State v. 0.622 Acres of Land, More or Less, 254 A.2d 57 (De.Super. 1969); Board of Co Commissioners of Dona Ana County v. Sykes 74 N.M. 435, 394 P.2d 278 (1964).

Lee v. North Dakota Park Service, et al., 262 N.W.2d 467, 473 (N.D. 1977).

As was true with the plaintiffs in Lee, the Lake Tschida permit holders have a “mere permissive use” which “is not property in a constitutional sense.” Id. While NDCC § 57-02-03 gives authority to Grant County to tax “property,” it does not authorize taxation of things that are **not** property such as licenses and permits granting permission for a permit holder to merely use property for part of the year. Grant County does not have legislative authority to tax the permits held by the Lake Tschida permittees because the Supreme Court has told us such permits are “not property in a constitutional sense.” Lee, supra. And the constitution is the ultimate governing law in North Dakota. Article I, § 23, of the North Dakota constitution; Article VI, ¶2, of the U.S. constitution.

So, in summary, Grant County cannot tax these permits because Grant County does not have legal authority to tax as property things that are not property.

Second, were a court to determine these permits are something other than the permits they are, under federal and state constitutions and laws, without a specific act of congress creating an exception, states and political subdivisions (i.e. counties) cannot legally impose any taxes upon federal lands. This is because of Article VI, Clause 2, of the US constitution; the Supremacy Clause, etc. States and political subdivisions generally cannot tax federal property without Congressional action approving such taxation. Other potentially relevant federal constitutional provisions include the “Property Clause” (Article IV, Section 3, Clause 2) and (possibly) the “Enclave Clause” (Article I, Section 8, Clause 17), covering “other needful buildings”⁵ that may come into play.

⁵ The Supreme Court has interpreted the phrase “other needful Buildings” broadly and held that the phrase “includes whatever structures are found to be necessary in the performance of the functions of the Federal Government.” Dravo Contracting Co., 302 U.S. at 143; see Arlington

North Dakota’s state constitution specifically declares (in [Art. X, section 5](#)) that federal land cannot be taxed unless there has been an exemption adopted by an “act of congress” allowing local North Dakota governments to impose property taxes. Congress knows how to adopt such exemptions and has specifically done so with respect to leased lands on military bases. See, e.g., [10 USC § 2667](#). (Think of a McDonalds restaurant on an Air Force Base; the county can impose property taxes on that McDonalds, etc.).

Similarly, section 57-02-08 of the North Dakota Century Code reads as follows:

57-02-08. Property exempt from taxation. All property described in this section to the extent herein limited shall be exempt from taxation:

1. All property owned exclusively by the United States except any such property which the state and its political subdivisions are authorized by the laws of the United States to tax. []

There do not appear to be any “laws of the United States” allowing for taxation of a restrictive BoR permit to use federal land seven months of the year.

The United States Congress has recognized there are financial needs of county governments because of the limited services they presumably provide on these federal lands (i.e. limited emergency services, etc.). Recognizing those needs, Congress devised a statutorily-mandated system through which the federal government compensates counties for those services. See [31 U.S.C. Ch. 69](#). Congress appropriates federal dollars to the Department of the Interior (in section 6906 of the federal law) to be paid to counties based upon nearby population and the number of acres of federal land that exist in each county in the US. For example, Grant County (where Lake Tschida is located), in North Dakota, has 8,669 acres of federal land and receives (approx.) \$25,448 per year in what is called “Payments In Lieu of Taxes” or PILT. [Here is a link to a DOI website](#) showing a breakdown of all such money paid to North Dakota counties with federal land in 2022. Grant County is and has been receiving property taxes from permittees, and then is also receiving federal Payments In Lieu of Taxes on top of that. It appears Grant County is double dipping, and that seems like a False Claims Act problem for Grant County.⁶

A likely response one might expect to hear from Grant County regarding its authority to tax permittees is that they’re not actually taxing the land. They are, instead (they might say) only

Hotel v. Fant, 278 U.S. 439, 455 (1929) (holding that a hospital and hotel located in a national park were “other needful Buildings”); c.f. *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 529–30 (1938) (“The United States has large bodies of public lands. These properties are used for forests, parks, ranges, wild life sanctuaries, flood control, and other purposes which are not covered by [the Enclave Clause].”)

⁶ According to the [Bureau’s website](#), the reservoir includes roughly 10,760 acres of combined land and water. It’s not clear whether the cabin area land around Lake Tschida is included in the 8,669 acres for which Grant County receives federal PILT dollars. This might need to be figured out.

taxing the temporary dwelling on the land. If you look at an example of what the current tax appraiser’s report looks like for a Lake Tschida cabin on federal land ([link here](#)) (or [more directly here](#)) you’ll see that the appraiser’s spreadsheet delineates between the appraised value of the “Land” -- \$0 – and the appraised value of the temporary “Dwlg” (or “dwelling”) -- \$293,800.

Values				
Type	Appraised	B of R	St. Equalized	Pr Yr: 2022
Land		\$0	\$0	
Dwlg	\$293,800	\$0	\$0	\$110,500
Impr		\$0	\$0	
Total	\$293,800	\$0	\$0	\$110,500

If Grant County were to make such an argument in a court of law, it would be meritless. First year law students learn in property law class – if they didn’t know it already – that “Real property consists not only of land which is immovable but also that which is affixed to the land, that which is incidental or appurtenant to the land, and that which is immovable by law.” *Strobel v. Northwest G.F. Mutual Ins. Co.*, 152 N.W.2d 794, at 796 (ND 1967); see, also, [NDCC §§ 47-01-03, and -05](#). The North Dakota Office of State Tax Commissioner has a short publication that makes this clear. “Structures and buildings, including systems for the heating, air conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges appertaining to the property are real property.” [Guideline - Property Tax: Classification Of Property For Assessment Purposes](#). Nothing about this concept is new, nor should it surprise anybody. There’s a Latin phrase that comes out of British common law, “quicquid plantatur solo, solo cedit” which means, roughly, that “whatever is attached to the soil belongs to the soil.”

Ignoring the fact that the permittees do not have an exclusive possessory interest in taxed the federal land, under North Dakota law real property also includes certain manufactured homes. See, e.g., [NDCC §§ 47-01-03\(2\)](#) (“That which is affixed to land, including manufactured homes as defined in section 41-09-02 with respect to which the requirements of subsection 6 of section 47-10-27 have been satisfied”) and [47-10-27\(1\)](#) (“For purposes of this section, a manufactured home is permanently affixed if the manufactured home is affixed to real property and connected to residential utilities, such as water, gas, electricity, or sewer or septic service.”). It would appear that most or all manufactured home permit holders at Lake Tschida are also being illegally taxed by Grant County, since most if not all are somehow “affixed” to the real property, and then hooked up to electricity and septic services.

In all of the documentation I’ve seen from Grant County regarding the taxes we’re addressing here, they characterize these taxes as being property taxes. For example, on the “[Notice of Increase in Real Estate Assessment](#)” received recently, it says “an increase in assessment does not mean property taxes on the parcel will increase.” (etc.). It also references “property you own” (which is inaccurate as permittees do not actually “own” the real property). The Notice

document notes that the county is sending out the notice because it is required to do so by sections 57-02-53 or 57-17-08(4) of the North Dakota Century Code, both of which relate to notice requirements under North Dakota's property tax laws. But it wouldn't matter if they called these taxes something else. They could call it "a mandatory ham sandwich fundraiser" and it wouldn't matter. Property tax is property tax.

Lastly, as noted above, the Permit itself says "property taxes" must be paid by April 15th. Again, Grant County would be violating the state and federal constitution if it imposed "property taxes" on federal land, and if we are not talking about a non-possessory permit interest, we are – at best – talking about federal land here.

While there may be various opinions out there suggesting counties can tax a leasehold interest a lessor has relating to state land (see, e.g. N.D.A.G. Opinion 89-06), no such opinions address a situation where there is clearly no leasehold interest, where there is only a restrictive, partial-year use permit, and where the land is federal land.

Grant County is illegally imposing property taxes on federal land being used, under valid permits, by Lake Tschida permit holders. Grant County is also double dipping by collecting PILT money from the Department of the Interior – money the county receives, definitionally, "in lieu of" property tax money – raising questions regarding the False Claims Act. Cabin permit holders should not limit their fight to the issue of the obscene 2023 tax increases being imposed; they should look at challenging Grant County's illegal tax scheme in its entirety and even demand refunds for taxes illegally collected by Grant County in the past.

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-6

Date issued: June 1, 1989

Requested by: Timothy L. Kingstad, Commissioner
State Land Department

- QUESTION PRESENTED -

Whether a nonexempt person's possessory interest in government-owned real property that is managed or controlled by the Board of University and School Lands is subject to taxation on the value of the possessory interest if the real property is not subject to payments in lieu of ad valorem taxes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a nonexempt person's possessory interest in government-owned real property that is managed or controlled by the Board of University and School Lands is subject to taxation on the value of the possessory interest if the real property is not subject to payments in lieu of ad valorem taxes.

- ANALYSIS -

Real property located in North Dakota and owned by the United States, the state of North Dakota, or its political subdivisions is exempt from ad valorem taxation. N.D. Const. art. X, § 5; N.D.C.C. § 57-02-08(1), (2), (3). However, this does not mean that a leasehold interest of a nonexempt person in real property owned by a governmental entity is exempt from ad valorem taxation.

Possessory interests are defined as real property for purposes of ad valorem taxation as follows:

57-02-04. "Real property" defined. Real property for the purpose of taxation, includes:

1. The land itself . . . and all rights and privileges thereto belonging to or in anywise appertaining
2. All structures and buildings . . . and all rights and privileges thereto belonging or in anywise appertaining

All property in this state is subject to taxation unless expressly exempted by law. N.D.C.C. § 57-02-03. The taxation of a possessory interest in certain property was addressed by a 1988 Attorney General's opinion. That opinion stated the following:

A possessory interest in government owned real property held by a nonexempt person is therefor subject to taxation on the value of the possessory interest, regardless of the characterization of the lease under which it is held because no exemption is provided by law. See, Otter Tail Power Co. v. Degnan, 252 N.W. 619 (N.D. 1934); Lower Yellowstone Irrigation District No. 2 v. Nelson, 2 N.W.2d 180 (N.D. 1941); and United States v. Fresno County, 429 U.S. 452 (1977).

1988 N.D. Op. Att'y Gen. 29, 30. This taxable interest is collectible as a personal charge against the nonexempt holder of the possessory interest. N.D.C.C. § 57-24-31; 1981 N.D. Op. Att'y Gen. 351.

The remaining issue is whether these principles of law apply to a nonexempt person's possessory interest in government-owned real property managed or controlled by the Board of University and School Lands.

In Otter Tail Power Co. v. Degnan, 252 N.W. 619 (N.D. 1934), the supreme court held that Otter Tail's possessory interest in buildings owned by the city of Devils Lake was taxable under section 2076 of the Compiled Laws of 1913. The 1913 statute is the predecessor to N.D.C.C. § 57-02-04(1), (2).

In Ex parte Gaines (Garland County v. Gaines), 56 Ark. 227, 19 S.W. 602, it is held that "the interest of a lessee in lands leased from the United States is not exempt from assessment for taxation," and further that such interest acquired by the lease was property. To the same effect is Outer Harbor Dock & Wharf Co. v. City of Los Angeles, 49 Cal. App. 120, 193 P. 137; Carrington v. People, 195 Ill. 484, 63 N.E. 163; State ex rel. Sioux County v. Tucker, 38 Neb. 56, 56 N.W. 718. In this latter case the court held that "school lands sold by the state, but to which the equitable title of the purchaser has not been completed by full payment of the purchase money, are subject to taxation to the extent of the purchaser's interest therein."

This latter holding is based upon the broad general principle that "exemptions, no matter how meritorious, are of grace, and must be strictly construed"; and "the constitution and the statutes passed thereunder contemplate the taxation of all property not specifically exempted." It is true there was also a statute in Nebraska specifically providing for the taxation of the purchaser's interest in school lands, similar to one in this state, but the court holds that independent of such statute such interest is taxable. If leasehold and possessory interests are taxable as rights and privileges appertaining to the real estate, we see no reason why the right to the use of the building involved herein is not also taxable. Such an eminent authority as Cooley in his work on taxation (I Cooley on Taxation [3d Ed.] p. 635) says: "It is entirely competent to provide for the assessment of any mere possessory right

in lands whether they are owned by the government or by private individuals."

252 N.W. at 621-22 (emphasis supplied). The North Dakota Supreme Court cited this case with approval in Lower Yellowstone Irr. Dist. No. 2 v. Nelson, 2 N.W.2d 180, 183 (N.D. 1942).

Besides the Nebraska decision that was relied upon in the Otter Tail decision, other state courts have also held that leasehold interests in state-owned school lands are subject to taxation. People v. Hendrickson-Pontiac, Inc., 137 N.E.2d 381 (Ill. 1956); City of Chicago v. University of Chicago, 134 N.E. 723 (Ill. 1922); Sexton v. Board of Supervisors, 38 So. 636 (Miss. 1905); Street v. City of Columbus, 23 So. 773 (Miss. 1898); Annot., 54 A.L.R.3d 402, 537, 540, 541, 543 (1974); Annot., 23 A.L.R. 248, 252 (1923).

Therefore, a possessory interest held by a nonexempt person in government-owned real property that is managed or controlled by the Board of University and School Lands is subject to taxation on the value of the possessory interest. No enabling legislation is necessary because an assessment of this kind would be made in the same manner as any other assessment against a nonexempt person having a possessory interest in government-owned land.

The 1989 Legislative Assembly enacted House Bill No. 1075, which is effective for all taxable years after December 31, 1988. This legislation directs the Board of University and School Lands to make payments in lieu of ad valorem taxes on the following property:

[R]eal property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained after January 1, 1980, by foreclosure or deed in lieu of foreclosure of a mortgage given to the Bank of North Dakota, including a mortgage assigned to the state treasurer under section 54-30-02.

Because of these in lieu payments, a possessory interest held by a nonexempt person in these properties is not subject to taxation on the value of the possessory interest.

In the interest of fairness to people who may wish to bid for leasehold interests in real property that is managed or controlled by the Board of University and School Lands, notice should be given that these possessory interests are subject to ad valorem assessment if they are held by a nonexempt person.

To the extent that this opinion conflicts with the 1979 N.D. Op. Att'y Gen. 267, the 1979 opinion is overruled.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Robert W. Wirtz
Assistant Attorney General

ja

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 Elgin, ND 58533
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 recreation@laketschida.com
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OCTOBER 26, 2019

DEAR PERMITEE:

This letter is your 2020 Cabin permit billing. Enclosed you will also find a copy of your 2020 Permit, a check list of all pages requiring your signature, and a list of areas to pay close attention to for minor changes. Please complete the following portion of this letter by filling in all applicable information and returning the letter stamped "Original" to the office address indicated below. You may retain the copy stamped "File Copy" for your records. Please review your 2020 permit; sign and date accordingly. A complete copy of your 2020 signed permit must also be returned with this letter. We would be happy to accept electronic copies of your permit if you so choose, by sending them to recreation@laketschida.com.

Please see the breakdown of your permit and charges below:

CA: [redacted] LOT #: [redacted]

Name:(Please Print) _____

2020 Permit Fee (including Admin fee)	[redacted]
2020 Garbage Fee	[redacted]
Subtotal Due for 2020 Permit/Fees	[redacted]
Offsite Parking - \$30.00 X [redacted] (number of spots) = TOTAL DUE (INCLUDING OFFSITE PARKING) PAYMENT TYPE	\$ [redacted] \$ [redacted] Please add if you wish to keep/add offsite parking for 2019 CASH: _____ CHECK: # [redacted] CREDIT CARD(BY PHONE ONLY): _____

Please note that offsite parking is limited to 2 spots. If you do not request offsite parking be advised that all personal property must remain within your permitted lot lines. Also, note that if you do not purchase offsite parking at this time you are forfeiting any spot you have previously reserved and it could be allotted to another permittee.

Please note that the permit fee is due December 1, 2019. If the fee is not paid by December 31, 2019, you will receive a late notice and a \$100.00 penalty will be added to the total amount due. Failure to pay the permit fee and penalty within 30 days of the date of that notice is grounds for termination of your permit and at that time termination procedures will begin. Please see Article 5c of your permit for more information.

If you wish to pay with credit or debit card you must contact me at 701-390-6355. If I am not available, please do not leave your information in a message. Leave a message indicating a good time to return the call and I will call you back and we can take care of payment at that time.

Sincerely,

Shannon Wangsvick
Recreational Manager
Lake Tschida
Box 118
Elgin, ND 58533
Phone: 701-584-2201
recreation@laketschida.com

TRI-CITIES JOINT JOB DEVELOPMENT AUTHORITY

SEASONAL RECREATION USE PERMIT
HEART BUTTE RESERVOIR/LAKE TSCHIDA
GRANT COUNTY, NORTH DAKOTA

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SEASONAL RECREATION USE PERMIT
HEART BUTTE RESERVOIR/LAKE TSCHIDA
GRANT COUNTY, NORTH DAKOTA

THIS PERMIT, was granted on the 1 day of January 2020, by the Tri-Cities Joint Job Development Authority (TCJJDA) to the following permittee:

Name: [redacted]
Address: [redacted]
[redacted]
Telephone: [redacted]
Email: [redacted]@com

In consideration of the rents and covenants herein specified, the parties mutually agree as follows:

1. GENERAL

Heart Butte Reservoir is under the jurisdiction of the Bureau of Reclamation (Reclamation) Dakotas Area Office, Bismarck, North Dakota. The lands within the reservoir boundaries are Federal lands which are open to the public for recreational use. Under a management agreement between Reclamation and the TCJJDA, TCJJDA administers a cabin site permit program which allows a Permittee to maintain a private cabin on Federal lands.

Cabin site permits may be obtained from TCJJDA and are issued on a case by case basis. Any Permittee issued a permit for a cabin site on Federal lands must obey the provisions of this Permit. Although TCJJDA administers the Federal lands at Heart Butte Reservoir on behalf of Reclamation, Reclamation has responsibility and jurisdiction over all Federal lands at Heart Butte Reservoir. Consistent with its legislative authority, Reclamation may take actions that may be inconvenient, costly, or adverse to the Permittee. These actions may or may not be consistent with or approved by TCJJDA. The Permittee's rights under this Permit are limited, are not guaranteed in perpetuity, and may be canceled at any time to meet the needs of the United States or TCJJDA. This Permit does not convey title to the land being used by the Permittee. By signing this Permit, the Permittee assumes all risks associated with their use of Federal land at Heart Butte Reservoir. Cabins and other private improvements at Heart Butte Reservoir are permitted on public lands in designated areas. Permittees are allowed to construct improvements on permitted cabin sites subject to the terms and conditions of this Permit. The cabin site permit program is designed to generate fair market value revenue for TCJJDA.

The United States shall not be liable for flood damage to the personal property of a permittee or for damages arising out of any act, omission, or occurrence relating to a lot to which a permit applies, other than for damages caused by an act or omission of the United States or an employee, agent or contractor of the United States before December 16, 2016.

TCJJDA and Reclamation will review all land use authorizations in accordance with 43 CFR Part 21, and Part 429, – Reclamation Directives and Standards, LND 01-03 – Recreation Program Management and LND 08-01 – Land Use Authorizations, to determine whether or not:

- a. the proposed use is compatible with authorized project purposes, project operations, safety and security;
- b. the proposed use is environmentally compliant;
- c. the proposed use is compatible with public interest;
- d. the proposed use does not conflict with Federal policies and initiatives;
- e. the proposed use is not contrary to public health and safety concerns;
- f. the proposed use has been screened against other reasonable alternatives, and
- g. the best interest of the United States are paramount to the authorization of any proposed use.

TCJJDA shall use the same permit renewal process for cabin area permits as the Secretary uses for other permit renewals in other reservoirs in the State of North Dakota administered by the Dakotas Area Office of the Bureau of Reclamation as per 43 CFR part 429 and 21 for management of private exclusive use permits on Reclamation lands.

When reviewing applications, the cabin site permit program may be wholly or partially discontinued if TCJJDA or Reclamation determines that the public need for the area has grown to a point where continued cabin use is no longer in the public interest. In such an event, or if the cabin site is needed under emergency conditions, Permittees may be required to vacate the cabin site and remove their improvements.

2. NOTICE

- a. The Permittee will provide TCJJDA with an address for service of notice, correspondence, and service of process to the Permittee. The Permittee will provide this address in writing. It is the Permittee's responsibility to update this address. The Permittee will provide updates to TCJJDA in writing. TCJJDA will file every address update. TCJJDA will mail notice to the last address received in writing in the TCJJDA's office.
- b. The Permittee agrees that any notice mailed by TCJJDA to the last address provided by the Permittee in writing and received by the TCJJDA's office constitutes notice and/or service of process under this Permit and the law. The Permittee agrees that further notice by publication, personal service by sheriff, personal service of summons and complaint, or other type of service is not needed to qualify as notice or service for administrative or litigation matters stemming from or related to this Permit. However, service made by the formal methods of personal service, service by mail, service by sheriff, and notice by publication will also be valid if done in accordance with the rules of procedure of the State of North Dakota.
- c. The Permittee agrees that as to materials sent by TCJJDA to the Permittee, notice and /or service of process are, for matters stemming from or related to this Permit, accomplished on the fifth calendar day following mailing of the notice, summons and complaint, or correspondence to the last address provided in writing to the JJDA's office by the Permittee.

3. DESCRIPTION AND AUTHORIZED USE OF LAND PERMITTED

Subject to the conditions described in this Permit, TCJJDA agrees to allow the Permittee to locate one single-family cabin for seasonal recreational use only, on the following described site:

Cabin Area, Site Sec. T. N., R. W. This Permit does not convey any ownership interest in the land.

Year-long occupancy of a Cabin on the lot is prohibited. The Site shall not be used as a permanent, year-round residence. The lot and any Cabin on the lot may be occupied on a continuous basis only from April 1 through October 31 of each year and is subject to the following restrictions.

- a. In this Permit, "Occupancy" or "Occupied" shall mean the presence of any person on the lot for any amount of time during a daily period beginning at 12:00 a.m. and ending on 11:59 p.m. of the same day.
- b. Occupancy between October 31 and April 1 is governed by the guest camping rule under Article 13 (I). Regulations pertaining to camping and stay limits are found at 43 CFR 423.33. In summary, overnight camping is allowed, consistent with established conditions (43 CFR 423.33(a)), and camping cannot exceed 14 days during any period of 30 consecutive days, at any single Reclamation project (43 CFR 423.33(b)).

4. EXCLUSIONS

The following are excepted and reserved from this Permit for the premises described above:

- a. All rights-of-way heretofore acquired or initiated or hereafter required for highways, railroads, irrigation works, or any other purpose;
- b. The right to take from said lands material for the construction, operation, and maintenance of Reclamation project works;
- c. The right at all times to continue construction, operation, and maintenance of any Reclamation project works now or hereafter required to be located on said lands;
- d. The right of the officers, agents, employees, licensees, and permittees of TCJJDA and Reclamation at any and all times, and without notice to the Permittee, to have ingress into, passage over, and egress from all of said lands, for the purpose of exercising, enforcing, and protecting the rights reserved by this article and for enforcing any and all provisions of this Permit, or for any purpose deemed necessary by Reclamation or TCJJDA;
- e. A right-of-way along all section lines or other practical routes heretofore or hereafter established by authority of the United States for public access to and use of the shoreline of the reservoir;
- f. The right to conduct studies of stream- or reservoir-related flooding and Safety of Dams investigations on the permitted premises, and to modify or terminate this Permit or implement any measures deemed necessary to comply with Federal, State, or local flood plain management regulations or to otherwise correct flooding or Safety of Dams problems; and

- g. The right to issue oil, gas, and mineral permits, easements, leases, permits, licenses, and other use authorizations to outside parties, and to conduct tests and surveys of any kind, and to take any other measures on the land deemed necessary, at any and all times, and at the sole discretion of Reclamation, in order to protect the interests of the United States.

5. PERMIT RATES AND ADMINISTRATIVE FEES

The Permittee shall pay to TCJJDA a permit application fee, an annual permit fee, and an administrative fee, as follows:

- a. The Permittee shall pay to TCJJDA an initial nonrefundable permit application fee of \$100 and an administrative fee of \$100 (covering the term of the Permit specified in Article 6) due on the date the Permittee signs this Permit to cover TCJJDA's costs of preparing, issuing, and administering this Permit. (Per 43 CFR Part 423.23)
- b. The Permittee shall pay TCJJDA an annual permit fee on or before December 1st of each year, as a permit fee for the following seasonal permit year. The initial annual permit fee shall be \$1639.65. Annual permit fees will be due and payable on or before December 1 for each subsequent year this Permit is in effect. During the term of this Permit, TCJJDA may adjust the annual permit fee to reflect current fair market values for similar properties. Reclamation's land index rate or other methods to determine fair market value will be used beginning with the 2022 permit rate adjustment to more closely represent recreational land permit rates.

By accepting this Permit, the Permittee waives all rights to protest or appeal increases in fees established by TCJJDA or Reclamation, provided those fees are consistent with federal law.

- c. If any annual permit fee is not received by December 31 of the year before the year for which they are being applied, a late notice will be mailed to the Permittee's address on record with the TCJJDA's office and a \$100 penalty will be assessed. Failure to pay the permit fee and penalty within 30 days of the date of the late notice is grounds for termination of this Permit.
- d. Additional costs incurred by TCJJDA associated with administering this Permit, at their discretion, may be reimbursable and payable by the Permittee.
 - (1) Additional administrative-incurred costs may be associated with the Permittee's building construction and cabin site development activities, off-site shoreline development activities (specified in Article 13), general cabin area services, etc. Payment by the Permittee for reimbursement of additional administrative-incurred costs shall be made to TCJJDA as stipulated in the billing notice.
 - (2) Additional TCJJDA or Reclamation-incurred costs may be associated with the Permittee's cabin site activities requiring oversight activities, National Environmental Policy Act (NEPA) compliance and National Historic Preservation Act (NHPA) compliance (e.g., Permittee obtaining

gravel/rock/topsoil from borrow sources which have not been previously approved from a cultural resources standpoint, NEPA and NHPA compliance for cabin site activities not covered in Reclamation's annual work plan). Payment by the Permittee for reimbursement of additional TCJJDA and Reclamation-incurred costs shall be made to TCJJDA as stipulated in the billing notice. The Permittee must pay the amount requested before TCJJDA will continue processing the application.

(3) Failure to fully pay all costs assessed under either subparagraph one or two just above, within 60 days of notice is grounds for termination of this Permit without a pre-deprivation hearing. If TCJJDA moves to terminate this Permit, notice of the termination will be mailed to the Permittee's address on file with the TCJJDA's office.

- e. The Permittee will be required to pay an additional disposal fee for household garbage (e.g., cans, bottles, paper) collection as part of the annual rental fee. TCJJDA will administer the household garbage contract with a vendor. The amount for this service will be \$150.13 annually for 2020 and will be adjusted according to the bid price thereafter. The Permittee is responsible for making arrangements to dispose of all other debris (e.g., oil, tires, batteries, trees, lumber, mattresses, furniture, and appliances) to an approved offsite landfill at his/her cost. Any garbage, refuse, debris, junk, or other unauthorized materials, of any nature whatsoever, not removed by the Permittee after notice by TCJJDA to remove the unauthorized materials, will be removed by TCJJDA, and the Permittee will be billed for any and all associated removal costs.
- f. The Permittee shall pay to TCJJDA an annual fee for each 15 foot by 45 foot off-site vehicle parking and storage site issued under a separate special use permit. The 2020 fee for each off-site vehicle parking and storage is \$30 and subject to annual adjustment. Off-site parking is not transferable and will be limited to 2 off-site parking spots per each permitted lot.

Summary of Permit Fees for 2020:

Application fee:	\$100.00	Nonrefundable for initial review
Administrative fee	\$100.00	Processing the Permit, NEPA compliance, annual field reviews, reviewing requests to construct buildings, decks, erosion control structures, etc.
Annual rental fee:	\$1639.65	To be paid as stated above
Annual disposal fee:	\$150.13	To be paid as stated above
Total Fees	\$1989.78	Without off-site vehicle parking and storage site

6. TERM OF PERMIT

The term of this Permit shall be for a period not to exceed 5 years beginning on the date hereof and continuing until December 31, 2024, inclusive, unless sooner terminated as herein provided. Thereafter, any permits, upon issuance, shall mirror the term limit provided by the management agreement between Reclamation and TCJJDA which can be for a period of up to 20 years. All

provisions of this Permit will be null and void upon termination and any subsequent permit for the site may be subject to different provisions.

- a. TCJJDA will notify the Permittee concerning permit renewal 60 days prior to expiration of this Permit.
- b. TCJJDA and Reclamation may amend any subsequent permit to reflect or include all applicable regulations, current policy, fair market value, etc.
- c. The right of TCJJDA to issue a new permit is subject to denial by Reclamation if such exercise is determined not to be in the public interest or national security, inclusive of Safety of Dams and Flood Plain Management requirements.
- d. The Regional Director may, upon advice of the Solicitor, modify the terms and conditions of this Permit to meet local and special conditions. Before making any modifications, Reclamation will notify the Heart Butte Association.
- e. In the event of the death of the Permittee, a new permit will be issued to the heir(s) for the remaining term of this Permit. TCJJDA must be notified within 120 days of the death of the Permittee.

7. TRANSFER OF PERMIT, ASSIGNMENTS, AND SUBLEASES

The transfer, assignment, or subleasing of cabin site permits are subject to the following provisions:

- a. This permit and the rights and privileges granted hereunder may not be sold, bartered, assigned, or transferred by the Permittee. TCJJDA will indicate approval of assignment/transfer by entering into a new permit, for the unexpired term, with the assignee. TCJJDA and Reclamation reserve the right to amend any subsequent permits issued to reflect or include all applicable regulations and current policy.
- b. The Site may not be subleased or in any manner conveyed or assigned to a person not specified on the Permit.
- c. This permit may have two or more persons be signatory parties to this Permit as long as they are immediate family. Immediate family defined as parents and their children.
- d. The Permittee may have use of only one single-family cabin site in the Great Plains Region of the Bureau of Reclamation, inclusive of sites located on tracts permitted to organized groups on Reclamation reservoirs.
- e. This Permit may not include more than one staked site, and no more than one cabin is allowed in accordance with this Permit.
- f. This Permit may not be held in the name of a corporation. In the event the Permit is held in the name of a Trust, the name and address of the legally responsible person for the Trust, as well as the name(s) and addresses of all Trust beneficiaries, must be provided at the time this permit is executed.
- g. Any noncompliance as of December 16, 2016 with the terms of Article 13. of this permit at the time the permit is transferred or assigned are grandfathered in for the benefit of the new permittee and may continue.

8. SALE, REMOVAL OR TRANSFER OF CABIN OR ASSOCIATED PRIVATE PROPERTY

All sales, transfers, assigns, removal, demolition, or other disposal of the dwelling and associated property and improvements are subject to the following:

- a. TCJJDA must be notified by the Permittee at least 30 days prior to finalization of any action covered by this article and TCJJDA's permission to sell, remove, or transfer the Cabin must be obtained beforehand, but that permission will not be unreasonably withheld.
- b. This permit terminates upon transfer of ownership of the dwelling to another person(s) unless the dwelling is to be removed and replaced with another cabin.
- c. The Permittee must inform prospective buyers of the dwelling and associated private property that such sale does not include this permit, that said permit terminates when the cabin or associated private property is sold and that prospective buyers must apply to TCJJDA for another permit.
- d. Improvements to the land including trees, shrubs, turf, septic systems, vault toilets, wells, retaining walls, permanent masonry stairways leading to the waterfront, waterfront facilities, and other similar improvements, (the dwelling and directly associated improvements excepted), become fixed property and must remain with the lot when the permit terminates, unless their removal is approved or required by TCJJDA. Improvements remaining with the cabin site become the property of the United States when the permit terminates, with no reimbursement being given to the Permittee for such improvements subject to the provisions of Article 16. The Permittee will clean up and dispose of all hazardous materials on the cabin site. If the cabin site contains any hazardous materials, trash, rubbish, or debris, after the Permittee vacates the site, the Permittee is fully liable for cleanup and disposal and all associated costs

9. PUBLIC ACCESS

Access by the public to the permitted area will be governed by the following:

- a. The shoreline and access to the shoreline will at all times be open to the public and the Permittee will not restrict such access nor will the Permittee post or construct any signs that restrict or give the impression of restricting public shoreline access by fencing, gates, posting of no trespassing signs, or by any other means.
- b. The Permittee will recognize and honor the right of access of the public and neighboring permittees along established roadways, trails, and lot lines which may cross the permitted Site.
- c. Permittee is not required to allow public parking within the permit area.
- d. The Permittee is not required to allow the public to use their private dock placed on the shoreline.

10. BOUNDARIES

The permitted site boundary survey and related markers are Federal property and are not to be

disturbed. These markers are defined by permanent stakes or monuments which were placed under the authority of and with the approval of Reclamation. It is the Permittee's responsibility to protect such monuments and notify TCJJDA if such monuments are removed, damaged, or appear to be endangered by human or natural processes. Any monuments damaged, defaced, disturbed, removed, or concealed by the Permittee, or by negligence on the part of the Permittee, shall be corrected by an approved licensed land surveyor at the expense of the Permittee. The Permittee will not expand any of his/her facilities, improvements, or structures onto another Permittee's cabin site. The TCJJDA may, after application by one or more of the parties involved, approve construction of shared utility systems.

11. REVIEWS AND INSPECTIONS

TCJJDA, Reclamation and other official personnel may at all reasonable times and during reasonable daylight hours have full access to the above described permitted site including but not limited to the cabin and outbuildings thereon for the purpose of inspecting for compliance with or enforcement t, inspecting for compliance with or enforcement of county, state, or Federal laws and/or regulations, examining and inspecting the conditions thereof, or for exercising any of the rights or powers reserved to Reclamation and TCJJDA under the terms, conditions, and provisions of this Permit. Access to the cabin or outbuildings must be based on consent of the Permittee or reasonable suspicion that a violation has recently, is at the time, or is about to occur.

TCJJDA and Reclamation will conduct a compliance review of all existing private exclusive recreational or residential uses at least once every 5 years, to determine if the following criteria are being met: (1) environmental requirements; (2) public health and safety; (3) current in financial obligations to Reclamation (43 CFR § 429.32b); and (4) Permit compliance.

12. SANITATION AND WASTE DISPOSAL

Sanitation and waste disposal within and for the permitted cabin site shall be in accordance with the following provisions:

- a. The Permittee shall provide for disposal of domestic sewage and other waste and litter resulting from the Permittee's use of the permitted site. All sanitary facilities including sewage and disposal, garbage disposal, must comply with all Federal, State, and local laws, rules, regulations, zoning ordinances, building codes, etc. All sanitary facilities, including sewage disposal and domestic water systems, must be approved by Custer District Health Unit (CDHU), Mandan, North Dakota.
- b. Permitted sites shall be kept free of debris, garbage, trash, and any other unsightly objects. Garbage shall be stored in covered containers until disposal by TCJJDA's contracted vendor. Covered containers shall be stored or placed within 10' of main access road of lot for TCJJDA contracted vendor to pick up. Refuse shall not be burned or deposited in or near refuse containers provided by the TCJJDA for public use within public recreation sites.
- c. Sewage systems must be located within the Permitted lot, not on common ground, except any system currently located on common ground.

- d. The Permittee shall obtain a sewage septic system permit from CDHU and a project application from TCJJDA prior to installation of sewage septic system on the permitted lot.
- e. The Permittee shall contact CDHU to obtain criteria for placement of sewage disposal systems on the permitted lot.
- f. All existing sewage disposal systems and facilities shall be inspected within 1 year of the effective date of this permit by the Custer District Health Unit (CDHU) to ensure that applicable wastewater disposal standards are being met and to ensure that untreated effluent is not seeping into the reservoir. Within 14 days of receiving the inspection report, the Permittee shall provide the inspection reports or official copies thereof to TCJJDA. CDHU will inform the permittee that the septic system is one of the three conditions – passed, non-compliant, or failed.

A passed septic system is totally functioning and meets Custer Health requirements

A non-compliant septic system (that does not meet Custer Health's requirements but is still functioning) must be brought up to code within 120 days of the inspection. Following corrective action, Permittee will request another inspection from CDHU to ensure code compliance at permittees expense. Permittee shall submit inspection reports or official copies of the report to TCJJDA.

A failed septic system (system not functioning and/or raw sewage is being discharged onto/into the ground or reservoir) must be repaired or replaced within 120 days of the date the system failed or it was known to have failed. The Permittee must immediately stop using the failed system and take corrective action approved by the CDHU to remove sewage from Reclamation lands and waters. If the site characteristics do not allow a failed system to be repaired or replaced to meet CDHU requirements, and no other viable options are identified the Permit will be terminated at the end of the current recreation season. Permittee shall be responsible for all clean-up and remedial actions to deal with any sewage discharge and shall reimburse TCJJDA for any expense incurred by TCJJDA in administering or addressing any sewage discharge on the Permitted Site.

TCJJDA will not approve the transfer or renewal of any Permitted Lot without proof of a current sewage disposal system permit and updated inspection; through CDHU approval. All expenses for inspections and achieving compliance are the responsibility of the Permittee. Permittee shall obtain an inspection of the lot's sewage disposal system, to the extent deemed necessary by CDHU every 5 years and shall comply with all reporting requirements and any necessary corrective action, as described above.

- g. No raw or insufficiently treated sewage, solid waste, or other refuse shall be dumped into the reservoir or stored or released at a location where such could be deposited in the reservoir or on associated public lands.

- h. All outhouses shall be vaulted and inspected to meet state health standards or removed. All vault toilets shall be pumped, as necessary, at the end of the recreation season, or prior to November 1, to prevent pollution during potential flooding of the reservoir.
- i. Plans for constructing new facilities or modifying existing facilities shall be submitted to TCJJDA for approval prior to construction in accordance with this permit. Permittees are advised that permission to construct or modify facilities is not guaranteed.
- j. Any permittee having a holding tank on its site must ensure that it meets specifications by Custer District Health Department. If any holding tank leaks and causes damage to Reclamation facilities and its use is not stopped and is not promptly repaired or replaced or if any holding tank pops out of the ground due to permittee's negligence and causes damage to Reclamation facilities, the Permit may be terminated.

13. CONSTRUCTION, MAINTENANCE, AND SITE DEVELOPMENT REQUIREMENTS

Initial construction, replacement, maintenance, and modification of the site, structures, and appurtenances shall be subject to the following:

- a. All new construction, improvements, or alterations to the lot and structures (other than routine maintenance and emergency), including any additions, garages, sheds, patios, decks, walkways, stairways, etc. shall be approved in writing by an authorized TCJJDA and Reclamation representative prior to initiation of the action. Before submitting the plans to TCJJDA for approval, the Permittee shall consult the county zoning ordinances, if any, and determine that the Permittee's plan will comply with the county's ordinances and/or county permitting needs. The Permittee shall comply faithfully with all plans and applications as approved by TCJJDA. The decision to issue any authorization or permission to construct, improve, or otherwise alter the Site shall be within the sole discretion of TCJJDA and Reclamation.
- b. The Project Application form (Exhibit B) and written requests for building construction and site development activities, along with detailed plans and a schedule for completion, must be submitted by the Permittee to TCJJDA at least 60 days prior to the start of the proposed construction / work activity. Note: The Project Application form will be submitted to Reclamation by TCJJDA for review and approval prior to final approval by TCJJDA.
- c. The application shall also include: Pertinent information regarding off-site construction activities associated with providing utility services, constructing roads, etc. Note: Borrow material shall not be taken from the cabin site area or from any other Federal lands at Heart Butte Reservoir. Borrow material (e.g., rock, sand, gravel, and topsoil) shall be obtained from areas which have been surveyed for cultural resources and have been determined to contain no significant historic properties. Borrow sources shall be submitted to TCJJDA, for submittal to Reclamation, at least 60 days in advance of any excavation activity to allow time for a cultural resource survey to be performed and consultation with

- the State Historical Preservation Officer (SHPO).
- d. The Permittee shall be responsible for obtaining all state or county building permits prior to construction, and such permits as are necessary for utility crossings, road crossings, etc. A copy of all such permits shall be provided to TCJJDA before approved construction activities begin.
 - e. National Environmental Policy Act (NEPA) compliance and National Historic Preservation Act (NHPA) compliance are required for all building construction and site development activities. The NEPA and NHPA compliance shall cover activities on the permitted site and adjacent public lands associated with providing electrical power, domestic water, sewage disposal, telephone service, etc. Reclamation is the agency responsible for assuring NEPA and NHPA compliance for activities on Heart Butte Reservoir lands. The Permittee is advised that such compliance can be time consuming and costly to the Permittee. The Permittee is encouraged to contact TCJJDA in advance of any anticipated activities that will require NEPA and NHPA compliance.

The Permittee shall be particularly alert in land disturbing activities to take all reasonable and necessary precautions to protect and preserve historic, prehistoric, archaeological, and paleontological sites and resources. Should such sites or resources be discovered during land disturbing activities, the Permittee shall immediately suspend work within the vicinity of the sites or resource and notify TCJJDA. Reclamation will promptly have the area inspected to determine its significance and the appropriate actions to follow (salvage, test excavation, etc., and resumption of operations). All objects found or salvaged from public lands are the property of the United States government and will be turned over to Reclamation. The Permittee will be responsible for mitigating any damage to affected resources.

- f. Detailed construction drawings of building construction and/or site development activities shall be prepared and be submitted to TCJJDA, upon completion of construction and/or site development. Development or construction that varies from the submitted drawings is grounds for termination of this Permit. Failure to comply with this paragraph is grounds for termination of this Permit without pre-deprivation hearing. If the TCJJDA moves to terminate this Permit, notice of the termination will be mailed to the Permittee's address on file with the TCJJDA. Be advised that all projects will continue to be reviewed on an ongoing basis and any variations regardless of amount of time between project completion and inspection are subject to this paragraph and are grounds for termination of this permit without pre-deprivation hearing.
- g. Building construction shall be consistent with sound building practices and with the general standards and guidelines set forth below. Existing cabins will be exempt from the standards and guidelines specified in (2), (3), (4), and (5), until such time as the cabin is replaced for any reason. No expansion will be allowed for existing cabins over the maximum specified.
 - (1) Only one single-family dwelling will be permitted on each lot, regardless of the lot size.

- (2) The maximum plan/top view size of any cabin (including attached garage, enclosed deck/porch, etc.) shall be 1,700 square feet.
 - (3) Cabins shall have a maximum of two levels (e.g., main floor and basement, main floor and loft, etc.)
 - (4) Two-level cabins shall have a maximum combined level floor/living space of 2,000 square feet, excluding attached garages.
 - (5) Maximum allowed square feet of garage space per permitted lot is 800sqft (attached and/or detached) No single garage shall exceed the maximum floor area of 800 square feet and shall only be a single story. Garage space shall be used for storage space only and at no point shall be used for extended living space. Use of garage space as living space is a direct violation of permitted use and this permit and could lead to termination of permit. Sheds or other building structures shall have no more than a maximum floor area of 144 square feet.
 - (6) All cabins, garages, storage sheds, and other building structures shall be constructed above elevation 2094.5 feet. This includes footings and any other part of construction.
 - (7) Design and construction of cabins, garages, and associated facilities shall be such that the cabin, garage, and facilities can be moved off the site in the event the cabin site permit is terminated.
 - (8) All buildings shall be constructed in conformance with applicable State and local building codes, State Health Department regulations, etc.). Furthermore, TCJJDA may require cabins or appurtenances, or other improvements to be engineered by a certified engineer. Proof of compliance as evidenced by a signed inspection certificate from an authorized state or local building inspector must be provided to TCJJDA for each cabin permitted on Federal lands.
- h. Construction, restoration, repair, or replacement of the dwelling unit or appurtenances shall be subject to such additional or revised Federal, state and local standards and policies as may be promulgated during the term of this Permit.
- i. Cabin site permits are not issued in perpetuity, and in constructing any improvement to a cabin site, the Permittee assumes the risk that they may eventually be required to remove their improvements and vacate the premises if their cabin site is needed for other purposes.
- j. The dwelling and appurtenances must be kept free of fire and explosion hazards and must conform to applicable Federal, State and local fire and safety codes. Fireplaces, stoves, or any other type of burner must be fireproofed by use of a spark proof screen or door. All fires must be extinguished prior to leaving the area and the Permittee shall take all reasonable precautions to prevent or suppress grass or woodland fires. TCJJDA may take additional measures necessary to reduce or prevent fire hazards.
- k. The Permittee shall not cut or damage any trees or otherwise disturb the natural vegetation located outside the permit site nor shall trees or shrubs be planted or other permanent landscaping be conducted outside the boundaries of the permit

site without the prior approval of TCJJDA and Reclamation via a project application.

- i. If the cabin and appurtenances are demolished or so destroyed as to make repair and restoration impractical, this Permit and all of the rights of the Permittee hereunder shall terminate as provided below, unless however, the Permittee notifies TCJJDA in writing within 60 days of such action or knowledge of such action, that the cabin and appurtenances will be replaced. If the dwelling which is demolished or damaged is to be rebuilt, restored, or repaired, this Permit shall not terminate, provided the Permittee agrees to restore or rebuild the same in accordance with plans and specifications consented to by TCJJDA, at Permittee's sole expense, within 180 days from the date when the damage occurred, excluding any time when work was prevented by causes beyond Permittee's control.

If the dwelling is not to be restored or rebuilt as aforesaid, the Permittee agrees to remove, at Permittee's expense, and within 60 days after damage or destruction, all debris from the land and restore said land to conditions similar to its original or natural appearance, as determined by TCJJDA.

- m. The cabin and appurtenances must comply with applicable local, State, and Federal floodplain regulations.
- n. The Permittee shall maintain the premises and improvements thereon in a good state of repair.
- o. All newly constructed or replacement cabins, or appurtenances, shall be adequately anchored by use of deadmen, foundation anchor bolts, or other approved devices.
- p. Motor homes, mobile homes, or other recreation vehicles (RV's) may not be used as seasonal, long-term, or permanent dwellings or storage units.
- q. Cabin owners must move all structures (docks, lifts, etc.) and personal belongings located in the flood pool to the highest point on their lot or adjacent to their cabin by October 15 each year. Structures need to be portable (having wheels or skids) to facilitate removal from the flood pool.
- r. Reclamation-owned lands, facilities, and water-bodies, whether managed directly managed by Reclamation or managed by another entity through a managing partner agreement, are subject to Reclamation policies and federal, state and local regulations. Compliance with the Code of Federal Regulations (CFR) governing public conduct and use of lands (43 CFR 423 and 43 CFR 429), as well as terms and conditions of use permits and/or use authorizations, is required as appropriate.
- s. Heart Butte Reservoir continues to grow in visitation and serves as a draw for the local area/region. Managing and monitoring **all** uses and activities (per 43 CFR 423 and 429), including overnight camping and stay limits, requires consistency in implementation and enforcement for both the general public areas as well as in areas permitted for existing private exclusive use. As such, overnight camping regulations and associated camping fees apply to areas permitted for existing private exclusive.
- t. Regulations pertaining to camping and stay limits are found at 43 CFR 423.33. In summary, overnight camping is allowed, consistent with established conditions (43 CFR 423.33(a)), and camping cannot exceed 14 days during any period of 30

- consecutive days, at any single Reclamation project (43 CFR 423.33(b)).
- u. Anyone who camps overnight within the Permittee's lot (permittee of existing private exclusive use) will be subject to the same regulations at 43 CFR 423.33 as members of the public, in addition to camping rates established by TCJJDA. Failure to comply with 43 CFR 423.33 camping regulations and observing stay limits results in unauthorized exclusive use (43 CFR 429.32(j)).
 - v. The presence of camping by RVs, Motorhome, etc., on the Permittee's site, whether owned by the Permittee or a guest(s), must be located entirely within the permitted lot boundary and shall be limited to a stay of no more than 14 days within any 30-day period. Additional RV's are prohibited from being on Off-Site Parking lots at any time.
 - w. Permittees shall observe the camping stay limits as defined by CFR 423.33(b), which limits camping to any 14 days within a 30 day consecutive period (conversely the Permittee's site must not contain any Recreational Vehicle (RV), Motorhome, etc., during any 16 days of the same 30-day period). The 30-day period commences with the appearance of the first RV, Motorhome, etc., and continues consecutively until the 30-day period is over. Permittees are responsible for obtaining necessary temporary camping registration/permits from the TCJJDA office for guest(s) (or the Permittee's own RV or Motorhome) who plan to occupy space within the site.

14. PERMISSIBLE OFF-SITE SHORELINE DEVELOPMENT

Permittees are allowed to construct, operate, and maintain four shoreline developments outside the legal boundaries of their permitted site, subject to the provisions of this permit, and provided that developments are approved and permitted in writing by TCJJDA before they are constructed. Permissible developments are: boat docks and lifts; water systems using reservoir water; bank stabilization and erosion control structures (retaining walls), subject to NEPA compliance and Corps of Engineers 404 permits, and single access route from the permitted site to the reservoir shoreline

A Project Application (Exhibit B) shall be submitted by the Permittee to TCJJDA and approval is required by TCJJDA before any work commences.

- a. Docks and Lifts
 - Permittees may install one dock and/or two lift for safe docking of Permittee's boats/watercraft. Docks and lifts should be placed along shoreline in line of permitted lot unless approved by TCJJDA and Reclamation. A project application should be submitted for consideration for approval of placement not in line with permitted lot or on common ground.
 - (1) Docks must be maintained in a manner, so they are readily visible above the surface of the water. In lieu of flotation or in combination with a flotation system, a wheeled dock is acceptable. Steel barrels may not be used for flotation. Docks may extend no more than 40 feet into the reservoir water, or 1/3 of the distance across the cove, whichever is less; or to other length as determined on an individual basis, in writing, by TCJJDA. Anchorage shall be of a type appropriate for the site-specific conditions and shall be designed to resist forces imposed by winds up to at

least 70 mph. Shared dock systems by several permittees (marina type) may be considered by TCJJDA in areas if it is determined that such systems require less space than individual docks.

- (2) All docks and lifts must have the cabin lot number placed on the structure in a manner making them visible from the water, with lettering at least 4 inches high.
- (3) The docks are private property and cabin site permittees are not required to make their docks available for public use.
- (4) All docks placed in the reservoir by the Permittee shall be subject to additional or modified standards for construction, operation, maintenance, and removal that may be developed by TCJJDA and/or Reclamation.
- (5) All watercraft belonging to the permittee's visitors must be removed from Lake Tschida when the visitors depart the premises. Any watercraft left behind will be considered abandoned property after 24 hours and subject to confiscation (Per 43 CFR Part 423.23)

b. Reservoir Bank Stabilization/Erosion Control Structures

Bank stabilization shall be accomplished with rock riprap or other approved materials. Broken pieces of concrete, old car bodies and tires are not authorized for bank stabilization.

- (1) Erosion control structures, including retaining walls, will only be permitted where TCJJDA and Reclamation determines that such a structure is needed to protect improvements within the permitted site and will not have adverse environmental impacts on the resources. All erosion control structures must adhere to design standards that TCJJDA may develop.
- (2) The Permittee shall obtain a 404 Permit from the Corps of Engineers prior to conducting bank stabilization activities or constructing erosion control structures below elevation 2064.5, which is the top of conservation pool elevation for Heart Butte Reservoir.

c. Water Systems Using Reservoir Water

Subject to obtaining a water service contract from Reclamation and the proper payment of fees thereof for the use of reservoir water, water systems may be installed to supply reservoir water to the cabin site for irrigation purposes (i.e. watering lawn, trees, gardens, etc). Waterlines may extend no more than 40 feet into the reservoir water. The location of submersible pumps and intake waterlines which are suspended from a float (e.g., durable, ABS plastic, Styrofoam-filled, fluorescent colored, etc.) to keep them off the bottom of the reservoir must be clearly marked. (Section 9(c)(2) of the Reclamation Project Act of 1939 (53 Stat. 1187))

- (1) All water system electrical facilities shall be installed according to the requirements of the National Electrical Code and will require an electrical inspection and certification by a State certified master electrician. A copy of the certification shall be provided by the permittee to TCJJDA. The record of inspection and approval of the reservoir-supplied water system will be included in the cabin site permit file.
- (2) All water systems and facilities shall be inspected by a certified master electrician and be in compliance with National Electrical Code

- requirements within 1 year of the effective date of this permit. A copy of the electrical wiring certificate shall be provided by the Permittee to TCJJDA.
- (3) Ground water (well) systems are only permitted inside the cabin lot boundary.
 - (4) The Permittee is advised they need to comply with State water board permitting requirements as may be necessary, prior to drilling any new wells within the cabin site area. A copy of any required permits shall be submitted to JJDA before drilling commences
 - (5) All water obtained directly from the reservoir is considered project water. Such use is permissive only and conveys no water right to the user. Neither TCJJDA nor Reclamation warrants the quality of the water for domestic use, assumes no liability for water used for such purposes, and is under no obligation to construct or furnish water treatment facilities.
- d. Shoreline Access Structures/Facilities
Permittees may be allowed to construct and maintain a single access to the reservoir shoreline outside the boundaries of their permitted site, provided such route is determined by TCJJDA to be safe access to the shoreline. Access routes may include stairways to cross steep terrain. An approved project application must be obtained from TCJJDA before constructing and new facilities.

15. MISCELLANEOUS CONDITIONS

In the use of the Site and surrounding premises, the Permittee shall comply with each of the following conditions:

- a. No illegal activity shall occur or be allowed on the cabin site.
- b. The Permittee shall comply with state and Federal laws and Department of the Interior regulations relating to fishing, hunting, protection of cultural (archeological) resources, and control of plant and animal pests. The permittee shall use the land in such a manner to promote acceptable conservation of the land and shall control noxious weeds on the permitted site. The permittee shall also consult with and obtain the written consent of TCJJDA for the establishment of any species of plants proposed on the premises. The permittee shall further cooperate in weed control programs in compliance with laws or regulations which authorize representatives of public agencies to enter the permitted area to control noxious weeds.
- c. Neither the United States nor TCJJDA assumes responsibility for damage caused by or to the cabin appurtenances or improvements authorized by this Permit, or to the property used or stored in connection therewith, resulting from reservoir fluctuations or from any authorized action including project purposes.
- d. The use of herbicides, fungicides, insecticides, pesticide, or any other similar substances, shall be in accordance with all provisions of Federal and State pesticide laws and amendments thereto. No "restricted-use" chemical shall be used. All pesticides shall be removed from the permitted site before October 31 each year.
- e. The Permittee assumes full responsibility for any and all liability arising out of or in any way connected with the Permittee's use and maintenance of the cabin or

- appurtenances, or improvements and agrees to indemnify and save harmless the United States or its agents and assignees and the TCJJDA, its officers and associates from any and all such liability.
- f. The Permittee shall not inflict, cause to be inflicted, or willfully allow any damage, destruction, defacement, or waste of facilities or resources within the area.
 - g. This Permit creates no vested property right. Neither TCJJDA nor Reclamation is providing public land to private individuals for use as their primary or sole place of residence. TCJJDA is not responsible for providing year-round services such as: law enforcement, fire protection, snow plowing, or any form of road maintenance.
 - h. The dwelling unit and other structures constructed or maintained on the permitted site shall be for seasonal (April 1 thru October 31) use only and shall not be used as a year-round principal place of residence.
 - i. No part of the premises herein described shall be used for commercial pursuits of any nature.
 - j. Discharging a firearm on a cabin site, a road adjacent to one, or on the shoreline adjacent to a site is prohibited.
 - k. Dogs and other animals owned by the permittee or their guests shall be controlled in a way that causes no nuisance or danger to other cabin site permittees or the general public. All pets must be contained within permitted lot at all time by leash or fence. Pets must be on a leash no longer than 6' if off of Permittee's permitted lot. Electronic leashes/shock collars are not an acceptable form of leash or containment. Permittees should make a mutual effort to resolve problems relating to uncontrolled dogs or other animals before making a complaint. Complaints shall be directed to the Heart Butte Association (HBA) areas director or his/her alternate. If deemed necessary, HBA shall notify TCJJDA of the complaint and failure of the permittee to observe the terms of the permit. TCJJDA will notify the permittee in writing of the violation and the animals shall be confined to the Permittee's lot and be controlled as directed to resolve the complaint.
 - l. It is mutually understood and agreed by the Permittee that any unresolvable disagreement with another permittee involving this permit, serious civil and all criminal matters excepted, shall be submitted to TCJJDA for arbitration, that the decision made thereon by TCJJDA shall be in all respects final and binding upon all parties hereto, and said parties hereby agree to abide by and conform to the ruling and decision as set forth. Any such failure to so conform shall be sufficient cause for cancellation of this permit. Be advised that this paragraph is inclusive of all TCJJDA Staff and Laborers contracted by TCJJDA to provide services to Lake Tschida and permitted lots.
 - m. Except for the four kinds of permissible off-site shoreline developments listed in Article 14 (boat docks and lifts, reservoir bank stabilization / erosion control structures, water systems using reservoir water, and shoreline access structures/facilities), any surface disturbing activity conducted by a Permittee, or their agent, outside the legal boundaries of their permitted site is prohibited and will be considered trespass. Any structure or activity not specifically approved by

- TCJJDA will be considered trespass. Any unauthorized structures or improvements may be removed by TCJJDA if the Permittee fails to remove such structures or improvements after due notice. All costs associated with such removal will be billed to the Permittee.
- n. Off-site vehicle parking and storage is prohibited, unless a special off-site parking space permit has been approved by TCJJDA. Off-site vehicle parking permits will be limited to 2 per permitted lot.
 - o. Quiet time is from 11 pm through 6 am Mountain Time. First failure to comply will result in a fine of \$500.00. Additional violations can result in additional fines and/or termination of permit. Failure to fully pay all fees and/or fines assessed under one or more subparagraphs within 20 days of notice, is grounds for a termination of the Permit without a pre-deprivation hearing.
 - p. Fireworks are prohibited at all times. First failure to comply will result in a fine of \$500.00. Additional violations will result in additional fines and/or termination of permit. Failure to fully pay all fees and/or fines assessed under one or more subparagraphs within 20 days of notice, is grounds for a termination of the Permit without a pre-deprivation hearing.

16. CONFLICT RESOLUTION PROCEDURE

If TCJJDA or Reclamation finds or is notified of a violation;

- (1.) Within ten (10) calendar days the Recreational Manager will contact Permittee. An HBA representative may also be contacted. Recreational manager in cooperation with Permittee will agree on date and type of cure. Recreational manager will notify TCJJDA and Reclamation of completed cure.
- (2.) If cure is not completed within agreed time, Recreational Manager will notify managing partner Lake Supervisor.
- (3.) Permittee and Lake Supervisor will discuss reasonable cure date. Permittee may have a Heart Butte Association (HBA) representative present at any such discussion.
- (4.) If cure is not completed within agreed time, managing partner Lake Supervisor will notify the TCJJDA.
- (5.) TCJJDA will contact Permittee by certified mail. Permittee will have seven days to reply to TCJJDA. If the Permittee does not contact TCJJDA or come into compliance, TCJJDA will move to terminate the permit and give notice to Permittee. The permittee will be given seven calendar days to request a meeting with TCJJDA to resolve the violation before termination. Permittee may have an HBA representative present at any such meeting.
- (6.) If the Permittee has come into compliance with the terms of the permit, TCJJDA may still impose an administrative monetary sanction. If TCJJDA chooses to impose an administrative monetary sanction, the sanction is limited to

\$10,000 in addition to the expenses appurtenant to curing. TCJJDA may require payment of the sanction in one lump sum or devise a reasonable payment plan. Any monetary sanction imposed shall be set out in writing and become a condition of the permit. Failure to pay the sanction on time is grounds for termination. Any monetary sanction must be reasonably related to the violation committed. Factors that may be considered in determining the reasonable relation of the penalty to the infraction include but are not limited to the severity of the infraction, the intent of the Permittee, damages, ability to remedy, cost of investigation, and prosecution of the violation, general deterrence, and specific deterrence.

17. TERMINATION OF PERMIT

Reclamation has delegated authority to terminate permits to TCJJDA.

- a. Obligations of the Permittee and prohibited conduct and conditions are expressed throughout this Permit. In some instances, a statement to the effect that failure to fulfill the obligation or commission of the prohibited act is grounds for termination is included in the same paragraph as the obligation or prohibition. Whether that is specified in close proximity to the obligation or prohibition, failure to accomplish any obligation expressed in this Permit or commission of any conduct prohibited under this Permit constitutes grounds to terminate (or for any other dispositional alternative specified in Article 17(1) this Permit. The conditions listed in subsection "b" below are not the only grounds for termination of this Permit. Permit termination is a TCJJDA option for violation of any condition or prohibition listed in this Permit.
- b. This Permit may be terminated, (or any other dispositional alternative specified in Article 17(1) and all of the rights of the Permittee hereunder shall cease, and the Permittee shall quietly and peaceably deliver to the United States possession of the premises under any of the following conditions:
 - (1) At the expiration of the term as provided in Article 6; or,
 - (2) Upon expiration or termination of the existing management agreement (Management Agreement No. R10MU60016) between Reclamation and TCJJDA, and failure of Reclamation and TCJJDA to enter into a new management agreement whereby TCJJDA, as Reclamation's managing partner, administers certain Heart Butte Reservoir lands and facilities for recreational, wildlife and associated purposes; or,
 - (3) If the permitted lot is needed for any project purpose as provided in Article 4(a) through 4(g), with termination to be effective on December 31 of any year with notice served 90 days in advance, except in emergency situations; or,
 - (4) On the failure of the Permittee to pay a full amount owed by the due date, or associate origination fee after the first notice, as provided in Article 5; or,
 - (5) If ownership of the dwelling passes to another person and an assignment has not been approved as provided in Article 8; or,
 - (6) If the cabin and appurtenances are demolished, or destroyed or severely damaged and the Permittee elects not to replace or repair the same as

- provided in Article 13(1); or,
- (7) If the cabin site property taxes are not paid every year by the 15th of April; or,
 - (8) At any time on the mutual agreement of all parties to this Permit; or,
 - (9) If the Permittee refuses to allow review or inspection as provided for in Article 11; or,
 - (10) After failure of the Permittee to observe any of the terms of this Permit.
 - (11) The Permittee will be permitted 60 days after expiration or termination of the permit to remove any improvements or other private property thereon, subject to the provisions of Articles *8 and 13(l)*, and restore the premises to a condition satisfactory to TCJJDA and Reclamation. Removal of such improvements or other property and restoration of the premises are the responsibility of the Permittee. It is agreed that all nonpermanent improvements or other property not removed within the 60-day period will thereafter be considered abandoned and will automatically become the property of the United States and subject to disposal under Federal regulations. Any removal of such improvements or other property and restoration work remaining will be performed by the United States and the Permittee is liable for all costs therefore.
 - (12) A refund of the annual permit fee may be allowed only if this Permit is canceled for project purposes and will be prorated based upon time used.

18. HEARING PROCESS

- a. Reclamation has delegated authority to terminate permits to TCJJDA.
- b. Reference in this section to days or dates by which an act must be conducted refer to calendar days; not business days.
- c. The TCJJDA Chairman may extend a deadline if prior to the deadline sought to be extended a party or TCJJDA member files a written request for extension with the TCJJDA, and mails or faxes it to the opposing party, all TCJJDA members, TCJJDA's Attorney. The request must contain the basis for the requested extension. The Chairman may only extend a deadline for good cause and must provide written notice of the decision to extend, or the denial thereof, to all TCJJDA members, TCJJDA's Attorney, and the Permittee.
- d. The TCJJDA Chairman may continue a hearing for good cause if prior to the hearing sought to be continued a party or a TCJJDA member files a written request for a continuance with the TCJJDA, and mails or faxes it to the opposing party, all TCJJDA members, and TCJJDA's Attorney. The request must contain the basis for the requested continuance. The Chairman may only continue a hearing for good cause and must provide written notice of the decision to extend, or the denial thereof, to all TCJJDA members, TCJJDA's Attorney and the Permittee.
- e. **NO INDEPENDENT INVESTIGATION OR DATA COLLECTION.** Once a notice of termination has been mailed to a Permittee, the independent activities of each and every TCJJDA Member are limited as follows. No TCJJDA member should base any decision pertaining to violation or disposition on information that has not been provided to every member of TCJJDA, the Permittee, and TCJJDA's

Attorney in time to allow rebuttal. A TCJJDA member is expressly prohibited from conducting any independent inquiry or investigation. TCJJDA members are not to seek out information on their own. Every TCJJDA member is forbidden from receiving unsolicited information offered to a TCJJDA member. TCJJDA members are expressly forbidden from discussing any case pending before TCJJDA with any person besides another TCJJDA member, or TCJJDA's Attorney. No TCJJDA member will discuss the case with any other Permittee, law enforcement officer, or citizen who wishes to offer an opinion or information on the case. Such persons will be directed by the TCJJDA member to convey the information they have to the Lake Recreation Manager or Board Chairman (or Lake Supervisor) of TCJJDA. The Lake Recreation Manager or Board Chairman (or Lake Supervisor) will ensure that any information he collects will be presented to the TCJJDA who shall promptly distribute it to every TCJJDA member, the Permittee, and TCJJDA's Attorney. Any and all information on the case considered by any TCJJDA Member should be published to both parties sufficiently prior to any hearing to allow reasonable time for rebuttal. The TCJJDA may, by motion passed by a majority of the TCJJDA at an open meeting, instruct the TCJJDA Lake Manager, other directed Parties, or the Grant County Sheriff to investigate one or more specific issues. The results of that investigation will be submitted to TCJJDA, the Permittee, and TCJJDA's Attorney and in a written *report*. Every party with standing must be given a reasonable time to submit written rebuttal to any material disclosed to him.

f. PRELIMINARY DETERMINATION. If TCJJDA determines that an obligation in this Permit has not been satisfied or that prohibited conduct or a condition prohibited by this Permit has taken place, a majority of a quorum of TCJJDA may make a preliminary determination that termination is in order. This preliminary decision can and usually would be made in a summary proceeding at which only TCJJDA's representative or associates would address TCJJDA. At this summary proceeding, whether the Permittee will be allowed to address TCJJDA is up to the Chairman. According to North Dakota Century Code section 44-04-20(2), if time and circumstances allow for listing the item in the agenda for the TCJJDA meeting, the public notice will contain a reference to a preliminary determination regarding termination of the permit for permitted site.

g. NOTICE OF TERMINATION. After TCJJDA makes a preliminary determination for termination, the TCJJDA Secretary shall provide a written notice of intent to terminate to the Permittee. The notice of intent to terminate will contain the following.

- (1) Specific notice of the allegations including listing each and every condition or obligation of the Permit alleged to have been violated.
- (2) Provision of specific notice that if the Permittee wants a hearing on the allegation(s), the Permittee must deliver a written request for a hearing to the TCJJDA's office within 15 days of the mailing of TCJJDA's notice.
- (3) Provision of notice that failure to deliver written request for a hearing to the TCJJDA's office within 15 days of the TCJJDA's mailing of the notice of intent to terminate to the Permittee constitutes waiver of the right to a hearing and admission of the allegations in the pre-termination notice.

- (4) Provision of notice of opportunity to cure for those violations which are amenable to cure and/or specification of any alleged violation that is not subject to cure. If there is an allegation of a violation that is amendable to cure, then the Permittee will be informed that the Permittee has 15 days from the date of the notice of the violation to cure the alleged violation(s). If there is an allegation of a violation that is amenable to cure, the Permittee will be notified that the Permittee has 15 days from the date on the notice of termination to file a request for a hearing.
 - (5) Provision of notice that all materials the Permittee wishes TCJJDA to consider must be presented to TCJJDA with the Permittee's initial response to the notice of termination including but not limited to a list of witnesses by name, address and phone number and a summary of their testimony; and a list of exhibits and copies thereof.
 - (6) Provision of notice that no material will be considered by TCJJDA at the termination hearing if the material has not been disclosed in the Permittee's initial reply to the notice of termination. Provision of notice that although the TCJJDA Chairman may allow leave to amend initial responses, there is no guarantee leave to amend will be granted.
- h. **PERMITTEE'S RESPONSE TO NOTICE OF TERMINATION.** The Permittee must provide a written response within 15 days of the date on the notice of termination or make a written request for extension in accord with paragraph 17 c above. The Permittee's response must contain the following.
1. If represented by legal counsel, the response must identify the lawyer.
 2. A rebuttal to each of the allegations the Permittee denies and an admission to each allegation the Permittee does not deny.
 3. A list of witnesses, by name, address, phone number, and summary of the testimony for each witness.
 4. A list of exhibits the Permittee plans to offer and a copy of each exhibit.
- i. **SETTING DATE FOR HEARING OR FINAL DISPOSITION.**
- (1) If the Permittee fails to deliver a written request for a hearing to the TCJJDA within 15 days of the date on the notice of termination, there will be no hearing on the issue of whether the violations were committed. The violations are deemed admitted by the failure to timely file a request for a hearing. Once the date for filing a request for hearing has passed, the TCJJDA shall schedule the case for disposition at the next regularly scheduled meeting of the TCJJDA Board. If the TCJJDA Chairman determines the nature of the violation necessitates final disposition sooner than the next regularly scheduled TCJJDA Board Meeting, the Chairman may direct the Secretary to schedule a special meeting of the TCJJDA Board. (See however, special requirements of NDCC.)
 - (2) If the Permittee delivers a request for a hearing to the TCJJDA Secretary within 15 days of the date on the notice of termination, the TCJJDA Secretary will promptly furnish a copy of the Permittee's response to each TCJJDA Board member and TCJJDA's Attorney. TCJJDA's Attorney,

Lake Recreation manager or Lake Supervisor may, within 5 days of the Permittee's filing of a response and in accord with the provisions of paragraph 18(c) above, request leave of the TCJJDA Chairman to amend the list of witnesses or list of exhibits. The Chairman will provide written notice of the decision granting or denying leave to amend to all TCJJDA Board members, TCJJDA's Attorney, and the Permittee. If leave to amend is granted, the Chairman will specify a deadline for filing the amendments. If the TCJJDA's Attorney, or Lake Recreation Manager or Lake Supervisor does file amendments within the time allotted by the Chair, the Permittee may in turn request leave to amend. If the Permittee requests leave to amend, the Chair of the TCJJDA will rule on the request and publish the ruling to each member of the TCJJDA, TCJJDA's Attorney, and the Permittee. If the Permittee's request to amend is granted the Chairman's ruling must specify a date by which the amendments must be filed. Failure of either party to file amendments in time will result in exclusion of any material not timely filed. After each party has had one opportunity for leave to amend, no further requests for leave to amend will be entertained. No undisclosed witness, exhibit, or statement will be considered at the hearing. Within ten (10) days of the Chair's last deadline for amendment, the Secretary will schedule the allegations for hearing before the TCJJDA Board.

- j. **HEARING ON ALLEGATIONS.** The hearing will be held at an open meeting of the TCJJDA and recorded on audio tape. The Chairman of the TCJJDA will preside over the hearing. The TCJJDA may move to retain a private attorney from TCJJDA board funds to act as Referee at the hearing instead of the Chairman. If an attorney is hired to referee, the Referee's rulings on the admission of evidence will not be final. The TCJJDA's Attorney or Lake Recreation Manager or the Lake Supervisor or his designee will represent the TCJJDA. The Permittee may be represented by counsel or represent him or herself. The burden of proving the allegations is on the TCJJDA board. The standard of proof is a preponderance of the evidence. The Chairman (or the Referee) will control the admission of testimony and exhibits. The Chairman may limit the TCJJDA's Attorney, Lake Recreation Manager, Lake Supervisor and the Permittee to a reasonable amount of time, witnesses, and exhibits on the basis of relevance and accumulation. The Chairman may allow opening and closing statements. The Chairman may request guidance from the TCJJDA's Attorney regarding procedure and admission of evidence.
- k. **FINDINGS.** Once presentation of evidence and closing statements (if any) are complete, TCJJDA will make a finding on each and every allegation regarding whether it was proven. Findings must be based solely on evidence formally submitted to the TCJJDA board in the filings or at the hearing. TCJJDA is free to judge weight and credibility of witnesses and evidence. For example, although hearsay may be admitted, the weight attributed to it is up to TCJJDA. The findings will be noted in writing by the TCJJDA Secretary. Once the findings have been made, noted, and published, TCJJDA will enter into the disposition phase.

1. **DISPOSITIONAL ALTERNATIVES.** If TCJJDA finds that one or more of the allegations was supported by a preponderance of the evidence, TCJJDA shall select from among the following alternatives for disposition. TCJJDA and the Permittee may agree upon a dispositional alternative not enumerated below provided it is not in contravention of the law.
 - (1) Terminate the permit.
 - (2) If the Permittee has come into compliance with the terms of the permit, the TCJJDA may refrain from terminating the permit
 - (3) If the Permittee has come into compliance with the terms of the permit, TCJJDA may refrain from terminating the permit and impose an administrative monetary sanction. If the Permittee has not come into compliance with the terms of the permit but it appears that the Permittee has the will and capability to do so, TCJJDA may suspend the Permittee's privileges of recreational use for a specified time but preserve the Permittee's privileges of ingress and egress sufficient to cure the deficiency. If TCJJDA suspends with further opportunity to cure, TCJJDA may impose an administrative monetary sanction. If TCJJDA chooses to impose an administrative monetary sanction, the sanction is limited to \$10,000 in addition to the expenses appurtenant to curing. TCJJDA may require payment of the sanction in one lump sum or devise a reasonable payment plan. Any monetary sanction imposed shall be set out in writing and become a condition of the permit. Failure to pay the sanction on time is grounds for termination. Any monetary sanction must be reasonably related to the violation committed. Factors that may be considered in determining the reasonable relation of the penalty to the infraction include but are not limited to the severity of the infraction, the intent of the Permittee, damages, ability to remedy, cost of investigation and prosecution of the violation, general deterrence, and specific deterrence.

19. ADVISORY COMMITTEE

The Executive Committee of the Heart Butte Association (HBA) is recognized as the Advisory Committee to TCJJDA and Reclamation on issues related to the Cabin and Trailer/RV permits and may be utilized on an as-needed basis by TCJJDA and Reclamation.

20. COVENANT AGAINST CONTINGENT FEES

The Permittee warrants that no person or selling agency has been employed or retained to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Permittee for the purpose of securing business. For breach or violation of this warranty, TCJJDA shall have the right to annul this Permit without liability or in its discretion to require the Permittee to pay, in addition to the Permit fee, the full amount of such commission, percentage, brokerage, or contingent fee.

21. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner of the Bureau of Reclamation shall be admitted to any share or part of this contract or to any benefit that may arise here from. This restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

22. SUCCESSORS IN INTEREST OBLIGATED

The provisions of this Permit shall apply to and bind the assigns of the United States, and the heirs, executors, administrators, and assigns of the Permittee.

23. NO PROPERTY RIGHT CREATED

This Permit grants no vested property right but affords only a limited license to occupy the land, pending a greater public use. Therefore, the process due to a permit holder is less than the process due to a lease holder. Privileges granted under this Permit are strictly limited by the terms and conditions contained herein. Notice is complete when made under the procedures of Article 2. Any decision of TCJJDA to terminate a permit is final when approved by TCJJDA.

24. WAIVER OF RIGHT TO APPEAL

By signing this Permit the individual(s) whose name appears below agrees to accept all terms of this Permit, and further agrees to waive all rights to protest or appeal any of the terms, conditions or provisions contained herein.

25. FAILURE TO ENFORCE DOES NOT CONSTITUTE WAIVER

TCJJDA's waiver of an infraction of this Permit by the Permittee is not waiver of future compliance, and any provision waived, as well as other provisions of this Permit, remain in full force and effect. TCJJDA and or Reclamation are not precluded from future exercise of a right or remedy (including but not limited to termination) or the exercise of any other right or remedy by a single or partial exercise of a right or remedy.

26. SEVERABILITY

If any term of this Permit is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Permit did not contain the particular term or provision held to be invalid.

27. INDEMNIFICATION – 43 CFR Part 429.28

- a. The grantee agrees to indemnify the TCJJDA and the United States for, and hold TCJJDA and the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the grantee.
- b. By accepting this Permit, the Permittee agrees to comply with and be bound by all terms and conditions specified by 43 C.F.R. 429.28(a).

IN WITNESS WHEREOF, the parties hereunto subscribed their names as of the date first-above written.

TRI-CITIES JOINT JOB DEVELOPMENT AUTHORITY

By: _____
Title: Chairman
For: Tri-Cities Joint Job Development Authority Date: _____

I have read this Permit and understand its provisions. I know that it is an important document concerning the place I use for recreation. I realize I may consult with an attorney and either have done so or made a choice to refrain from consulting a lawyer.

PERMITTEE
[redacted]

By: [redacted]
[redacted]
Date: _____

Phone number [redacted] E-mail Address [redacted]

By: _____
(Print Name) [redacted]
Date: [redacted]

(Signature)
Phone number _____ E-mail Address _____

[redacted] [redacted]
Address (Telephone No.)
[redacted]
City, State, Zip

(Address) ATTENTION! This address is THE SOLE ADDRESS to which TCJJDA will provide notice relative to all actions pertaining to this permit. If you need to change this address, you must do so in writing and send the writing to the TCJJDA, P.O. Box 118, Elgin, North Dakota 58533, indicating the reason you send the different address and the Cabin Site to which it applies. See Notice, section 2(a), above.

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-6

Date issued: June 1, 1989

Requested by: Timothy L. Kingstad, Commissioner
State Land Department

- QUESTION PRESENTED -

Whether a nonexempt person's possessory interest in government-owned real property that is managed or controlled by the Board of University and School Lands is subject to taxation on the value of the possessory interest if the real property is not subject to payments in lieu of ad valorem taxes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a nonexempt person's possessory interest in government-owned real property that is managed or controlled by the Board of University and School Lands is subject to taxation on the value of the possessory interest if the real property is not subject to payments in lieu of ad valorem taxes.

- ANALYSIS -

Real property located in North Dakota and owned by the United States, the state of North Dakota, or its political subdivisions is exempt from ad valorem taxation. N.D. Const. art. X, § 5; N.D.C.C. § 57-02-08(1), (2), (3). However, this does not mean that a leasehold interest of a nonexempt person in real property owned by a governmental entity is exempt from ad valorem taxation.

Possessory interests are defined as real property for purposes of ad valorem taxation as follows:

57-02-04. "Real property" defined. Real property for the purpose of taxation, includes:

1. The land itself . . . and all rights and privileges thereto belonging to or in anywise appertaining
2. All structures and buildings . . . and all rights and privileges thereto belonging or in anywise appertaining

All property in this state is subject to taxation unless expressly exempted by law. N.D.C.C. § 57-02-03. The taxation of a possessory interest in certain property was addressed by a 1988 Attorney General's opinion. That opinion stated the following:

A possessory interest in government owned real property held by a nonexempt person is therefor subject to taxation on the value of the possessory interest, regardless of the characterization of the lease under which it is held because no exemption is provided by law. See, Otter Tail Power Co. v. Degnan, 252 N.W. 619 (N.D. 1934); Lower Yellowstone Irrigation District No. 2 v. Nelson, 2 N.W.2d 180 (N.D. 1941); and United States v. Fresno County, 429 U.S. 452 (1977).

1988 N.D. Op. Att'y Gen. 29, 30. This taxable interest is collectible as a personal charge against the nonexempt holder of the possessory interest. N.D.C.C. § 57-24-31; 1981 N.D. Op. Att'y Gen. 351.

The remaining issue is whether these principles of law apply to a nonexempt person's possessory interest in government-owned real property managed or controlled by the Board of University and School Lands.

In Otter Tail Power Co. v. Degnan, 252 N.W. 619 (N.D. 1934), the supreme court held that Otter Tail's possessory interest in buildings owned by the city of Devils Lake was taxable under section 2076 of the Compiled Laws of 1913. The 1913 statute is the predecessor to N.D.C.C. § 57-02-04(1), (2).

In Ex parte Gaines (Garland County v. Gaines), 56 Ark. 227, 19 S.W. 602, it is held that "the interest of a lessee in lands leased from the United States is not exempt from assessment for taxation," and further that such interest acquired by the lease was property. To the same effect is Outer Harbor Dock & Wharf Co. v. City of Los Angeles, 49 Cal. App. 120, 193 P. 137; Carrington v. People, 195 Ill. 484, 63 N.E. 163; State ex rel. Sioux County v. Tucker, 38 Neb. 56, 56 N.W. 718. In this latter case the court held that "school lands sold by the state, but to which the equitable title of the purchaser has not been completed by full payment of the purchase money, are subject to taxation to the extent of the purchaser's interest therein."

This latter holding is based upon the broad general principle that "exemptions, no matter how meritorious, are of grace, and must be strictly construed"; and "the constitution and the statutes passed thereunder contemplate the taxation of all property not specifically exempted." It is true there was also a statute in Nebraska specifically providing for the taxation of the purchaser's interest in school lands, similar to one in this state, but the court holds that independent of such statute such interest is taxable. If leasehold and possessory interests are taxable as rights and privileges appertaining to the real estate, we see no reason why the right to the use of the building involved herein is not also taxable. Such an eminent authority as Cooley in his work on taxation (I Cooley on Taxation [3d Ed.] p. 635) says: "It is entirely competent to provide for the assessment of any mere possessory right

in lands whether they are owned by the government or by private individuals."

252 N.W. at 621-22 (emphasis supplied). The North Dakota Supreme Court cited this case with approval in Lower Yellowstone Irr. Dist. No. 2 v. Nelson, 2 N.W.2d 180, 183 (N.D. 1942).

Besides the Nebraska decision that was relied upon in the Otter Tail decision, other state courts have also held that leasehold interests in state-owned school lands are subject to taxation. People v. Hendrickson-Pontiac, Inc., 137 N.E.2d 381 (Ill. 1956); City of Chicago v. University of Chicago, 134 N.E. 723 (Ill. 1922); Sexton v. Board of Supervisors, 38 So. 636 (Miss. 1905); Street v. City of Columbus, 23 So. 773 (Miss. 1898); Annot., 54 A.L.R.3d 402, 537, 540, 541, 543 (1974); Annot., 23 A.L.R. 248, 252 (1923).

Therefore, a possessory interest held by a nonexempt person in government-owned real property that is managed or controlled by the Board of University and School Lands is subject to taxation on the value of the possessory interest. No enabling legislation is necessary because an assessment of this kind would be made in the same manner as any other assessment against a nonexempt person having a possessory interest in government-owned land.

The 1989 Legislative Assembly enacted House Bill No. 1075, which is effective for all taxable years after December 31, 1988. This legislation directs the Board of University and School Lands to make payments in lieu of ad valorem taxes on the following property:

[R]eal property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained after January 1, 1980, by foreclosure or deed in lieu of foreclosure of a mortgage given to the Bank of North Dakota, including a mortgage assigned to the state treasurer under section 54-30-02.

Because of these in lieu payments, a possessory interest held by a nonexempt person in these properties is not subject to taxation on the value of the possessory interest.

In the interest of fairness to people who may wish to bid for leasehold interests in real property that is managed or controlled by the Board of University and School Lands, notice should be given that these possessory interests are subject to ad valorem assessment if they are held by a nonexempt person.

To the extent that this opinion conflicts with the 1979 N.D. Op. Att'y Gen. 267, the 1979 opinion is overruled.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Robert W. Wirtz
Assistant Attorney General

ja

Grant County

Auditor/ Treasurer

Grant County Courthouse
P.O. Box 227
Carson ND 58529-0227

Sara Meier
Auditor/ Treasurer
701-622-3275

CHAD NODLAND
811 N WASHINGTON ST
BISMARCK, ND 58501

TO: CHAD NODLAND
FROM: GRANT COUNTY BOARD OF EQUALIZATION
Sara Meier, Secretary
DATE: July 7, 2023
REGARDING: 2023 County Board of Equalization appeal

On June 7, 2023 the Grant County Board of Equalization heard appeals from property owners or parties of interest on property valued for the 2023 assessment year. On June 8, 2023 the Grant County Board of Equalization reconvened to determine the action to be taken on the property of the appeals, and to act upon the assessments across the county. Listed below is the action that was taken on the property of your appeal.

PARCEL IDENTIFIER
Cabin areas and trailer areas: PID05678100

ACTION(S) BY BOARD OF EQUALIZATION

Motion to make no change to value made by Meyer, and seconded by Hochhalter. All in favor voting aye. Motion carried.

Chairman Zenker read from the document provided by the Equalization Advisory Committee, "Site adjustments to property located on federal, state, or other government property for which a payment in lieu of tax is made may create a double taxation which could be unlawful. Our recommendation is to remove the site adjustments applied to structures that may be considered as double taxation for the land which is subject to in lieu payment." Ehler stated that the adjustment will likely become part of the map factor in future years based on the sale prices compared the true and full value. Motion to remove the lake influence adjustment of \$40,000 from all properties it was applied to made by Meyer, and seconded by Hochhalter. Roll call vote – Meyer – aye, Hochhalter – aye, Zenker – aye. Motion carried.

If you are not satisfied with the actions of the Grant County Board of Equalization, and you have made adequate appeals to the local and county board(s) of equalization, you may appeal to the North Dakota State Board of Equalization, which will meet on August 8th, 2023 at 8:30 a.m. Central Time in the Coteau Room of the State Capital Building, Bismarck. ND.

You may contact the Property Tax Division of the Office of State Tax Commissioner for further information about the State Board of Equalization meeting at 701-328-3127.

30 BLUEGILL BLFS,

Deed: NODLAND, JILLIAN

Map Area: LAKE TSCHIDA CABINS

Checks/Tags:

Contract:

Route: 903-015-270

Lister/Date: SF, 06/25/2022

CID#:

Tax Dist: 136-89 Elgin/NL Sch Elgin Fi

Review/Date: RK, 10/05/2022

DBA:

Plat Page:

Entry Status: Inspected

MLS:

Subdiv: [NONE]

Rural / Residential

Legal: Section: 0; Twp: 136; Rng: 89; Block: 3; Lot: 30; Deeded Acres: 0.000

CABIN AREA 3 LOT 30

No Land Dimensions Entered

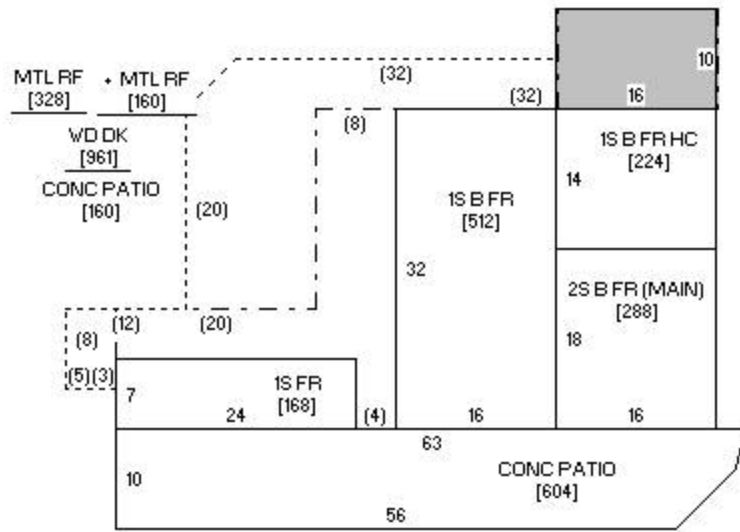
Sales				Building Permits				Values					
Date	\$ Amount	NUTC	Recording	Date	Number	Tag	\$ Amount	Reason	Type	Appraised	B of R	St. Equalized	Pr Yr: 2022
									Land		\$0	\$0	
									Dwlg	\$235,000	\$0	\$0	\$97,400
									Impr		\$0	\$0	
									Total	\$235,000	\$0	\$0	\$97,400

Res. Structure		Finish				Plumbing				Addition		Garage	
Occ. Code	101	Ttl Rooms Above #	6	Bedrooms Above #	3	Standard Bath - 3 Fixt	1	Addition	1 of 3	Garage	1 of 1		
Occ. Descr.	Single-Family / Owner Occupied	Ttl Rooms Below #	2	Bedrooms Below #	1	Shower Stall Bath -3 Fixt		Year Built	1969	Style	Det Fr.		
Year Built	1969	Living Qtrs. W/ Walk-ou	400			Toilet Room (1/2 Bath)		EFA	54	W X L	22' X 30'		
EFA / EFYr	54 / 1969					Lavatory		EFA Year	1969	Area (SF)	660		
Arch. Dsgn	N/A	Foundation	C Blk			Water Closet		Style	1 Sty Fr.	Year Built	1969		
Style	2 Story Frame	Exterior Walls	EIFS			Sink		Area (SF)	512	EFA	54		
AreaSF	288 /	Roof	Mtl / Hip			Shower Stall/Tub		Condition	Normal	EFF Year	1969		
		Interior Finish	Drwl / Panel			Mtl St Sh Bath		Bsmt (SF)		Condition	NML		
		Flooring	Carp / Vinyl			Mtl Stall Shower	2	NoBsmt Flr(SF)		Bsmt (SF)			
		Non-base Heating		Fireplace		Wet Bar		Heat	No	Qtrs Over	None		
		Floor/Wall #	1	Prefab-Double Side	1	Cust Bath - 3 Fixt		AC	No	Qtrs Over (SF)			
		Pipeless #	0	Prefab	1	Custom Tub		Attic (SF)		Qtrs AC (SF)			
		Hand Fired (Y/N)	No			No Hot Water Tank		See other pages for more additions.					
		Space Heat #	0			No Plumbing				Interior Finish	<None>		
Condition	NML					Sewer & Water Only				Interior Finish (SF)			
		Appliances				Water Only w/Sink				Door Opnrs			
Basement	Full	Range Unit		Built-In Vacuums		Hot Tub				Stalls- Bsmt / Std	-- / 2.00		
No Bsmt Flr.	0	Oven - Single		Intercom System		Bidet							
Heat	No	Oven - Double		BI Stereo(SpkrsOnly)		Fbgls Service Sink	1						
AC	No	Dishwasher				Urinal							
Attic	None	Microwave				Sauna							
		Trash Compactor				Cust Bath - 4 Fixt							
		Jennair				Cust Tile Full Bath							
		Security System				Cust Tile SS Bath							
						Cust Bath - 5 Fixt							
						Cust Tile Shower/Tub							
						Cust Tile SSB +lav							
						Cust Tile SSB w/Std Tub							
						Cust Tile SSB - 5 Fixt							
						Cust Bath +lav							
						Cust Bath w/Cust SS							
						Cust Bath w/Cust SS +lav							



Bldg / Addn	Description	Units	Year					
	101 — Single-Family / Owner Occupied							
	2 Story Frame	288						
#1	Bsmt Fin - Living Qtrs. W/ Walk-out (Low)	400 Tbl						
	Adjustment for no base heat							
	Other Heat: Wall Furnace	1						
	Deck #1: Concrete Patio	604 SF						
	Deck #2: Concrete Patio	160 SF						
	Deck #3: Wood Deck	961 SF						
	Deck #4: Fbgl/Mtl Roof	328 SF						
	Deck #5: Fbgl/Mtl Roof	160 SF						
	Plumbing	4						
#1	Fireplace: Prefab-Double Side	1						
#2	Fireplace: Prefab	1						
1 of 3 Adtn	1 Story Frame	512 SF	1969					
2 of 3 Adtn	1 Story Frame	168 SF	1969					
3 of 3 Adtn	High Ceiling-Frame	224 SF	1969					
	Basement area	224 SF						
	Garage: Det Frame 22' X 30'	660 SF	1969					

Prior Year	Comment	Value Type	Location	Class	Land Value	Dwelling Value	Improvement Value	M & E Value	Total Value
2022	VAI Import from 2022 file	Import			\$0	\$97,400	\$0	\$0	\$97,400
2021	VAI Import from 2021 file.	Import			\$0	\$93,100	\$0	\$0	\$93,100
2020	VAI Import from 2020 file	Import			\$0	\$93,100	\$0	\$0	\$93,100
2019	VAI Import from 2019 file.	Import			\$0	\$93,100	\$0	\$0	\$93,100
2018	VAI Import from file	Import			\$0	\$77,600	\$0	\$0	\$77,600
2017	VAI Import from file	Import			\$0	\$77,600	\$0	\$0	\$77,600
2011		Import	Rural	Res	\$0	\$59,200	\$0	\$0	\$59,200
2010		Import	Rural	Res	\$0	\$54,400	\$0	\$0	\$54,400
2009		Import	Rural	Res	\$0	\$49,800	\$0	\$0	\$49,800
2008		Import	Rural	Res	\$0	\$49,800	\$0	\$0	\$49,800
2007		Import	Rural	Res	\$0	\$47,400	\$0	\$0	\$47,400
2006		Import	Rural	Res	\$0	\$47,300	\$0	\$0	\$47,300
2005		Import	Rural	Res	\$0	\$39,000	\$0	\$0	\$39,000
2004		Import	Rural	Res	\$0	\$37,800	\$0	\$0	\$37,800
2003		Import	Rural	Res	\$0	\$37,800	\$0	\$0	\$37,800



Sketch 1 of 1

