

School Trust Lands Management

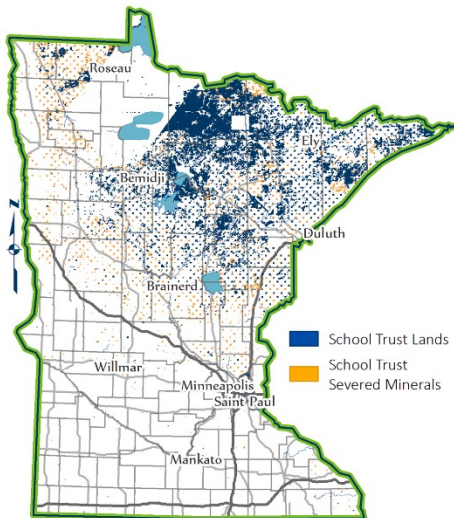
Effective April 19, 2019

Policy Overview

The federal Organic Act of 1849 created the Territory of Minnesota and reserved sections 16 and 36 of each public land survey township “for the purpose of being applied to the schools in said territory”. The federal Enabling Act of 1857 granted Minnesota those reserved lands, and the state’s citizens accepted this grant with the adoption of a Constitution in October of the same year. These lands are known as school trust lands. They are owned by the State of Minnesota and include both surface rights and mineral rights. When the state accepted the trust lands, it accepted the terms and conditions of the grant, and took on the role of trustee of the lands for the benefit of the public schools.

School trust lands are an important and little known category of land ownership across the nation. They are publicly owned and managed, yet have a different legal purpose than other public lands. Just as state parks, wildlife management areas or other types of public land have legally defined objectives, so do school trust lands.

The Minnesota Legislature delegated the authority to manage the state’s school trust lands to the



Commissioner of the Department of Natural Resources (DNR). These lands comprise approximately 2.5 million acres, or 45%, of the 5.6 million acres of public land managed by DNR. Additionally, DNR manages one million acres of school trust lands severed mineral interests. More than two million acres, or 92%, of Minnesota’s school trust lands are located in ten northern Minnesota counties. The remaining school trust lands are dispersed through other parts of the state, with less than 500 acres remaining in the southern third of the state.

Guiding Principles

DNR uses five guiding principles to inform school trust land management:

1. **DNR’s Role as Trustee.** The Permanent School Fund is a trust, established in the Minnesota State Constitution, Art. XI, sec. 8 and designated as a perpetual source of revenue for Minnesota’s public schools. It consists of two parts: the physical lands granted to the state by the federal government and the dollars in the fund that are generated from those lands. The department manages the physical lands as a “trustee,” which imposes fiduciary responsibilities on the department to manage state-owned, school trust assets for the benefit of school districts and charter schools in Minnesota.

However, non-trust assets are administered for their applicable statutory purposes. The department does not manage non-trust assets for the benefit of the trust.

2. **Constitutional Duty.** The department's primary responsibility in the management of school trust lands is to uphold the Constitution. As such, all statutory language must be read to be consistent with the obligations set forth in the Constitution to the extent possible, but when the two are inconsistent, the Constitutional obligations the DNR has as a trustee take precedence.
3. **Statutory Goal of the Permanent School Fund.** The department manages the school trust lands according to the statutory goal of the Permanent School Fund, outlined in Minn. Stat., sec. 127A.31.
4. **Ancillary Public Benefits.** The department's duty to manage school trust lands for the benefit of Minnesota's K-12 public education system distinguishes school trust lands from other public lands, which are managed for multiple uses or for the benefit of the general public regardless of their financial return. The department's management authorities allow for multiple uses and several income streams from school trust lands. Ancillary public benefits are included, but only when school trust assets are not negatively impacted. Ancillary public benefits include open public access, ecosystem services, and fish and wildlife habitat.
5. **Obligation to Compensate.** If the department decides to manage school trust land in a manner that restricts or prohibits long-term economic return in a way that conflicts with its trust obligations, state law requires DNR to compensate the Permanent School Fund (see Minn. Stat., sec. 92.122).

Implementing the Statutory Goal of the Permanent School Fund

A key component of the DNR's school trust lands management policy is guidance regarding how the DNR implements the statutory goal of the Permanent School Fund. The department is charged in Minn. Stat., sec. 127A.31 with "secur[ing] the maximum long-term economic return from the school trust lands consistent with the fiduciary responsibilities imposed by the trust relationship established in the Minnesota Constitution, with sound natural resource conservation and management principles, and with other specific policy provided in state law."

"Sound natural resource conservation and management principles" are not further defined in statute. To provide clarity and consistency, the department uses three core elements to define sound natural resource conservation and management principles for the various land management activities that occur on school trust lands under the authority of the DNR. These core elements are 1) follow state and federal law, 2) use best management practices and 3) develop best interest guidelines to take ecological benefits into consideration when it is in the best interest of the trust.

State and Federal Law. The DNR follows all relevant state and federal laws. When there are disagreements in interpretation of law, or when there are laws that conflict with the department's trust obligations, the department follows the School Trust Dispute Resolution Procedure outlined later in this document. Examples of state and federal laws include, but are not limited to, the following:

- Federal Endangered Species Act
- Federal Shipstead-Newton-Nolan Act
- Federal Clean Water Act, Section 404
- Federal Cultural Preservation Laws
- Federal 1940 Bald & Golden Eagle Act
- Minn. Stat., secs. 103G.221 to 103G.2375: the State Wetland Conservation Act
- Minn. Stat., sec. 84.0895: Protection of Threatened and Endangered Species

- Minn. Stat., ch. 89A: Sustainable Forest Resources
- Minn. Stat., secs. 103G.545, 92.45, and 282.018: Little Shipstead-Newton-Nolan Act
- Minn. Stat., sec. 103F.48: Riparian Protection and Water Quality Practice

In some instances where field level operational guidance is needed to clarify appropriate implementation of state and federal law, the department uses school trust management guidelines to do so.

Best Management Practices. When available, the DNR uses generally accepted and widely vetted best management practices (BMPs) for land and resource management. Generally, BMPs can be defined as practices, or combinations of practices, that are designed to achieve sustainable management and have been determined to be technologically and economically effective, practicable and based on sound science. School trust management guidelines will identify the BMPs appropriate for use on school trust lands.

“Best Interest” Guidelines. Statute provides direction to take ecological benefits into consideration when it’s in the best interest of the school trust lands (see Minn. Stat., sec. 127A.351(b)). Doing so is in the trust’s best interest when ecological benefits mitigate risk to the trust’s ability to generate long-term economic return or ensure the long-term economic value and productivity of the trust. The School Trust Advisory Team (STAT – see DNR School Trust Land Internal Governance section below), or in specific limited instances, the DNR Commissioner, identifies when there is a situation in which it is in the trust’s best interest to take ecological benefits into consideration. In these instances, the STAT will charter an interdisciplinary team to develop management guidelines. Management modifications may be applied only when related management guidelines are approved by the Commissioner’s Office. These situations include:

- When candidate species under the federal Endangered Species Act, or state species of special concern, are at high risk of being federally or state listed as threatened or endangered.
- When modifications to the DNR’s management plans or activities are needed to participate in natural resource certification programs, like forest certification.
- In other limited instances, when it is in the best interests of the trust to take ecological benefits into consideration, as determined by the Commissioner.

Best Interest Guidelines Category	Best Interest Guidelines Goal
Situations when candidate species under the federal Endangered Species Act, or state species of special concern, are at high risk of being federally or state listed as threatened or endangered. ¹	Maintain the species sufficient to prevent it from becoming listed as threatened or endangered. Management options may include: <ul style="list-style-type: none"> • Minimize lethal and non-lethal impacts to individuals of these species • Minimize negative impacts to the habitat
Situations when modifications to our resource management plans or activities are needed to	Maintain relevant certifications.

¹ The STAT will consider information that relates to the species risk of becoming threatened and endangered, and must be evaluated, in part, using relevant indicators and data as determined by the STAT. The Statement of Need and Reasonableness (SONAR) related to the listing of a species of special concern may also be used.

participate in natural resource certifications, like forest certification.	Note: In the guidelines development process, priority will be given to addressing open internal and external audit findings identified through related audit processes.
On a limited basis and as determined by the Commissioner, in other cases when it is in the best interests of the trust to take ecological benefits into consideration.	Management goals will be determined on a case by case basis by the Commissioner.

Guidelines in use as of Fall 2022

Guidelines Clarifying Implementation of State and Federal Law

- School Trust Land Forest Management Policy Guidelines for Deer Wintering Areas

Best Management Practices Guidelines

- Best Management Practices for Forest Management on School Trust Lands
- School Trust Land Forest Management Policy Guidelines for Vernal Pools

Best Interest Guidelines

- School Trust Land Forest Management Policy Guidelines for Jack pine (yarrow) woodland
- School Trust Land Forest Management Policy Guidelines for Northern mesic hardwood (cedar) forest

School Trust Land Procedures

School Trust Management Guidelines

Where clarifying guidance is needed to achieve consistent natural resource management on school trust lands, the department issues school trust management guidelines. These guidelines will be developed by cross-disciplinary teams within the department identified by the STAT for the following purposes:

- To provide field level operational guidance to clarify implementation of state and federal law.
- To identify approved best management practices to apply on school trust lands.
- To take ecological benefits into consideration when it's in the best interests of the trust.
- To identify landscape level management approaches for use on school trust lands.

The STAT reviews a proposed list of best interest guidelines on an annual basis. The STAT determines changes to the list, if needed. Annual review by the STAT will ensure a consistent and effective process related to development of best interest guidelines.

In general, management guidelines will be organized by type of resource management activity. These include forest management, real estate management and mineral management. Management guidelines may direct management at the site or landscape level.

Forest Management Guidelines are used when planning and conducting forestry activities on school trust lands. These activities include but are not limited to timber harvest, site preparation and regeneration.

Real Estate Management Guidelines are used when planning for and conducting real estate transactions on school trust lands. These activities include but are not limited to peat leasing, aggregate

leasing, real property leasing, utility licensing, granting of easements, resolution of trespass, sale and exchange of school trust lands.

Minerals Management Guidelines are used when planning for and conducting mineral-related management activities involving school trust lands. These activities include but are not limited to the leasing of ferrous minerals, nonferrous metallic minerals, industrial minerals, and other subsurface resources as well as any surface planning or management activities that have the potential to affect the mineral estate.

Permanent School Fund Compensation

Minn. Stat., sec. 92.122 requires that the Permanent School Fund be compensated in two instances:

- When revenue generated from school trust lands is diminished by management practices applied to the land and resources as determined by the commissioner of natural resources, the DNR must compensate the Permanent School Fund.
- When generating revenue from school trust land and associated resources will be prohibited by a policy or designation applied to the land, the Permanent School Fund must be compensated before the policy or designation is applied.

Compensation Methods. Several methods are authorized in law that DNR may use to compensate the Permanent School Fund when statute requires it to do so.

- Land exchange, with lands compatible with the goal of the Permanent School Fund as compensation.
- Compensation lease, with lease payments as compensation.
- Condemnation, with payment of the award and judgment as compensation.

Compensation methods may require external coordination with the Office of School Trust Lands or others to implement within the DNR. The department's authority to compensate the trust is outlined in Minn. Stat., sec. 92.122.

Compensation Procedures. The DNR evaluates internal requests to manage school trust lands for purposes not consistent with the management goals of the Permanent School Fund through the Permanent School Fund Compensation Procedure. The Permanent School Fund Compensation procedure begins with the proposing division completing the Permanent School Fund compensation application. Each Division Director is the lead for their division's annual application process. The Land Asset and School Trust Administrator (LASTA) is the department lead for all formally submitted applications and is responsible for managing the application process. The Commissioner makes final decisions on specific compensation determinations as part of the Permanent School Fund Compensation Procedure.

DNR School Trust Land Internal Governance

As defined in statute, the DNR manages school trust assets under the direction of the Commissioner. The Commissioner has authority over the administration of school trust lands and is appointed by and serves at the pleasure of the Governor. All employees of the DNR act in a trustee capacity when managing school trust assets. Division Directors are delegated authority by the Commissioner to manage and control DNR administered lands and resources. Division Directors are delegated authority to make

decisions on the land and resources under their control, including school trust lands. The divisions of Forestry, Fish and Wildlife, Ecological and Water Resources, and Parks and Trails each act as the administrator of most surface activities on school trust lands under their jurisdiction. The division of Lands and Minerals manages mineral resources on all state lands, including school trust lands and school trust minerals. The Commissioner makes final decisions on DNR's school trust lands policy and management direction. In addition, the Commissioner may make final decisions on other specific school trust lands management matters.

School Trust Land Leadership Teams

DNR uses two working teams to provide a framework for decision-making and guidance on management decisions:

- **Executive FRIT (ExFRIT).** This is an internal DNR team that provides leadership direction on forest management policy and issues that are statewide in scope or otherwise irresolvable at other levels of the department. Members are the Division Directors from Forestry, Fish and Wildlife, and Ecological and Water Resources. Division Directors from Parks and Trails, Lands and Minerals and the LASTA participate as needed. When ExFRIT is unable to come to agreement, the team will provide interdisciplinary recommendations to the Commissioner's Office (CMO). ExFRIT is the owner of the dispute resolution process from the Interdisciplinary Forest Management Coordination Framework (IFMCF) used to resolve forest management disputes under the School Trust Dispute Resolution Procedure.
- **The School Trust Advisory Team (STAT).** The STAT is established to provide a forum for the department to effectively address school trust land management issues and trends with statewide and interdisciplinary significance. More specifically, the STAT provides interdisciplinary recommendations to ExFRIT and CMO regarding the following:
 - Emerging school trust management issues, including special projects
 - Compensation strategies and funding sources
 - Resolution of school trust real property or mineral disputes
 - Interdisciplinary recommendations of school trust policy, management guidelines, compensation structure and decision-making procedures

The CMO, with advice from the STAT, set and manage decision-making processes related to school trust land management.

Dispute Resolution

When interdisciplinary conflicts regarding school trust land management arise, staff should refer first to the related school trust management guidelines for direction. If these guidelines are not sufficient to resolve the conflict, use the procedures as outlined in the School Trust Dispute Resolution Procedure to resolve the dispute. All school trust disputes are to be resolved within 150 days. After 150 days, disputes will forward to the Commissioner for resolution. The Commissioner will seek to resolve all forwarded disputes within 30 days. Decisions will be communicated as outlined in the School Trust Dispute Resolution Procedure.

The LASTA, in coordination with the CMO, has responsibility to ensure the department maintains compliance with its constitutional and statutory obligations, as well as fiduciary responsibilities owed to

the beneficiaries of the trust; therefore, disputes require LASTA notification and involvement as described below and outlined in the School Trust Dispute Resolution Procedure.

1. **Forest Management Dispute (related to timber harvest, reforestation, etc.)** School trust conflicts related to forest management activities not addressed by management guidelines will follow the Interdisciplinary Forest Management Coordination Framework's (IFMCF) dispute resolution process, with two exceptions.
 - a. **LASTA Notification.** When a dispute arises on school trust land, the divisions involved in the dispute are collectively responsible for drafting the dispute form and ensuring compliance with this policy and related procedure. Regional Managers of the affected divisions are required, collectively, to notify the LASTA of the dispute to enable school trust input and representation in the process.
 - b. **Dispute Duration.** The dispute resolution process within IFMCF allows for extended time limits if all decision makers agree. This does not apply to school trust disputes; after 150 days, school trust disputes will forward to the Commissioner for resolution as outlined in the School Trust Dispute Resolution Procedure.

2. **Real Property or Mineral Dispute (related to real property, real estate transactions, mineral resources, peat, aggregate, etc.)** When school trust conflicts related to real property and minerals management activities arise and are beyond the scope of related school trust management guidelines, use the School Trust Dispute Resolution Procedure.