Digest of Laws Table of Contents

NDCC Cite	Statute Title	Page #
11-10	County General Provisions	1
11-18	County Recorder	9
11-20	County Surveyor	16
11-27-05	Drilling or Mining Leases by County	20
11-27-06	When Interest of County in Lands Conveyed	21
11-31	County Highway Engineer	22
11-33.2	Subdivision Regulation	24
11-35	Regional Planning and Zoning Commissions	29
17-04	Wind Energy Property Rights	30
23-06-21	Regulation of Cemeteries	32
23-06-21.1	Title to Burial Plots Reverts After Sixty Years-Procedure-Abandonment	33
24-01	State Highway System	34
24-02-07.3	Prequalification, selection, and contracting for consultants	49
24-02-08	Engineering Consulting Services, Coordinator of Highway, Road, and Street Program	50
24-06	Local Road Improvements	51
24-07	Opening and Vacating Highways	57
32-15	Eminent Domain	64
32-16	Action for Partition of Real Property	72
32-17	Actions to Quiet Title and Determine Claim to Real Estate	78
32-29.3	Uniform Arbitration Act	83
35-27	Construction Lien	94
38-02	Lode and Mining Claims	99
40-20-03	City Engineer-Qualifications-Duties-Compensation-Plans or Surveys	102
40-20-04	When City Engineer to be Street Commissioner	103
40-39	Opening and Vacating Streets, Alleys, and Public Places	104
40-49	Parks and Park Districts	106
40-50.1	Platting of Townsites	113
43-19.1	Professional Engineers and Land Surveyors	117
43-23.1	Subdivided Lands Disposition Act	129

NDCC Cite	Statute Title	Page #
43-51	Professional and Occupational Licensing	139
47-01	Property General Provisions	143
47-04-31	Highways, Railways, or Rights of Way - Covenants of Warranty	146
47-05	Servitudes	147
47-06	Real Estate Title by Occupancy and Accession	151
47-10	Real Property Transfers	153
47-19-03.1	Deed and Contracts for Deeds to Include Name and Address of Drafter	160
47-20.1	Survey and Corner Recordation Act	161
47-20.2	Plane Coordinates	164
48-01.2	Public Improvement Bids and Contracts	167
54-01	Sovereignty and Jurisdiction of State	178
54-44.7	Architect Engineer and Land Surveying Services	186
57-02-02	Abbreviations Used in Land Descriptions	189
57-02-38	Units of Real Property for Assessment	191
57-02-39	Irregularities of Land to be Platted into Lots if Required	192
57-05-02	Right of Way Not Used for Railroad Purposes to be Surveyed	193
57-05-05	Maps of Railroad Right of Way - Filing-Penalty	194
61-07-08	Surveys, Examinations and Plans - Water District	195
61-15	Water Conservation	196
61-21	Drainage Assessment Projects	198
61-33	Sovereign Land Management	216
64-02-02	Weights and Measures	218
64-02-09	Standards of Weights and Measures	218

Digest of Laws Table of Contents

NDAC Cite	Rule Title	Page
28-02.1	Engineer and Land Surveyor Registration	220
28-03.1	Rules of Professional Conduct	252
28-04	Continuing Professional Competency	263
33-18-01	Water Well Construction and Water Well Pump Installation	269
33-18-02	Ground Water Monitoring Well Construction Requirements	278
43-02-02	Subsurface Mineral Exploration and Development	289
43-02-03	Oil and Gas Conservation	296
43-02-05	Underground Injection Control	325
43-05-01	Geologic Storage of Carbon Dioxide	332
69-05.2-04	Areas Unsuitable for Mining	340
69-05.2-08	Permit Applications-Permit Area-Requirements for	360
69-05.2-09	Permit Applications-Permit Area-Requirements for	379
69-05.2-10	Permit Applications-Review, Public Participation and Approval or Disapproval	397
69-05.2-13	Performance Standards-General Requirements	414
89-02-01	Drainage of Ponds, Sloughs, Lakes or Sheetwater or any Series Thereof, and Meandered Lakes	424
89-10-01	Sovereign Lands	439

CHAPTER 11-10
GENERAL PROVISIONS

11-10-01. County a corporate body - Powers.

Each organized county is a body corporate for civil and political purposes only. As such, the county may sue and be sued, contract and be contracted with, and in all cases when lands have been granted to it for public purposes and any part thereof has been sold and the purchase money or any part thereof is due and unpaid, all proceedings necessary to recover possession of such lands or to enforce the payment of the purchase money shall be instituted in the name of the proper county.

11-10-02. Number and election of county officers.

Each organized county, unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One recorder.
3. One county treasurer.
4. One coroner.
5. A board of county commissioners consisting of three or five members as provided in this title.

In addition, unless otherwise provided in section 11-10-02.3, each county must have an elected state's attorney and an elected sheriff. In counties having a population of six thousand or less, the recorder also serves as ex officio clerk of the district court. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the recorder, county auditor, treasurer, sheriff, and state's attorney, who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03.

11-10-02.1. Employment of county surveyors.

The board of county commissioners may employ a county surveyor to serve at the pleasure of the board and such surveyor may be compensated on a per diem basis or otherwise as may be determined by the board. The office of county surveyor may be combined with the office of county highway engineer.

11-10-02.2. County supervisor of assessments - Appointment.

Repealed by S.L. 1969, ch. 130, § 9.

11-10-02.3. Appointment of state's attorney upon voter approval.

Upon the submission to the board of county commissioners of a petition signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election or upon resolution of the board of county commissioners, the county auditor shall place the question of appointing the state's attorney on the ballot at the next primary or general election, whichever occurs first. If a majority of the qualified electors of the county voting on the question approves the change from elective to appointive, the change is effective at the end of the term of office of the state's attorney holding office at the time of the election.

11-10-03. Additional justices and constables for unorganized townships.

Repealed by S.L. 1959, ch. 268, § 34.

11-10-04. Officer must be qualified elector - Exceptions.

1. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which the person is appointed, and a county commissioner must be a qualified elector in the district from which the commissioner is chosen.
2. Notwithstanding subsection 3, upon approval of the board of county commissioners of each affected county, a person may serve as an elected officer of more than one county and must be a qualified elector of one of the counties in which the person is elected.
3. A candidate for election to a county office must be, at the time of election, a qualified elector in the jurisdiction in which the candidate is to serve.
4. Two or more counties may appoint one person to fill the same office in each county and the person filling the office must be a qualified elector of one of the counties.
5. a. The boards of county commissioners of two or more counties may agree by resolution to elect a multicounty jurisdiction state's attorney pursuant to chapter 11-10.3. An agreement made between two or more counties according to this subsection must specify procedures for filing for office, the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. A candidate for election to the office of multicounty jurisdiction state's attorney must be a qualified elector of the multicounty jurisdiction at the time of the election; or
   b. The boards of county commissioners of two or more counties may agree by resolution to allow any candidate for the office of state's attorney to petition for office in each county, and to serve if elected, if the candidate is a qualified elector of one of the counties at the time of the election. To be elected to serve a county in which the candidate is not a resident, the candidate must receive the highest number of votes for the office in that county. Each county shall certify the results and issue certificates of election pursuant to chapter 16.1-15.

11-10-04.1. Board members must reside in taxing district.

Unless otherwise provided by law, an appointed member of a county board, commission, or committee that has authority to levy taxes must be a resident of the area subject to taxation by the board, commission, or committee.

11-10-05. When terms of county officers commence - When officers qualify.

Except as otherwise specifically provided by the laws of this state, the regular term of office of each county officer, when the officer is elected for a full term, shall commence on the first of January next succeeding the officer's election and each such officer shall qualify and enter upon the discharge of the officer's duties on the first of January next succeeding the date of the officer's election. If the office to which an officer is elected was vacant at the time of the officer's election or becomes vacant prior to the date fixed for the commencement of the officer's term, the officer may qualify and enter upon the duties of the office forthwith even though the officer was not elected to fill such vacancy. If an officer is elected to fill an unexpired term in an office then held by an appointee, such officer may qualify and enter upon the discharge of the duties of such office at any time after receiving a certificate of election to that office but not later than the first Monday in January next succeeding the date of the officer's election to the unexpired term of office.

11-10-05.1. When terms of county commissioners commence.

The regular term of office of each county commissioner, when the commissioner is elected for a full term, commences on the first Monday in December next succeeding the officer's election and each such commissioner shall qualify and enter upon the discharge of the commissioner's duties on or before the first Monday in December next succeeding the date of the commissioner's election or within ten days thereafter. If a commissioner is elected to fill an

unexpired commission term held by an appointee, such officer may qualify and enter upon the discharge of the duties of such office at any time after receiving a certificate of election to that office but not later than the first Monday in December next succeeding the date of the commissioner's election to the unexpired term of office.

11-10-06. Bonds of county officers.

Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, recorder, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.
8. Repealed by S.L. 1989, ch. 137, § 10.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section 11-10-10.

11-10-07. Bonds required in counties where offices consolidated.

In counties where any offices are consolidated under the provisions of this title, only one bond shall be required for the offices consolidated, and such bond shall be in the highest amount required for any one of the offices so consolidated.

11-10-08. Bonds of county officers to be recorded.

Unless a county officer is bonded in the state bonding fund, the bond of each county officer, immediately after the approval thereof, shall be recorded at length in the office of the recorder in a book provided for that purpose except as otherwise provided by the laws of this state. Immediately after the recording of such bond, it shall be filed as provided in title 44.

11-10-09. Oath of county officers.

Every county officer, before entering upon the discharge of the officer's duties, shall take and subscribe the oath prescribed for civil officers.

11-10-10. Salaries of elected county officers.

1. The salary of an elected county auditor, county treasurer, county superintendent of schools, recorder, and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of the census has been published. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum amount payable for that office when filled on a full-time basis in the future.
2. An elected county treasurer, county superintendent of schools, recorder, and county auditor are entitled to the following minimum annual salary, payable monthly, for official services rendered:

a. Nineteen thousand dollars in counties having a population of less than eight thousand.
b. Nineteen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for in this subsection within the limitations contained in this subdivision.

3. The county superintendent of schools is entitled to receive for any trips necessarily made within the county in the performance of school district reorganization duties the same mileage received under section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. If the county has for its employees a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, the benefits may be in addition to the salaries payable to county officials.
4. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board.
5. An elected sheriff is entitled to the following minimum annual salary, payable monthly, for official services rendered:
   a. Twenty-one thousand nine hundred dollars in counties having a population of less than eight thousand.
   b. Twenty-two thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for in this subsection within the limitations contained in this subdivision.
6. An elected state's attorney in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney must be full time and may not be an attorney or counsel for any party except the state or county, is entitled to receive a minimum salary of forty-seven thousand dollars. State's attorneys not considered full time are entitled to an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

11-10-10.1. Legislative intent in regard to county salaries.

It is the intent of the legislative assembly that the several boards of county commissioners shall exercise the responsibility of setting the salaries of county officials within the limits imposed by section 11-10-10. A board of county commissioners, in making a decision in regard to a county official's salary, should take into account the financial status of the county, the responsibilities of the position, and any factors that the board deems relevant in arriving at the decision.

11-10-10.2. Salary of clerk of the district court.

Repealed by S.L. 1975, ch. 87, § 2.

11-10-10.3. Salaries of county superintendents of schools for 1947, 1948, 1949, and 1950.

Repealed by omission from this code.

11-10-10.4. Compensation and expenses of county commissioners for 1949, 1950, 1951, and 1952.

Repealed by omission from this code.

11-10-10.5. County superintendent of schools - Officer.

For purposes of sections 11-10-10, 11-10-15, and 11-10-20, the county superintendent of schools employed by the board of county commissioners is an officer of the county. A board of county commissioners shall employ a county superintendent of schools, as provided for in section 15.1-11-01, or assign the duties of the county superintendent of schools, as provided for in section 15.1-11-02.

11-10-11. Appointment and salary of deputies and clerks.

The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, recorder, ex officio clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section.

11-10-12. Deputy county officials - Bonds.

Any county official may require that official's deputy to be bonded for the faithful performance of the deputy's duties in an amount to be fixed by the board of county commissioners. A bond of a deputy shall be issued, and the premium thereon paid, in the same manner as in the case of a county official.

11-10-13. Oath of deputies.

Each deputy county officer shall take and subscribe the same oath as the deputy's principal, naming the deputyship, which shall be endorsed upon and filed with the deputy's certificate of appointment.

11-10-14. Fees received by county officers turned over to county treasurer.

The salaries fixed by this chapter shall be full compensation for all county officials, deputies, clerks, and assistants, respectively, and all fees and compensation received by any official, deputy, clerk, or assistant for any act or service rendered in an official capacity shall be accounted for and paid over monthly to the county treasurer and be credited to the general fund of said county, except that such official, deputy, clerk, and assistant shall be entitled to retain such fees as now are allowed to that officer and permitted by law or as may be hereafter permitted and allowed.

11-10-15. Mileage of officials and employees.

Unless otherwise provided by the laws of this state, every county official, whether elective or appointive, every deputy of a county official, and any county employee entitled by law to travel or mileage expense is entitled to mileage expenses of at least the amount allowed state officers and employees under section 54-06-09 for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duties.

11-10-16. Statement to claim mileage.

Unless the expense was incurred by the use of a purchasing card, before an allowance for mileage or travel expense may be paid by a county, the individual for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. Before a claim for mileage is allowed or paid, the claimant shall file the

statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.

11-10-17. Officers to make settlement.

Every county officer chargeable with money belonging to the county shall render that officer's account to and settle with the board of county commissioners at such times as are provided by the laws of this state. A county officer shall pay into the county treasury any balance which may be due the county, taking duplicate receipts therefor, and deposit one of the receipts with the county auditor within five days thereafter.

11-10-18. Penalty for failure to render or settle accounts.

If any person chargeable with money belonging to the county shall neglect or refuse to render true accounts to or settle with the county therefor, the board of county commissioners shall adjust the accounts of such delinquent according to the best information it can obtain and ascertain the balance due the county and order suit brought in the name of the county therefor. The delinquent shall not be entitled to any salary during the time the person is delinquent and shall forfeit and pay to the county a penalty of twenty percent on any amount of funds due the county and withheld by the person.

11-10-19. Use of photography in making county records.

Whenever the board of county commissioners shall deem it expedient to do so, photography may be used in the making of permanent county records. When permanent photographic or photostatic copies of any instrument, document, or decree which is required to be recorded are thus made, such copies may be filed and kept instead of the record books or records of instruments or documents required by any provision of this code.

11-10-19.1. Use of photography in making county records.

Whenever a statute requires an order, will, or other instrument, document, or decree to be transcribed into a record book of a county official, the same may be done by affixing a photostatic or photographic copy thereof to a page of the record book. Such photostatic or photographic copy shall be certified as to correctness by the county official. The photostatic or photographic copy and the certificate shall then be affixed to the page of the record book, and the county official shall inscribe on such page the nature of the instrument affixed, the date recorded, and the official's signature.

11-10-20. Board of county commissioners to provide offices, courtroom, jail - Where public records kept - Authorization for central filing of documents of recorder and clerk of district court.

The board of county commissioners shall provide a courtroom and jail, and shall provide offices in the courthouse of the county for the sheriff, county treasurer, recorder, auditor, clerk of the district court, state's attorney, county superintendent of schools, and any other officer who has charge of public records. If there is no courthouse in the county or if the courthouse erected has insufficient capacity, such offices must be furnished by the county in a suitable building at the county seat for all elected officials, and at any place within the county for appointive or administrative officials, at the lowest rent to be obtained, provided that this section does not apply where county officials may serve more than one county as may be otherwise authorized by law. The board of county commissioners may provide by resolution for the filing in a single location of documents maintained by the recorder and the clerk of the district court. The resolution must state in which office the filing is to be done, the persons who are to have custody of and access to the central files, and must list the documents which are to be centrally filed.

11-10-21. Committee to purchase certain supplies for county.

The county auditor, county treasurer, and the chairman of the board of county commissioners, or such other member of the board as may be designated thereby, shall

constitute a committee which shall purchase and provide all necessary blanks, books, and other stationery for the use in their official capacities of all county officers and emergency supplies and equipment required by the county.

11-10-22. Unlawful for officer to purchase county warrant or evidence of debt - Penalty.

Every person who, while an officer of any county of this state or the deputy or clerk of any such officer, directly or indirectly, buys or traffics in, or in anywise becomes a party to the purchase of, any county warrant or order, or any bill, account, claim, or evidence of indebtedness of the person's county, for any sum less than the full face value thereof, is guilty of an infraction.

11-10-23. Fee bill to be posted - Penalty.

Any county officer whose fees are fixed by law shall make a schedule thereof and shall keep the same in the officer's office in a conspicuous place. If any such officer shall neglect to do so, the officer, for such neglect, shall forfeit and pay the sum of five dollars to be recovered by a civil action for the use of the county in which the offense was committed.

11-10-24. Authorization to organize associations of county governments.

1. Counties, organized under the Constitution of North Dakota or organized under any form of county government authorized by the statutes of North Dakota, are hereby authorized upon motion of the board of county commissioners to organize and participate in an association of counties.
2. The organization or organizations authorized hereunder must be organized pursuant to chapter 10-33.

11-10-25. Nepotism by county officials restricted.

No head of any executive or administrative department or agency, either elective or appointive, of any county in this state, may appoint that official's spouse, son, daughter, brother, or sister to any position under the control or direction of that official, unless the appointment has been previously approved by resolution of the board of county commissioners.

11-10-26. Appeal after deposit for taking.

When the county seeks acquisition of right of way through eminent domain proceedings authorized by chapter 32-15, the board of county commissioners may make an offer to purchase the right of way and deposit the amount of the offer with the clerk of the district court and thereupon take immediate possession of the right of way as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of property as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the board of county commissioners, and the matter must be tried at the next regular or special term of court with a jury unless a jury is waived, in the manner prescribed for trials under chapter 32-15.

11-10-27. Presumption of regular adoption, enactment, or amendment of resolution or ordinance.

Three years after adoption or amendment of a resolution or the enactment or amendment of an ordinance by the board of county commissioners it is conclusively presumed that the resolution or ordinance was adopted, enacted, or amended and published as required by law.

11-10-28. Newly elected or appointed county officials - Training.

Within one year of assuming office, an individual who is elected or appointed to the office of county commissioner, auditor, clerk of district court, recorder, or treasurer shall attend training based upon a curriculum specific to that office and approved by the statewide association for that office.

11-10-29. Refund of taxes or fees - Minimum amount.

Notwithstanding any other provision of law, a person is not entitled to a tax or fee refund, to be paid or approved by a county officer or employee, unless the amount of the refund is five dollars or more.

11-10-30. Acceptance of payment by credit card or other payment method.

A county may accept payment by wire transfer, electronic transfer, automated clearinghouse, or a nationally recognized credit or debit card for any fee charged by, or compensation, tax, or assessment due to a county. A reasonable fee not exceeding the discount, exchange fee, or other fee incurred by the county may be added to the payment as a service charge for the acceptance of payment by a method authorized by this section. The county auditor or individual functioning as county auditor for a county may determine which nationally recognized cards or other payment methods will be accepted for payments made under this section and the amount of the applicable service charge. A person's liability for a payment is not discharged until the county has received payment or credit from the institution responsible for making the payment or credit.

CHAPTER 11-18
RECORDER

11-18-01. Recorder's duties - Recording and filing instruments - Abstracts

The recorder shall:

1. Keep a full and true record, in proper books or other storage media provided for that purpose, of each patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, and other instrument required to be filed or admitted to record, if the person offering the instrument for filing or recording pays to the recorder the fees provided by law for the filing or recording.
2. Endorse upon each instrument filed with the recorder for record or otherwise the date and the hour and minute of the day of the filing or recording.
3. When the instrument is recorded or filed, endorse on the instrument the book and page or document number, the date, and the hour and minute of the date when it was recorded or filed with the recorder.

11-18-01.1. Recorder to be substituted for register of deeds.

Whenever the term "register of deeds" appears in the North Dakota Century Code, the term "recorder" or "county recorder", whichever is appropriate, must be substituted therefor. The recorder must be substituted for, take any actions previously taken by, and perform all duties previously performed by the register of deeds.

11-18-02. Recorder not to record certain instruments unless they bear auditor's certificate of transfer.

Except as otherwise provided in section 11-18-03, the recorder shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent and current taxes and delinquent and current special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes. The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under section 57-02-08.3.

11-18-02.1. Duty of recorder to notify county auditor of certain transactions - Correction of tax rolls by county auditor.

The recorder shall notify the county auditor of the filing of deeds, patents, plats, and vacations of plats, streets, or roads at the time such documents are filed in the recorder's office. The county auditor shall correct the tax rolls and any other records in the auditor's office in order that the auditor's records will be current for the purpose of the preparation of real property assessment books.

11-18-02.2. Statements of full consideration to be filed with recorder - Procedure - Penalty.

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed one of the following:
   a. A statement of the full consideration paid for the property conveyed.
   b. A statement designating one of the exemptions in subsection 6 which the grantee believes applies to the transaction.
2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-27 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of

affixation a statement of the full consideration paid by the party for the manufactured home before the affixation.

3. The recorder may not record any deed unless the deed complies with subsection 1 or record any affidavit of affixation unless the affidavit complies with subsection 2.
4. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out this section, and the forms must contain a space for the explanation of special circumstances that may have contributed to the amount of the consideration.
5. For purposes of subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.
6. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
   a. Property owned or used by public utilities.
   b. Property classified as personal property.
   c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
   d. A sale that resulted as a settlement of an estate.
   e. All forced sales, mortgage foreclosures, and tax sales.
   f. All sales to or from religious, charitable, or nonprofit organizations.
   g. All sales when there is an indicated change of use by the new owners.
   h. All transfer of ownership of property for which is given a quitclaim deed.
   i. Sales of property not assessable by law.
   j. Agricultural lands of less than eighty acres [32.37 hectares].
   k. A transfer that is pursuant to a judgment.
   l. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.
7. Any person that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein is guilty of a class B misdemeanor.

11-18-03. Instruments entitled to record without regard to taxes.

The following instruments may be recorded by the recorder without the auditor's certificate referred to in section 11-18-02:

1. A sheriff's or referee's certificate of sale on execution or on foreclosure of a mortgage.
2. A mineral deed conveying oil, gas, and other minerals in or under the surface of lands.
3. A personal representative's deed or any document terminating joint tenancy or a life estate or any judgment or decree affecting title to real estate, which must be presented to the auditor's office prior to being placed of record in order to allow the auditor to make such changes in the tax rolls of the auditor's office as may be necessary.
4. Any deed conveying to the state, or to any political subdivision or municipal corporation thereof, any right of way for use as a public street, alley, or highway.
5. Any plat, replat, or auditor's lot accompanied by a resolution requesting the recording of the plat, replat, or auditor's lot by the governing body of a political subdivision.
6. A statement of succession in interest to minerals deemed to be abandoned under chapter 38-18.1.
7. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.

11-18-04. Seal of recorder.

The recorder shall maintain a seal and make an impression of the same upon each instrument to which the recorder attaches the recorder's official signature. The seal shall bear the following inscription: Recorder of _____ County.

11-18-05. Fees of recorder.

The recorder shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:
   a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, twenty dollars for documents containing one to six pages and sixty-five dollars for documents containing more than six pages plus three dollars for each additional page after the first twenty-five pages. In addition, for all documents recorded under this section that list more than ten sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for each instrument recorded under this subdivision must be placed in the document preservation fund.
      (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
      (2) The printed, written, or typed words must be considered legible by the recorder before the page will be accepted for recording and, unless the form was issued by a government agency, must have a font size equal to or larger than ten point calibri.
      (3) Each real estate instrument must have a legal description considered to be adequate by the recorder before such instrument will be accepted for recording.
      (4) A space of at least three inches [7.62 centimeters] must be provided across the top of the first page of each instrument for the recorder's recording information. If a space of at least three inches [7.62 centimeters] is not provided across the top of the first page, the recorder shall add a page, and an additional page charge must be levied in accordance with the fee structure.
   b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than ten instruments previously recorded in the county in which recording is requested, a fee of twenty dollars for documents containing one to six pages, sixty-five dollars for documents containing more than six pages plus three dollars for each additional page after the first twenty-five pages, and three dollars for each additional document number or book and page after the first ten referenced instruments. In addition, for all documents recorded under this section which list more than ten separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for each instrument recorded under this subdivision must be placed in the document preservation fund.
   c. Plats, twenty dollars for twenty lots or fewer and fifty dollars for more than twenty lots.
   d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of ten dollars.
2. For filing any instrument, ten dollars.
3. For making certified copies of any recorded instrument or filed instrument, the charge is five dollars for the first page and two dollars for each additional page. For making a noncertified copy of any recorded instrument or filed instrument, a fee of not more than one dollar per instrument page. For providing any electronic data extracted from the recorded instrument, a fee of not more than fifty cents per instrument.

4. The recorder may establish procedures for providing access for duplicating records under the recorder's control. Such records include paper, photostat, microfilm, microfiche, and electronic or computer-generated instruments created by governmental employees.
5. Duplicate recorders' records stored offsite as a security measure are not accessible for reproduction.

11-18-05.1. Additional recording fees - Severed mineral interests.

Repealed by S.L. 1977, ch. 101, § 10.

11-18-06. Recorder to keep an accounting record of fees - Monthly reports.

The recorder shall maintain an accounting record of fees for services rendered. Within three days after the close of each calendar month and also at the end of the recorder's term of office, the recorder shall file with the county auditor a statement under oath showing the fees that the recorder has received as the recorder since the date of the recorder's last report.

11-18-07. Tract indexes to be kept for transfers and for liens - Form of indexes.

The recorder shall keep a tract index of the deeds, contracts, and other instruments that are not merely liens and a tract index of the mortgages and other liens affecting or relating to the title to real property. The indexes must be in substantially the following forms:

FORM OF TRACT INDEX TO CITY PROPERTY

BLOCK NO. 1, IN___

No. of Lot	Vol.	Page or Document No.	Vol.	Page or Document No.	Vol.	Page or Document No.	Vol.	Page or Document No.	Vol.	Page or Document No.
1	____	____	____	____	____	____	____	____	____	____
2	____	____	____	____	____	____	____	____	____	____
3	____	____	____	____	____	____	____	____	____	____
4	____	____	____	____	____	____	____	____	____	____
5	____	____	____	____	____	____	____	____	____	____
6	____	____	____	____	____	____	____	____	____	____
7	____	____	____	____	____	____	____	____	____	____
8	____	____	____	____	____	____	____	____	____	____
9	____	____	____	____	____	____	____	____	____	____
10	____	____	____	____	____	____	____	____	____	____
11	____	____	____	____	____	____	____	____	____	____
12	____	____	____	____	____	____	____	____	____	____
13	____	____	____	____	____	____	____	____	____	____
14	____	____	____	____	____	____	____	____	____	____
15	____	____	____	____	____	____	____	____	____	____
16	____	____	____	____	____	____	____	____	____	____
17	____	____	____	____	____	____	____	____	____	____
18	____	____	____	____	____	____	____	____	____	____

FORM OF SECTIONAL SYSTEM OF TRACT INDEX TO REAL ESTATE TOWNSHIP NO. _____ RANGE NO. _____ SECTION NO. _____

No. of Section	Quarter Section	Part Quarter Section	Vol.	Page or Document No.	Vol.	Page or Document No.	Vol.	Page or Document No.
1	N.E.	N.E. quarter	____	____	____	____	____	____
		N.W. quarter	____	____	____	____	____	____
		S.W. quarter	____	____	____	____	____	____

	S.E. quarter	____	____	____	____	____	____
N.W.	N.E. quarter	____	____	____	____	____	____
	N.W. quarter	____	____	____	____	____	____
	S.W. quarter	____	____	____	____	____	____
	S.E. quarter	____	____	____	____	____	____
S.W.	N.E. quarter	____	____	____	____	____	____
	N.W. quarter	____	____	____	____	____	____
	S.W. quarter	____	____	____	____	____	____
	S.E. quarter	____	____	____	____	____	____
S.E.	N.E. quarter	____	____	____	____	____	____
	N.W. quarter	____	____	____	____	____	____
	S.W. quarter	____	____	____	____	____	____
	S.E. quarter	____	____	____	____	____	____

11-18-08. Separate grantor and grantee indexes to be kept for transfers and liens - Contents.

The recorder shall keep separate grantor and grantee indexes of the deeds, contracts, and other instruments not merely liens, and separate grantor and grantee indexes of the mortgages and other instruments which are liens affecting or relating to the title to real property. Such indexes shall show:

1. The names of the grantors and of the grantees.
2. The dates of the several instruments filed for record.
3. The dates upon which the several instruments are filed.
4. An abbreviated description of the real property affected by such instruments.
5. The number of the book and page where the instrument is recorded or the document number of the instrument.

11-18-09. Document to be numbered - Priority of filing.

The recorder, when any deed, patent, mortgage, receiver's receipt, contract, notice of lis pendens, copy of decree, or other instrument affecting the title to, or creating a lien upon, any real estate within the county is filed in the recorder's office, shall write or stamp thereon immediately a document number. Document numbers shall commence with the number one in each county and shall follow consecutively in the order of filing of the various documents. Priority of the document number on an instrument shall be prima facie evidence of the priority of the filing thereof. When the recorder receives by mail or other like enclosure more than one instrument at a time, the recorder shall affix document numbers thereon in the order in which such instruments actually come to the recorder's hand on opening such enclosure, save that when more than one instrument is recorded from the same source at the same time, the recorder may follow such directions, if any, as the sender may give in such numbering.

11-18-10. Recorder to keep reception record - Contents.

The recorder shall keep a record known as "The Reception Record". The record must be ruled in parallel columns showing:

1. The document number.
2. The date of recording.
3. The name of the grantor.
4. The name of the grantee.
5. The character of the instrument.
6. The book and page or document number upon which the instrument is recorded.
7. The name of the person to whom the instrument was returned.
8. A brief description of the property, if any, described in the instrument.

Immediately after any document or paper of a kind mentioned in section 11-18-09 is numbered, it must be entered in the reception record. The reception record must be a part of the public records of the office and open to public inspection during office hours.

11-18-11. Recorder to record instruments.

When an instrument affecting the title to or creating a lien upon real estate within the county is numbered and entered in the reception record and indexed, it must be recorded or filed as provided by law. The recorder shall provide recording information on the instrument as required by paragraph 4 of subdivision a of subsection 1 of section 11-18-05 and shall authenticate the information with an official signature and the official seal of the office as required by section 11-18-04.

11-18-12. Record, when complete - Penalty for alteration.

Repealed by S.L. 1975, ch. 106, § 673.

11-18-13. Indexing and filing security agreements.

The provisions of sections 11-18-09, 11-18-10, and 11-18-11 shall not extend to, nor cover the indexing and filing of, a financing statement. Such instrument shall be indexed and filed as provided in chapter 41-09.

11-18-14. Recorder to remove and destroy certain documents - Records to be made.

The recorder in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in the recorder's office, and destroy, all chattel mortgages, agricultural processor's liens, agricultural supplier's liens, agister's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the instrument upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the recorder shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the instrument was destroyed.

11-18-15. Notary seal on documents filed with recorder - Stamp or imprint allowed.

The notary seal on any document filed with a recorder may be in either a stamped or an imprinted form.

11-18-16. Buried transmission facilities - Filing notice thereof.

Repealed by S.L. 1995, ch. 455, § 8.

11-18-17. Establishment of a county card file system.

Repealed by S.L. 1995, ch. 455, § 8.

11-18-18. Request of exact location from owner of facilities - Owner to provide location information.

Repealed by S.L. 1995, ch. 455, § 8.

11-18-19. Injury or damage to the facility - Civil cause of action.

Repealed by S.L. 1995, ch. 455, § 8.

11-18-20. Card to be used in submitting information to county recorders.

Repealed by S.L. 1995, ch. 455, § 8.

11-18-21. Alteration of existing boundary lines by court or arbitrator - Filing of plat required.

Within thirty days of the issuance of any judgment or final decision in a court action or arbitration proceeding which establishes a boundary for real property that deviates from the existing boundaries established by the United States public land surveys, surveys using the North Dakota coordinate system, or any other official survey depicting the boundaries of real property, a plat must be filed in the office of the recorder in the county where the property is located, containing a diagrammatic depiction of the boundary as it existed prior to the judgment or final decision, and as established by the judgment or final decision. The plat must be

prepared by a land surveyor registered pursuant to chapter 43-19.1. The plat must be filed in the same manner as provided in section 47-20.1-06 and must clearly indicate that it depicts changes in existing boundaries ordered by the judgment of a court or the final decision of an arbitrator. Specific reference to the property affected must appear prominently in the title of the plat. Liability for the costs and responsibility for filing of the plat must be set by the court or arbitrator issuing the judgment or final decision. The requirements of this section are in addition to any other filing or recordation otherwise required in this state.

11-18-22. Document preservation fund.

The county treasurer shall establish a document preservation fund to receive the portion of the recording fees authorized by section 11-18-05. The revenue in this fund may be used only for contracting for and purchasing equipment and software for a document preservation, storage, and retrieval system; training employees to operate the system; maintaining and updating the system; and contracting for the offsite storage of microfilm or electronic duplicates of documents for the county recorder's office.

11-18-22.1. Document preservation fund - Recorder reporting requirement to legislative council.

Expired under S.L. 2005, ch. 104, § 4.

11-18-23. Filing or recording documents with recorder - Social security numbers.

1. A document that includes a social security number may not be filed or recorded with the recorder unless a law requires the social security number to be in the document in order to be filed or recorded. A document that is required to contain a social security number may be recorded in the real estate records with the social security number redacted.
2. Notwithstanding any other provision of law, when a copy of a document that includes a social security number is requested, the recorder is not required to redact the social security number unless the document was filed or recorded with the recorder after December 1, 2003.
3. A document that must include a social security number under chapters 14-03 and 23-02.1 may be processed and recorded under those chapters; however, the social security number is confidential and must be redacted before a copy or certified copy may be provided to the public.

CHAPTER 11-20
COUNTY SURVEYOR

11-20-01. Duties of county surveyor - Surveys presumptively correct. The county surveyor shall make all surveys of land within the county which the county surveyor may be called upon to make by the owner of the land or the owner's representative, or which the county surveyor is directed to make by the district court, by the board of county commissioners, or by the board of township supervisors of any township within the county. The county surveyor also shall make a survey of the public roads and of all lands, tracts, or lots owned by the county when directed to do so by the board of county commissioners. The surveys of the county surveyor or of the county surveyor's deputies are presumptively correct.

11-20-02. Deputies - Appointment - Removal. The county surveyor may appoint one or more deputies and may revoke any such appointment at pleasure. An appointment or revocation shall be in writing, signed by the surveyor, and filed with the recorder, unless the board of county commissioners designates a different official. Each deputy shall take the constitutional oath of office and may perform any duties imposed by law upon the county surveyor. The surveyor and the surveyor's sureties shall be responsible for the faithful performance of the duties of the surveyor's office by any deputy.

11-20-03. Assistants - Appointment - Qualifications. The county surveyor may appoint all chainmen, markers, and assistants required to make a survey. When the survey is of lines and monuments in dispute between parties or is made by order of the district court, the chainmen must be disinterested persons.

11-20-04. Oath of assistants to county surveyor. Every chainman and marker employed by the county surveyor in making surveys shall take an oath that the person will discharge the person's duties faithfully. The county surveyor or the surveyor's deputy making the survey may administer such oaths.

11-20-05. Certificate presumptive evidence. The certificate of the surveyor, or of the surveyor's deputy, of any survey of any lands in the county made by the person shall be presumptive evidence of the facts therein contained unless the surveyor shall be interested in the lands described in the certificate.

11-20-06. When surveyor of adjoining county may act. Whenever a survey is required of land in which the county surveyor or either of the surveyor's deputies may be interested, or when from any cause the surveyor or deputy surveyor of the county cannot be found or is unable to act, the survey may be made by the surveyor of an adjoining county or any of that surveyor's deputies. Such survey shall have the same effect as a survey made by the surveyor of the county in which the land is situated.

11-20-07. Form of surveys. All surveys made by the county surveyor must be made in accordance with the rules and regulations laid down by the commissioner of the United States general land office and in accordance with the following principles, when applicable:

1. All corners and boundaries which can be identified by the original field notes or other unquestionable testimony shall be regarded as the original corners and must not be changed while they can be so identified. The surveyor shall not give undue weight to partial and doubtful evidence or to appearances of monuments the recognition of which requires the presumption of marked errors in the original survey, and shall note an exact description of such apparent monuments.

2. Extinct intersection corners must be reestablished at proportional distances as recorded in the original field notes from the nearest known points in the original section line, east and west and north and south from such extinct section corners.

3. Any extinct quarter section corner, except on fractional section lines, must be reestablished equidistant and in a right line between the section corners, and in all other cases, at proportional distances between the nearest known points in the original lines.

4. Central quarter corners of whole sections, and of fractional sections adjoining the north and west boundaries of townships, must be reestablished at the intersection of two right lines connecting their opposite quarter section corners, respectively. County surveyors shall perpetuate the original corners from which they may work by noting new bearing trees when timber is near. They also shall perpetuate the principal corners which they make in like manner.

5. In the subdivision of fractional sections bounded on any side by a meandered lake or river or the boundary of a reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between the like section lines established by the original survey.

11-20-08. Record of original field notes required. Each county surveyor shall keep the original field notes of all surveys made by the surveyor or the surveyor's deputies for permanent purposes in well-bound books of convenient size furnished by the county surveyor at the expense of the county. Each book shall contain an index referring to the surveys of which it contains the field notes.

11-20-09. Contents of record of original field notes. The original field notes shall be taken and set down in the manner in which field notes of the United States surveys are kept and shall contain all of the details of each survey in the order in which the survey was made. The notes shall include in full all calculations made by the surveyor to determine areas or to measure inaccessible distances, such as lake and river crossings, or for any other purpose required by the survey. Diagrams may be used for purposes of illustration but shall not be used instead of the written notes required to be kept. The field notebook shall contain the certificate of the surveyor who made the surveys stating that the field notes therein contained are the complete original field notes of the surveys therein referred to and described.

11-20-10. Original field notes part of record - Where books kept. The original field notes shall be a part of the record required to be kept by the county surveyor and the books containing the notes shall be kept with the surveyor's other records of the county. Whenever one of the field books is filled or whenever a deputy county surveyor shall have ceased taking notes in the book the deputy has been using, the book shall be deposited in the office of the county surveyor or county auditor. Whenever the term of office of a deputy county surveyor expires, the deputy shall turn over to the county surveyor the field books which the deputy has partly filled.

11-20-11. What surveys shall be recorded. The county surveyor shall record in a suitable book which the surveyor shall provide at the expense of the county all surveys for permanent purposes made by the surveyor and the surveyor's deputies, except surveys for township highways.

11-20-12. Contents of record of survey. The record of each survey shall contain:

1. The evidence by which the surveyor determined or identified the corners or other starting points of the survey.

2. A full description of the starting points and the means which were taken to perpetuate the starting points upon the ground or to assist in determining and preserving their locations.

3. The object of the survey.

4. The methods used by the surveyor in making the survey and, when necessary or convenient, diagrams or plats may be used to illustrate such methods. If diagrams are used, they shall be considered a part of the record and there shall be shown thereon the courses and distances of the boundary lines located by the survey and such other facts as may have been determined by it.

5. The amount and direction of the allowance made by the surveyor for the difference between the magnetic meridian and the true meridian when the courses of the lines shown on the survey are given by the magnetic needle.

6. The date of the survey.

7. A full description of the land covered by the survey.

8. A list of property owners who were notified of the survey and a list of such owners present when the survey was made.

9. The name of the person or the names of the persons for whom the survey was made.

10. The names of the persons employed as chainmen on the survey and a statement that they were sworn by the surveyor when so required by law.

11. The certificate of the surveyor that the surveyor has carefully compared the record with the original field notes which the surveyor took at the time of the survey and that it is a true statement of the facts of the survey as shown by the original field notes.

11-20-13. Records of county surveyor as evidence. The records of the county surveyor may be kept in the office of the county auditor and shall be competent evidence in all courts of the facts therein set forth.

11-20-14. Surveys for private landowners - How expenses paid. Whenever two or more resident owners of real estate desire to have the corners and lines of their lands established, relocated, or perpetuated, they shall give at least ten days' notice of the time of the proposed survey to all other persons owning lands in the same section, and to all other persons residing in the township owning lands abutting on such section if their lands will be affected by the survey. The county surveyor shall make the required surveys at the time specified in the notice and the expense thereof shall be borne by all the persons benefited to the amount of work done for each as determined by the surveyor. If a person benefited by the survey, whether a resident or not, refuses or neglects to pay that person's share of the expense within sixty days thereafter, the surveyor shall certify to the county auditor the amount due, the name of the person who is delinquent, a description of that person's land, and the name of the person to whom the amount is due. The county auditor shall assess such amount against the land of such person and it shall be collected and paid to the county treasurer in the same manner as state and county taxes are collected and paid out by the county treasurer, on the order of the county surveyor.

11-20-14.1. Disputed property lines - Petition to district court - Effect of survey - Payment of expenses.

1. One or more owners of property may file with the clerk of district court a petition requesting the district court to direct the county surveyor to survey the property. The court shall set a time and place for a hearing on the petition. The hearing may not occur until three weeks after the petitioner has published notice of the petition, containing the substance of the petition, a description of the lands affected, and the names of the owners of the affected lands as they appear in the latest tax roll, and after the petitioner has mailed written notice to each occupant of land affected by the survey.

2. At the hearing on the petition, all interested parties may appear and be heard. If the district court finds that there is a dispute as to the location of a property line, the court may grant the petition. If a county surveyor is not available to conduct the survey, the court may appoint a registered land surveyor to conduct the survey. The surveyor shall provide reasonable advance written notice to occupants of affected lands specifying the date when the survey will begin.

3. After the survey has been completed, the surveyor shall file a record of survey under sections 11-20-12 and 11-20-13. The certificate of the surveyor is presumptive evidence of the facts contained in the survey and certificate.

4. After the survey has been completed, the surveyor shall make a certified report to the district court showing in detail the entire expense of the survey with recommendations as to apportionment of the expense. The court shall apportion equitably the expense of the survey to the several tracts affected and provide written notice of the proposed assessment to each owner affected. The notice must inform the affected owners of their right to appear in district court no sooner than fourteen days after the notices are mailed to object to the assessments. Following consideration of any objections, the court shall make any corrections or adjustments necessary, enter an order confirming the assessment, and order the parties to pay the surveyor within thirty days.

5. Upon certification by the surveyor that an affected owner has not paid the fees ordered by the district court within thirty days, the county auditor shall assess the amount against the land of each person affected. The county treasurer shall collect the assessments in the same manner as general property taxes are collected. On the order of the county auditor, the county treasurer shall pay any fees and expenses to a registered land surveyor who has conducted the survey.

11-20-15. Section corners - How made - Removal of markers - Penalty. The surveyor, when employed by private landowners as provided in section 11-20-14, shall sink into the earth at all section and quarter post corners a column of concrete or a cement block at least two feet [.61 meter] high, twelve inches [304.80 millimeters] square at the base, and six inches [152.40 millimeters] square at the top. The surveyor shall carefully describe the same in the records of the surveyor's survey. The surveyor also shall dig pits and shall mark and record new witness trees wherever possible to do so. Any person who willfully shall cut down, destroy, deface, or injure any living witness tree, or who shall remove a corner post in any shape as above established, is guilty of an infraction.

11-20-16. Fees of county surveyor. Repealed by S.L. 1953, ch. 115, § 2.

11-20-17. Assistants - How paid. All necessary chainmen and other assistants of the county surveyor shall be paid for their services by the person requiring the work to be done, unless it is otherwise specially agreed.

11-20-18. Papers to be delivered upon termination of employment - Penalty. When a county surveyor resigns or is removed from office, the surveyor shall deliver all books and papers relating to the office to the surveyor's successor or to the board of county commissioners if no successor has been appointed. A county surveyor who shall neglect to so deliver such books and papers within one month after the termination of employment, or any executor or administrator, within thirty days after appointment and qualification, of a deceased county surveyor who shall neglect to so deliver any such books and papers coming into the person's custody within one month after the death of the county surveyor, shall forfeit and pay to the county a sum of not less than ten dollars nor more than fifty dollars. Such amount shall be fixed by the board of county commissioners at its meeting after such failure. A similar sum shall be paid for each month thereafter until such books and papers are delivered as is required by this section.

11-27-05. Drilling or mining leases by county. The county, acting by and through the board of county commissioners, may join with the other owner or owners of the mineral rights in any lands in which an interest in such rights has been reserved by the county in making any standard or reasonable contract for the drilling, mining, or production of oil, gas, and minerals upon a royalty basis.

11-27-06. When interest of county in lands conveyed. All the interest of a county in its lands is conveyed when an order is made for the sale by the board of county commissioners and a deed reciting such order is executed in the name of the county by the chairman of the board and signed and acknowledged by the chairman for and on behalf of the county.

CHAPTER 11-31
COUNTY HIGHWAY ENGINEER

11-31-01. County highway engineer.

The board of county commissioners of any county in this state may at the discretion of the board employ a qualified county highway engineer at any time or the office of county highway engineer may be created in any county in this state by an election duly held.

11-31-01.1. Election for creation or termination of office of county highway engineer.

Upon the filing with the county auditor of a petition signed by not less than five percent of the qualified electors of the county as determined by the total number of votes cast in the last election, representing not less than seven percent of the voting precincts of the county, asking that an election be held on the question of the creation of the office of county highway engineer, the board of county commissioners shall submit the question at the next regular primary or general election. Notice of the election shall be given in the manner prescribed by law for the submission of questions to the qualified electors of a county under the general election law. If a majority of the votes cast on the question are in favor thereof, the office of county highway engineer shall be established and the board of county commissioners shall fill such office by appointment. The office so created shall not be terminated except upon the instruction of a majority of the qualified electors voting on the question in an election similarly held but any engineer appointed to fill such office may be removed from office by action of the board.

11-31-02. Qualification and employment basis.

The person employed or appointed as county highway engineer must be a duly qualified highway engineer. The compensation and other terms of service of such engineer shall be determined by the board of county commissioners and may be on a monthly or a per diem basis. Several counties may employ or appoint the same engineer.

11-31-03. Powers and duties.

Under the direction and supervision of the board of county commissioners, the county engineer shall:

1. Design and make plans for county and township highways.
2. Set up a comprehensive plan of county highways, showing by the use of maps, existing roads, operations in progress, and future plans.
3. Superintend county construction and maintenance operations pertaining to highways and bridges.
4. Keep a complete record of costs and expenditures.
5. Check all accounts, claims, and demands for expenditures in connection with all matters supervised by the county engineer and indicate the county engineer's recommendation prior to the submission of such accounts, claims, and demands to the board of county commissioners.
6. Keep a complete inventory of all equipment, repairs, gasoline and oil, and miscellaneous items.
7. Supervise the use and disposition of all county-owned road equipment and materials.
8. Employ and supervise all other personnel engaged in county road operations, terminating such employment when required in the best interest of the county.
9. Prepare and submit to the board of county commissioners a complete yearly report and such additional reports as may be required by the board of county commissioners at any time.
10. Cooperate with the federal highway administration or successors, the state department of transportation, and the townships of the county.
11. Perform such other duties as may be designated by the board of county commissioners.

When so directed by the board of county commissioners, the county engineers shall also, under the direction and supervision of the board of county commissioners or the drainage board, as

the case may be, prepare plans and specifications and supervise the construction and repair of drainage ditches.

11-31-04. Manner of payment of compensation.

Payment for the work actually performed by the county engineer may be made out of the county road and bridge fund or the general funds of the county upon certified vouchers showing the time actually expended and the contract price agreed upon. Such vouchers shall be filed with the county auditor and approved by the board of county commissioners, in the manner now provided by law for the filing and approval of other claims against the counties.

CHAPTER 11-33.2
SUBDIVISION REGULATION

11-33.2-01. Subdivision defined. For the purposes of this chapter, unless the context otherwise requires, "subdivision" means the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

11-33.2-02. County power to regulate subdivision. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict within the county the subdivision of land. This chapter shall not serve to invalidate any ordinance, resolution, regulation, decision, plat approval, or other action taken or adopted, by a board of county commissioners or county planning commission, prior to or subsequent to July 1, 1981, which regulates or otherwise affects the subdivision of land, except that, subsequent to July 1, 1981, the provisions of section 11-33.2-12 shall apply to any county requiring plat approval as a prerequisite to the subdivision of land.

11-33.2-03. Scope of county authority. County regulation of subdivisions pursuant to the provisions of this chapter shall in no way affect subdivisions within the corporate limits, or within the area of application of extraterritorial zoning jurisdiction adopted pursuant to section 40-47-01.1, of any city. Additionally, no resolution, regulation, or restriction adopted pursuant to the provisions of this chapter shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

11-33.2-04. Preparation of subdivision resolution - Contents. The board of county commissioners of any county desiring to avail itself of the powers conferred by sections 11-33.2-01 through 11-33.2-11 and sections 11-33.2-13 through 11-33.2-15 shall direct the county planning commission, as established pursuant to sections 11-33-04 and 11-33-05, to prepare a proposed resolution regulating the subdivision of land. The county planning commission shall prepare the proposed resolution to be submitted to the board of county commissioners and shall file it in the office of the county auditor. The proposed subdivision resolution may include:

1. Provisions for the submittal and processing of plats, and specifications for such plats, including provisions for preliminary and final approval and for processing of final approval by stages or sections of development.

2. Provisions for ensuring that:

    a. The location, layout, or arrangement of a proposed subdivision shall conform to the comprehensive plan of the county.

    b. Streets in and bordering a subdivision shall be coordinated, and be of such width and grade and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection.

    c. Adequate easements or rights of way shall be provided for drainage and utilities.

    d. Reservations if any by the developer of any area designed for use as public grounds shall be of suitable size and location for the designated use.

    e. Land which is subject to extraordinary hazards, including flooding and subsidence, either shall be made safe for the purpose for which such land is

proposed to be used, or shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing hazard.

3. Provisions governing the standards that public improvements shall meet, including streets, walkways, curbs, gutters, streetlights, fire hydrants, and water and sewage facilities. As a condition of final approval of plats, the board of county commissioners may require that the subdivider make and install such public improvements at the subdivider's expense and that the subdivider execute a surety bond or other security to ensure that the subdivider will so make those improvements within such time as the board of county commissioners shall set.

4. Provisions for release of a surety bond or other security upon completion of public improvements required to be made by the subdivider.

5. Provisions for encouraging and promoting flexibility, economy, and ingenuity in the location, layout, and design of subdivisions, including provisions authorizing the board of county commissioners to attach conditions to plat approvals requiring practices which are in accordance with modern and evolving principles of subdivision planning and development, as determined by the board of county commissioners.

11-33.2-05. Public hearing - Notice. After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

11-33.2-06. Publication of resolution - Effective date. Following the public hearing, the board of county commissioners may adopt the proposed resolution, with such changes as it may deem advisable. Upon adoption of the resolution, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any resolution, the county auditor shall have notice of that fact published for two successive weeks in the official newspaper of the county and in other newspapers published in the county as the board of county commissioners may deem appropriate. The notice shall describe the nature, scope, and purpose of the adopted resolution and shall state the times at which it will be available for public inspection and copying at the office of the recorder. Proof of publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment shall not take effect until the board of county commissioners has affirmed the resolution or amendment in accordance with the procedures set out in section 11-33.2-07. The resolution may be amended or repealed by the board of county commissioners by following the same procedures as in the case of adoption of a resolution.

11-33.2-07. Separate hearings. Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto, may, within thirty days after the first publication of the notice of adoption of the resolution or amendment, petition for a separate hearing before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground or grounds of objection. The petition shall be filed with the county auditor. A hearing on the petition shall be held by the board no sooner than seven days, nor later than thirty days after the filing of the petition with the county auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing, the board of county commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take. The board of county commissioners, at its next regular meeting, shall either rescind or affirm the resolution or amendment. The provisions of this section shall not

operate to curtail or exclude the exercise of any other rights or powers of the board of county commissioners or of any citizen.

11-33.2-08. Board may adjust enforcement of resolution. The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case when a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes of this chapter.

11-33.2-09. Appeals to district court. Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, or any resolution or amendments adopted hereunder, may appeal to the district court in the manner provided in section 28-34-01.

11-33.2-10. Board to enforce chapter. The board of county commissioners shall provide for the enforcement of this chapter and of any resolution and amendments adopted hereunder, and may impose enforcement duties on any officer, department, agency, or employee of the county.

11-33.2-11. Board may approve plats - Appropriate money. The board of county commissioners may approve plats as a prerequisite to the subdivision of land subject to the provisions of this chapter and may establish and collect reasonable fees therefor. The fees collected must be credited to the general fund of the county. The board of county commissioners may appropriate, out of the general funds of the county, moneys necessary for the purposes of this chapter. The board of county commissioners shall state the grounds upon which any request for approval of plats is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board.

11-33.2-12. Effect of approval of plats. If a county requires approval of plats as a prerequisite to the subdivision of land, whether such requirement be adopted in compliance with this chapter, or be adopted, whether prior to or subsequent to July 1, 1981, pursuant to other authority, from and after July 1, 1981:

1. No subdivision of any lot, tract, or parcel of land shall be made, no street, sanitary sewer, water main, or other improvements in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with a plat as finally approved by the board of county commissioners.

2. No plat shall be finally approved or disapproved by the board of county commissioners except upon receipt of recommendations by both the county planning commission and the board of township supervisors of the township in which the proposed subdivision is located. The board of county commissioners shall, by certified mail, notify the chairman of the board of township supervisors that an application for plat approval has been initiated, either before the county planning commission or before the board of county commissioners, and that the board of township supervisors is requested to make a recommendation on the application. If the board of county commissioners does not receive, by certified mail, a recommendation by the board of township supervisors within sixty days after notification, it may take final action on the application for plat approval. The recommendations by either the county planning commission or the board of township supervisors shall not be binding on the county commissioners.

3. In determining whether a plat shall be finally approved or disapproved, the board of county commissioners shall inquire into the public use and interest proposed to be served by the subdivision. It shall determine if appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks,

playgrounds, sites for schools and school grounds, but its determination is not limited to the foregoing. The board shall consider all other relevant facts and determine whether the public interest will be served by the subdivision. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and that the public use and interest will be served by the platting of such subdivision, and that the proposed plat complies with a county resolution, if any, regulating or restricting the subdivision of land, to the extent that such resolution does not conflict with the provisions of this section, such plat shall be finally approved with such conditions as the board of county commissioners may deem necessary. If it finds that the proposed plat does not make appropriate provisions, or that the public use and interest will not be served, or that the proposed plat does not so comply with the aforementioned resolution, then the board of county commissioners shall disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat.

11-33.2-12.1. Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain. Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

11-33.2-13. Remedies to effect completion of improvements. In the event that any public improvements which may be required to be installed by the subdivider have not been installed as provided in the subdivision resolution or in accordance with the plat as finally approved, the board of county commissioners is hereby granted the power to enforce any surety bond, or other security, required of said subdivider by appropriate legal and equitable remedies. If the proceeds of the bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the security, the board of county commissioners may, at its option, install part of such improvements in all or part of the subdivision and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the subdivider, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other purpose.

11-33.2-14. Recording plat. Upon final approval of a plat as required under this chapter, the subdivider shall record the plat in the office of the recorder of the county wherein the plat is located. Whenever plat approval is required by a county, the recorder shall not accept any plat for recording unless such plat officially notes the final approval of the board of county commissioners.

11-33.2-15. Penalty and remedies. Any person, partnership, corporation, or limited liability company who or which, being the owner or agent of the owner of any lot, tract, or parcel of land, shall lay out, construct, open, or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or who or which sells, transfers, or agrees or enters into an agreement to sell or transfer any land in a subdivision or engages in the subdivision of land or erects any buildings thereon, unless and until a plat has been finally approved in full compliance with the provisions of this chapter and of the resolution adopted hereunder and has been

recorded as provided herein, shall be guilty of a class B misdemeanor. Each lot, tract, or parcel created or transferred, and each building erected in a subdivision in violation of the provisions of this chapter or of the resolutions adopted hereunder shall constitute a separate offense.

If any lot, tract, or parcel of land is subdivided in violation of this chapter or any resolution or amendments thereto adopted pursuant to this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful subdivision.

2. To restrain, correct, or abate such violations.

3. To prevent the occupancy or use of the land which has been unlawfully subdivided.

4. To vacate and nullify any recorded plat of such unlawful subdivision.

CHAPTER 11-35
REGIONAL PLANNING AND ZONING COMMISSIONS

11-35-01. Regional commissions - Appointment - Powers. The governing boards of counties, cities, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members, namely, one from the board of county commissioners, two from the rural region affected, and two from the city, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region must be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, cities, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures must be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court in accordance with the procedure provided in section 28-34-01.

11-35-02. Zoning of territory adjacent to cities. Until the organization of either a regional planning and zoning commission as provided in section 11-35-01 or township or county zoning commission pursuant to sections 58-03-11 through 58-03-15 and chapter 11-33, respectively, any city which shall determine to use zoning regulations shall have exclusive jurisdiction and power to zone over all land over which it has authority to control subdivisions and platting of land as provided in section 40-48-18.

CHAPTER 17-04
WIND ENERGY PROPERTY RIGHTS

17-04-01. Wind option agreement - Definition - Termination.

A wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed five years on agreed terms. A wind option agreement is void and terminates if the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

17-04-02. Wind easement - Definition.

For purposes of sections 17-04-03 and 17-04-04, the term wind easement means a right, whether stated in the form of a restriction, easement, covenant, or condition, in a deed, will, or other instrument executed by or on behalf of an owner of land or airspace for the purpose of ensuring adequate exposure of a wind power system to the winds.

17-04-03. Wind easements - Creation - Term - Development required.

A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. However, the easement is void if the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

17-04-04. Severance of wind energy rights limited.

Except for a wind easement created under section 17-04-03 and as otherwise provided in this section, an interest in a resource located on a tract of land and associated with the production of energy for wind power on the tract of land may not be severed from the surface estate. However, nothing in this section may be construed to prohibit or limit the right of a seller of real estate to retain any payments associated with an existing wind energy project.

17-04-05. Wind energy leases - Termination.

A lease for wind energy purposes is void and terminates if the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

17-04-06. Requirements for wind easements and wind energy leases.

1. In a wind easement and a wind energy lease, the easement and lease:
   a. Must be delivered to the property owner with a cover page containing the following paragraph with the correct term of years in the blank and in at least sixteen-point type:

      Special message to property owners

      This is an important agreement our lawyers have drafted that will bind you and your land for up to _____ years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract.

You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

b. May not be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to the property owner.

c. May not require either party to maintain the confidentiality of any negotiations or the terms of any proposed lease or easement except that the parties may agree to a mutual confidentiality agreement in the final executed lease or easement.

d. Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement. When a wind energy facility is being constructed and when it is completed, the property owner must make accommodations to the developer, owner, or operator of the facility for the facility's business operations to allow the construction and operation of the wind energy facility.

e. May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind energy generation.

f. May not make the property owner liable for any damages caused by the wind energy facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.

g. Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.

h. Must allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years unless the property owner receives the normal minimum lease payments that would have occurred if the wind energy facility had been operating during that time. For the purposes of this subdivision, the term "normal minimum lease payments" means a payment in the lease or easement called a "base amount" or "minimum payment", or similar language, or if this language is not provided for in the lease or easement, payments at least equal to the periodic payments received by the property owner in the last calendar year that the wind energy facility was in full operation.

i. Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.

2. The owner of the wind energy facility shall carry general liability insurance relating to claims for property damage or bodily injury arising out of the construction or operation of the wind energy facility project site and may include the property owner as an additional insured on the policy.

3. If the terms of the wind easement or wind energy lease are not in accordance with this section, the court may reform the easement or lease in accordance with this section, void the easement or lease, or order any relief allowed by law.

23-06-21. Regulation of cemeteries. All persons, corporations, municipalities, associations, and organizations owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies shall:

1. Provide for a sexton or secretary.

2. Cause the lot or parcel of ground used and designated as a cemetery to be platted into orderly blocks and lots, alleys and streets or driveways, giving to each a distinctive name or number that must be a permanent designation of its location.

3. File the original plat with the recorder of the county in which the cemetery or place of burial is located and the copy or blueprint thereof with the sexton or secretary.

4. Register with the state department of health the name and location of the cemetery or place of burial, the name and address of the sexton, and the name and address of other officers of the cemetery association, corporation, or organization.

5. Furnish such information and reports as the state department of health may require including the submission of plans and specifications for review and approval before constructing, erecting, or placing on the burial site for the burial or disposition of any human remains any interment structure or device constructed or placed wholly or partially above the natural surface of the ground.

6. Keep a local register of all burials showing as to each burial the name of the deceased, the date and location of burial, the date of death, and the name and address of the undertaker.

23-06-21.1. Title to burial plots reverts after sixty years - Procedure - Abandonment. Any entity owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies may use the procedures in this section to reinvest itself with the title to a portion of a cemetery which was conveyed by deed to a person but which has not been used for purposes of burial for more than sixty years.

1. The entity owning, conducting, or maintaining a cemetery may pass a resolution demanding that the owner of a portion of a cemetery which has been unused for more than sixty years express an interest in the cemetery plot. The entity shall personally serve a copy of its resolution on the owner in the same manner as personal service of process in a civil action. The resolution must notify the owner that the owner must, within sixty days after service of the resolution on the owner, express an interest in retaining the unused cemetery plot.

2. If the owner of the unused plot cannot personally be served with a copy of the resolution of the entity because the owner cannot be found in this state or for any other valid reason, the entity shall publish its resolution for three consecutive weeks in the official newspaper of the county where the cemetery is located and shall mail a copy of the resolution within fourteen days after the third publication to the owner's last-known address.

3. If within sixty days after personal service or after publication of the board's resolution is completed, the owner or person with a legal interest in the cemetery plot fails to express an interest in retaining the unused cemetery plot, the owner's rights are terminated and title to that person's plot reverts to the entity owning, conducting, or maintaining the cemetery.

4. It is a conclusive presumption that an owner has abandoned a cemetery plot if for a period of more than sixty years the owner has not used any portion of the lot for purposes of burial and has not made provision for care of the lot beyond that provided uniformly to all lots within the cemetery and if the owner has failed to express an interest in retaining the cemetery plot after notice provided in this section.

CHAPTER 24-01
STATE HIGHWAY SYSTEM

24-01-01. Declaration of legislative intent. Adequate roads and streets provide for the free flow of traffic; result in low cost of motor vehicle operation; protect the health and safety of the citizens of the state; increase property value; and generally promote economic and social progress of the state. Therefore, the legislative assembly hereby determines and declares that an adequate and integrated system of roads and streets is essential to the general welfare of the state of North Dakota.

In designating the highway systems of this state, as hereinafter provided, the legislative assembly places a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state, for present as well as for future use. To this end, it is the intent of the legislative assembly to make the director of the department, and the department acting through the director, custodian of the state highway system and to provide sufficiently broad authority to enable the director of the department to function adequately and efficiently in all areas of appropriate jurisdiction with specific details to be determined by reasonable rules and regulations which may be promulgated by the director, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

It is recognized that the efficient management, operation, and control of our county roads, city streets, and other public thoroughfares are likewise a matter of vital public interest. Therefore, it is the further intent of the legislative assembly to bestow upon the boards of county commissioners similar authority with respect to the county road system and to local officials with respect to the roads under their jurisdiction.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the state of North Dakota shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. To this end, it is the intent of the legislative assembly to give broad authority and definite responsibility to the director of the department and to the boards of county commissioners so that working together, free from political pressure and local interests, they may provide for the state an integrated system of state and county highways built upon a basis of sound engineering with full regard to the interest and well-being of the state as a whole.

Providing adequate public highway facilities, including rural and urban links, is hereby declared to be a proper public use and purpose and the legislative assembly hereby determines and declares that chapter 177 of the Session Laws of 1953 is necessary for the immediate preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

24-01-01.1. Definition of words and phrases. The following words and phrases when used in this title shall, for the purposes of this title, have the meanings respectively ascribed to them in this chapter:

1. "Abandonment" means cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes.

2. "Acquisition or taking" means the process of obtaining right of way.

3. "Arterial highway" means a general term denoting a highway primarily for through traffic, usually on a continuous route.

4. "Belt highway" means an arterial highway for carrying traffic partially or entirely around an urban area or portion thereof.

5. "Capacity" means the ability of a roadway to accommodate traffic.

6. "Commission" means the public service commission of the state of North Dakota.

7. "Commissioner" means the director of the department of transportation of this state, acting directly or through authorized agents as provided in section 24-02-01.3.

8. "Consequential damages" means loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

9. "Controlled-access facility" means a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason.

10. "County road system" means the system of secondary highways designated by the county officials, the responsibility for which is lodged with the counties.

11. "Department" means the department of transportation of this state as provided by section 24-02-01.1.

12. "Direct compensation" means payment for land or interest in land and improvements actually acquired for highway purposes.

13. "Director" means the director of the department of transportation of this state, acting directly or through authorized agents as provided in section 24-02-01.3.

14. "Divided highway" means a highway with separated roadways for traffic in opposite directions.

15. "Easement" means a right acquired by public authority to use or control property for a designated highway purpose.

16. "Employee compensation" includes vacation and sick leave.

17. "Expressway" means a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.

18. "Fee simple" means an absolute estate or ownership in property including unlimited power of alienation, except as to any and all lands acquired or taken for highway, road, or street purposes. Where lands are taken for such purposes, "fee simple" shall not be deemed to include any oil, gas, or fluid mineral rights.

19. "Freeway" means an expressway with full control of access.

20. "Frontage street or road" means a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

21. "Grade crossing" means the intersection of a public highway and of the track or tracks of any railroad, however operated, on the same plane or level, other than a street railway within the limits of a city.

22. "Highway, street, or road" means a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a "road", while a highway in an urban area may be called a "street".

23. "Intersection" means a general term denoting the area where two or more highways join or cross.

24. "Interstate system" or "interstate highway system" means that part of the state highway system designated as the North Dakota portion of the national system of interstate and defense highways as provided for in Public Law 85-767 [23 U.S.C. 101 et seq.].

25. "Local street or local road" means a street or road primarily for access to residence, business, or other abutting property.

26. "Major street or major highway" means an arterial highway with intersections at grade and direct access to abutting property, and on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

27. "Market value" means the highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.

28. "Median" means the portion of a divided highway separating the traveled ways for traffic in opposite directions.

29. "Municipal corporation or municipality" means all cities organized under the laws of this state, but does not include any other political subdivisions.

30. "Outer separation" means the portion of an arterial highway between the traveled ways of a roadway for through traffic and a frontage street or road.

31. "Partial taking" means the acquisition of a parcel of property.

32. "Person" means any person, firm, partnership, association, corporation, limited liability company, organization, or business trust.

33. "Radial highway" means an arterial highway leading to or from an urban center.

34. "Remainder" means the portion of a parcel retained by the owner after a part of such parcel has been acquired.

35. "Remnant" means a remainder so small or irregular that it usually has little or no economic value to the owner.

36. "Right of access" means the right of ingress to a highway from abutting land and egress from a highway to abutting land.

37. "Right of survey entry" means the right to enter property temporarily to make surveys and investigations for proposed highway improvements.

38. "Right of way" means a general term denoting land, property, or interest therein, acquired for or devoted to highway purposes and shall include, but not be limited to publicly owned and controlled rest and recreation areas, sanitary facilities reasonably necessary to accommodate the traveling public, and tracts of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system.

39. "Right-of-way appraisal" means a determination of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

40. "Right-of-way estimate" means an approximation of the market value of property including damages, if any, in advance of an appraisal.

41. "Roadside" means a general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

42. "Roadway" means in general, the portion of a highway, including shoulders, for vehicular use. In construction specifications, the portion of a highway within limits of construction.

43. "Severance damages" means loss in value of the remainder of a parcel resulting from an acquisition.

44. "Shoulder" means the portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

45. "State highway system" means the system of state principal roads designated by the director of the department, the responsibility for which is lodged in the department.

46. "Through street or through highway" means every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highways and in obedience to either a stop sign or yield sign, when such signs are erected by law.

47. "Traffic lane" means the portion of the traveled way for the movement of a single line of vehicles.

48. "Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

24-01-01.2. State highway system - Mileage. The state highway system may not exceed seven percent of the entire road mileage of the state, whether such roads are township, county, or state roads, which may be functionally classified as to service, and in no case may such highway system exceed seven thousand seven hundred miles [12391.95 kilometers] in length.

24-01-02. Designation of state highway system. The director is hereby vested with complete authority to designate, locate, create, and determine what roads, highways, and streets constitute the state highway system, subject however, to such conditions, requirements, and mileage limits as provided for by law. The total mileage of the state highway system may be increased by not more than fifty miles [80.47 kilometers] in any one calendar year. In designating, locating, creating, and determining the several routes of the state highway system, the director shall take into account such factors as the actual or potential traffic volumes, the type of service class, the construction of bypasses and alternate routes, the conservation and development of the state's natural resources, the general economy of the state and communities, and the desirability of fitting such system into the general scheme of the nationwide network of highways.

24-01-03. Responsibility for state highway system. The director is responsible for the construction, maintenance, and operation of the state highway system and may enter a cooperative agreement with any municipality for the construction, maintenance, or repair of any urban connecting street. The director may not divest the state from responsibility for maintaining the structural integrity of any bridge over a navigable water of this state which is currently maintained by the state unless an agreement is reached with the municipality.

The jurisdiction, control, and duty of the state and municipality with respect to such urban connecting streets must be as follows:

1. The director has no authority to change or establish any grade of any such street without approval of the governing body of such municipality.

2. The municipality shall maintain at its own expense all underground facilities in such streets and has the right to construct such additional underground facilities as may be necessary in such streets.

3. The municipality has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby must be repaired promptly by said municipality at its direction and without cost to the department.

4. The municipality has exclusive right to grant franchises over, beneath, and upon such streets.

24-01-03.1. Highway performance classification plan. To the extent possible, the department of transportation shall implement the highway performance classification plan.

24-01-04. Municipalities to develop master street plan. Except for a municipality located within a designated metropolitan planning organization, each municipality of over five thousand population in this state, according to the latest available census, shall develop and adopt a master street plan cooperatively between the director and the municipal officials, which must ensure the proper location and integration of the state highway connections in the total city street plan. In selecting and designating the master street plan, the cooperating officials shall take into account the more important principal streets that connect the residential areas with business areas, and the streets that carry the important rural traffic into and across the city, to ensure a system of streets upon which traffic can be controlled and protected, in such a manner as to provide safe and efficient movement of traffic within a municipality.

24-01-04.1. Metropolitan planning organizations. Metropolitan planning organizations shall develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas which encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas of this state while minimizing transportation-related fuel consumption, air pollution, and greenhouse gas emissions. The plans and programs for each metropolitan area must provide for the development and integrated management and operation of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities that will function as an intermodal transportation system for the metropolitan area. A metropolitan planning organization is a political subdivision for purposes of chapter 54-52.

24-01-05. Designation of county system - Removal from state highway system. The director may designate, from time to time, those roads selected under section 24-05-16, as the county highway system not exceeding twenty-two thousand five hundred miles [36210.24 kilometers] in length on which federal aid funds must be expended as may be provided by such appropriations. In designating such system, the director may remove from the state highway system those parts which are low in standard of improvement and type of traffic service and which will be released from maintenance agreement or agreements with the federal government. No mileage on the state highway system may be placed on the county road system without the consent of the board of county commissioners of the county in which the road lies. The director may enter into an agreement with the board of county commissioners of any county providing for the transfer of highways from the state highway system to the county road system of such county.

24-01-06. Authority to abandon sections of routes. The director has the authority to abandon sections of routes on the state highway system when such abandoned sections are substantially replaced by improvements on new locations serving the area. Such abandonment may be made even though such highway is not placed on any other road system.

The abandonment order must be filed with the office of the recorder of each county in which the abandonment occurs.

24-01-07. Maps of state, county, and municipal systems. The department at all times shall provide and maintain a map of the state, which must show all the highways which have been designated, located, created, and constituted as part of the state highway system, the county road system, and the municipal arterial street system, and if practical the status of improvement thereof.

24-01-08. Uniform marking and erection of signs on highway. Repealed by S.L. 1975, ch. 353, § 4.

24-01-08.1. Location of signs precluding the cultivation of right of way. All signs erected by the department, after July 1, 1967, which give notice of the prohibition against the cultivation of the right of way, must be located as near as possible to right-of-way posts, or natural obstructions. All existing signs of such nature must be relocated according to the provisions contained in this section, and when requested by the landowner and a more suitable site can be agreed upon by the landowner and the department.

24-01-09. Authority to prescribe traffic-control signals. Repealed by S.L. 1975, ch. 353, § 4.

24-01-09.1. State highway commissioner to adopt sign manual. Repealed by S.L. 1975, ch. 353, § 4.

24-01-09.2. State highway commissioner to place signs on all state highways. Repealed by S.L. 1975, ch. 353, § 4.

24-01-10. Local jurisdictions may provide additional capacity to state highway. The governing board of any county, municipality, or township, as the case may be, may enter into a written agreement with the director for the construction of a roadway or structure of greater width or capacity than would be necessary to accommodate the normal state highway traffic, upon any state highway within its boundaries, and may appropriate from any funds available, and pay into the state highway fund, such sum or sums of money as may be agreed upon. Nothing herein contained prevents any such municipality from constructing the portions of the street not included in the state highway system independent of any contract with the department, if such construction conforms to such reasonable regulations as the department may prescribe as to grade and drainage.

24-01-11. Maintenance of additional width of state highway system in municipalities. The governing body of any municipality may enter into a written agreement with the department for the maintenance of such additional width by the department, and from time to time in accordance with such agreement shall appropriate and pay into the state highway fund such sums of money as may be agreed upon. Nothing herein contained may be construed to prevent any such municipality from maintaining such additional width at its own expense subject to the written approval of the department.

24-01-12. Regulation of advertising signs on highways. No person, firm, corporation, or limited liability company may place, put, or maintain any sign, billboard, or advertisement within the limits of a public highway, or in any manner paint, print, place, put, or affix, or cause to be painted, printed, placed, or affixed, any advertisement on or to any stone, tree, fence, stump, pole, mileboard, milestone, danger sign, danger signal, guide sign, guidepost, billboard, building, or other object within the limits of a public highway, or place, put or maintain any sign or billboard upon private property within one thousand feet [304.8 meters] of any highway grade crossing in such place or manner as to obstruct or interfere with a free and clear view of such crossing from any highway or railroad intersecting thereat. None of the provisions of this section prohibit the placing of public notices on billboards erected for that purpose by authority of the governing body of a municipality. Any advertisement in or upon a public highway or private property which, in the judgment of the director, may be deemed to be a hazard to traffic, or in the future may tend to

create a hazard to traffic, may be taken down, removed, or destroyed by direction or authority of the department in the case of the state highway system, by the board of county commissioners in the case of the county road system, and by the board of township supervisors in the case of township roads.

24-01-12.1. Harvesting hay on state highway system - Storage and removal. Every person harvesting hay on the rights of way of the state highway system, who stores the harvested hay on the rights of way for later removal, shall store the harvested hay at the outer edge of the rights of way. The director may remove any hay that is not stored as prescribed in this section. All hay stored on the rights of way must be removed by November first of each year.

24-01-12.2. Hay disposal. Any stored hay remaining on the right of way on November first of each year must be disposed of in a manner deemed proper by the director.

24-01-12.3. Entry into no-mow agreements. No state agency or political subdivision of the state may enter into any agreement to increase the no-mow acres contained in the rights of way of the state highway system.

24-01-13. Enforcement of highway laws - Vehicle size and weight controlled. The director and each officer and inspector of the department designated by the director have general police powers with respect to enforcement of all laws pertaining to the use of motor vehicles and trailers, other than passenger cars and motorcycles, upon the highways, roads, and streets of this state and may:

1. Classify highways and enforce limitations as to weight and load of vehicles thereon as provided for under section 39-12-01.

2. Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for under section 39-12-02.

3. Prohibit the operation or may impose restrictions on vehicular use of highways during certain seasons of the year as provided for under section 39-12-03.

24-01-14. Speed research. The director may conduct investigations, research, and analysis of speed limits on any highway.

24-01-15. Director to designate through highways. The director, with reference to highways under the director's jurisdiction, may designate as through highways any state highway or part thereof and erect stop signs or yield signs at specified entrances thereto where vehicles are not otherwise required by law to stop or yield right of way.

24-01-16. Erection and maintenance of guardrails. The director has the authority to erect and maintain guardrails, stretch wires, and other devices on all highways under the director's jurisdiction, in the interest of public safety.

24-01-17. Grade crossing elimination. The director has the authority to contract, on an equitable basis with any railway company, and to let all the necessary contracts for the construction of bridges, underpasses, and approaches necessary for the separation of grades at points of intersection between railroads and the state highways.

24-01-18. Right of way and materials may be acquired by purchase or eminent domain. The director, by order, on behalf of the state, and as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining a state highway, or of providing a temporary road for public use, may purchase, acquire, take over, or, subject to section 32-15-01, condemn under the right and power of eminent domain, for the state, any and all lands in fee simple or such easements thereof which the director deems necessary for present public use, either temporary or permanent, or which the director deems necessary for reasonable future public use, and to provide adequate drainage in

the improvement, construction, reconstruction, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining of a state highway, provided, however, as to any and all lands acquired or taken for highway, road, or street purposes, the director may not obtain any rights or interest in or to the oil, gas, or fluid minerals on or underlying said lands. No county may be required to participate in the cost or expense of right of way for the state highway system. By the same means, the director may secure any and all materials, including clay, gravel, sand, or rock, or the lands necessary to secure such material, and the necessary land or easements thereover, to provide ways and access thereto. The director may acquire such land or materials notwithstanding that the title thereto may be vested in the state or any division thereof; provided, however, that no interests in gas, oil, or fluid minerals may be acquired by this procedure.

24-01-18.1. Right of way adjacent to customs and immigration. Whenever the director finds that it will facilitate travel and promote public convenience or that it will avoid the need for additional road building, the director may procure rights of way and other interests in land adjacent to established public highways for the location of custom and immigration buildings to be erected by the federal government. The director is hereby vested with like power in the acquisition of such lands as the director may have in acquiring rights of way and land for highway purposes.

24-01-18.2. Sites for customs and immigration - Governor to convey. When the federal government has requested title to any lands acquired by the director under the provisions of sections 24-01-18.1 and 24-01-18.2 and the director certifies that the establishment of custom and immigration points of entry thereon will facilitate travel and promote public convenience or will avoid the need for additional road building, the governor is authorized to convey to the United States of America such sites as may be required for the location of such buildings and accessory facilities including means of access thereto.

24-01-19. Board of county commissioners may determine damages. If the director is unable to purchase land or materials with the necessary ways and access thereto, at what the director deems a reasonable valuation, then the board of county commissioners of the county wherein such land or materials may be situated, on petition of the director, shall proceed to ascertain and determine the damages and make awards in the manner provided by chapter 24-07 for lands taken for highway purposes as hereby modified or amended. Within fifteen days after the filing of such petition with the county auditor, the board of county commissioners shall fix a time and place, not later than sixty days from and after the filing of such petition, for a hearing of all persons interested or aggrieved by such taking, and shall cause to be published in the official newspaper of the county, at least once a week, for three successive weeks, prior to such hearing, a notice of such hearing, stating the time and place where the same shall be held, together with a description of the property to be taken. Such published notice must be in lieu of all other notices, and when so published must give the said board of county commissioners full and complete jurisdiction to proceed with the determination of awards of damages. A copy of such notice must be served personally upon all known owners residing or found within the state, and upon the occupant of the land, not less than fifteen days prior to such hearing, in the manner provided for the service of a summons in the district court, and in case of personal service of such notice upon all persons interested in any manner in said real property, as disclosed by the records in the office of the recorder of the county wherein said property is located, no publication of such notice may be made.

24-01-20. Damages to be paid into court. When the award of damages for the taking of land or materials, or both, has been completed by the board of county commissioners, the director shall pay, or cause to be paid from the state highway fund, into court, for the benefit of the owners of land to whom such awards have been made, by depositing with the clerk of court of such county cash in the amount of such award or awards.

24-01-21. Receipt to be signed by owner or clerk of court. Every owner entitled to an award for damages, before the same is paid to the owner by the clerk of court, shall sign and execute a receipt therefor. Such receipt must contain a description of the premises covered by the award. In case the owner fails or refuses to accept such award and execute such receipt

therefor, the clerk of court shall execute a receipt, reciting the deposit of such award with the owner and the description of the premises covered by the award.

24-01-22. Title vests after thirty days if no appeal taken. At the expiration of thirty days from the award by the board of county commissioners from which no appeal has been taken as provided in section 24-01-23, whenever such money has been deposited in the office of the clerk of court, the receipt of the owners of said property, or of such clerk of court, must be recorded in the office of the recorder of the county in which such real estate is situated, and the title to the land or materials thereupon must be vested in the state.

24-01-22.1. Appeal after deposit for taking. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for a taking of right of way as authorized by section 16 of article I of the Constitution of North Dakota, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury is waived, in the manner prescribed for trials under chapter 32-15.

24-01-23. Appeals from decision of board of county commissioners - Procedure - Special term of court. Any party aggrieved by the proceedings of the director in the taking of land or materials, or by the estimate of damages and the award of the board of county commissioners has the remedies provided in this title for appeal from any determination of a board of county commissioners in the taking of land for highway purposes. Service of a written or printed notice of such appeal must be made upon the chairman of the board of county commissioners and the director. An appeal from the award by the board of county commissioners, without filing a cost bond, may be taken by the director, by service of notice of appeal upon the chairman of the board of county commissioners and the owner of the property, in the manner provided by law for the service of a summons in a civil action. Upon any appeal, the director, on application to the judge of the district court, must be granted a special term of court, in the manner provided in cases of eminent domain in chapter 32-15.

24-01-24. Appeal does not stay condemnation proceedings. Repealed by omission from this code.

24-01-25. Fees not charged for recording instruments. No fees may be charged or collected by the county auditor, the recorder, or the clerk of court for any services rendered for the recording or filing of any document required under the provisions of chapter 177 of the 1953 Session Laws.

24-01-26. Grants of rights of way confirmed. The following grants of rights of way heretofore made by the legislative assembly are hereby confirmed:

1. For a highway across the military encampment grounds at Rock Island in Ramsey County as set forth in chapter 134 of the Session Laws of 1901.

2. For a highway across Devils Lake as set forth in chapter 141 of the Session Laws of 1903.

3. For a highway across Des Lacs Lake as set forth in chapter 57 of the Session Laws of 1905.

24-01-27. Survey - Plat - Damages from survey. Whenever the director determines by order that public exigency requires the taking of land or materials as provided in section 24-01-18, the director shall cause the same to be surveyed and described, and a plat thereof approved by the county auditor and the said description must be recorded in the office of the recorder of the county wherein the same is located. When such plat has been approved and recorded, any description of the property in accordance with the parcel or lot number and description set forth in such plat must be deemed a good and valid description of the lots or parcels of land so described. No such plat or description may bear the name or number which has been applied to any plat or description previously made and recorded. The director, or the

director's duly authorized agents, may enter upon any land for the purpose of making surveys, examinations, or tests. In case of any damages to said premises, the director forthwith shall pay to the owner of said premises the amount of such damages.

24-01-28. Vacating highways by director - Sale of property. The director may vacate any land or part thereof, or rights in land taken or acquired for highway purposes under the provisions of this title, by executing and recording a deed thereof, and the vacation revests the title to the land or rights in the persons, their heirs, successors, or assigns, in whom it was vested at the time of the taking. As oil, gas, and fluid minerals are not a part of and essential for highway purposes, all such rights heretofore taken, if any, are hereby vacated and returned to the person or persons in whom the title was vested at the time of taking, their heirs, administrators, executors, or assigns. Such reconveyance is subject to any existing contracts or agreements covering the property, and all rights and benefits thereof accrue to the grantee. The governor, on recommendation of the director, may sell and convey on behalf of the state the interests of the state in property acquired by purchase under this title and deemed no longer necessary for the purposes thereof, and the proceeds of the sale so far as practicable must be credited to the funds from which the purchase was made originally. With the consent of the persons, their heirs, successors, or assigns in whom the title or rights to the land were vested at the time of the purchase or acquisition, the director may vacate land acquired by purchase under this title which is deemed no longer necessary for highway purposes and which the director has determined that the cost of the sale exceeds the estimated value of the property, by executing and recording a deed thereof, and the vacation revests the title to the land or rights in those persons, their heirs, successors, or assigns.

24-01-29. Temporary acquisition of rights of way or easements for detours. The director, by order, and as part of the cost of constructing, reconstructing, or repairing a state highway or any part thereof, may acquire by gift, permission, purchase, lease, or condemnation, temporary easements or rights of way for the purpose of providing a temporary detour at such location as the director designates.

24-01-30. Authority to establish controlled-access facilities. The highway authorities of the state, counties, and municipalities of North Dakota, acting alone or in cooperation with each other or with any federal, state, or local agency, or any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities, provided that within municipalities such authority is subject to such municipal consent as may be provided by law. Said highway authorities of the state, counties, and municipalities, in addition to the specific powers granted by law, also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said units may regulate, restrict, or prohibit use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility.

24-01-31. Design of controlled-access facility. The highway authorities of the state, or any county, or municipality are authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection such highway authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person has any right of ingress or egress to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

24-01-32. Acquisition of property and property rights. For the purposes of chapter 177 of the 1953 Session Laws, the highway authorities of the state, or any county, or

municipality may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view, lights, and such advertising rights outside of the right of way as may be determined by the director to be in the public interest, by gift, devise, purchase, or condemnation in the same manner as such units are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of chapter 177 of the 1953 Session Laws must be in fee simple, provided, however, as to any and all lands acquired or taken for highway, road, or street purposes, they may not obtain any rights or interest in or to the oil, gas, or fluid minerals underlying said lands. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith, the state, county, or municipal highway authority may, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper.

24-01-33. New and existing facilities - Grade crossing elimination. The highway authorities of the state, or any county, or municipality may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a controlled-access facility. The state or any of its subdivisions has authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and municipal streets, by grade separation or service road, or by closing off such roads and streets at the right-of-way boundary lines of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility may intersect the same at grade. No municipal, county, or state highway, or other public way may be opened into or connected with any such controlled-access facility without the consent and previous approval of the highway authority in the state, county, or municipality having jurisdiction over such controlled-access facility. Such consent and approval may be given only if the public interest is served thereby.

24-01-34. Authority of local units to consent. The highway authorities of the state, or any county, or municipality are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions.

24-01-35. Local service roads. In connection with the development of any controlled-access facility the state, county, or municipal highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets must be of appropriate design and must be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

24-01-36. Bridges may be built separately. While the necessary bridges on any state highway must be construed and considered a part of such highway, nevertheless, such bridges may be designed, erected, and contracts awarded separately therefor, and such bridges may be designed, erected, and contracted irrespective of the time when the highway contiguous thereto has been or may have been improved. All necessary fills and approaches to any bridge must be construed and considered as part of such bridge.

24-01-37. Inspection of bridges. The department, at least every four years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the state highway system in the state. In case any bridge on the state highway system is deemed unsafe for public use by the said department, it forthwith shall take steps to close the same and prevent the use thereof by the public. In case any bridge on the state highway system is deemed unsafe for loads in excess of a certain weight, the department forthwith shall post notices on both ends of such bridge stating that such bridge is unsafe for loads beyond that weight.

24-01-38. Bridge across Yellowstone River in McKenzie County. Repealed by S.L. 1963, ch. 212, § 1.

24-01-39. Use of right of way for utilities subject to regulations by department. Electric transmission, telephone or telegraph lines, pole lines, railways, ditches, sewers, water, heat, or pipelines, gas mains, flumes, or other structures outside of the limits of any municipality which under the laws of this state, may be constructed, placed, or maintained across or along any highway which is a part of the state highway system, by any person, persons, corporation, limited liability company, or subdivision of the state, may be so maintained or constructed only in accordance with such regulations as may be prescribed by the department, which has power to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining along, across, or on any such state highway any of the utilities hereinbefore set forth. Nothing herein restricts the action of public authorities in extraordinary emergencies. Nothing in this chapter contained may be construed as modifying or abridging the powers conferred upon the public service commission in title 49, the intent of this section being that the powers hereby granted to the department may be exercised only in such manner as not to conflict with valid exercise by the public service commission of the powers granted to it.

24-01-40. Right of way for utilities - Granted by director. The director may grant to any person, who is a resident of this state, or to any corporation organized under the law of this state, or licensed to do business within this state, the right of way for the erection of a telephone line or electric line over or upon any state highway or structure constituting part of such highway or to lay pipes, conduits, or tunnels in, through, or over any such state highway or structure, or to erect, construct, and maintain any bridge, conduit, or other crossing in, under, or over such state highway or structure and in accordance with the rules and regulations therefor.

24-01-41. Relocation of utility facilities.

1. Whenever the director determines and orders that any utility facility which now is, or hereafter may be, located in, over, along, or under the national system of interstate and defense highways, or urban extension thereof, qualifying for federal aid should be changed, removed, or relocated to accommodate the construction of a project on the national system of interstate and defense highways, including extensions thereof within urban areas, the utility owning or operating such facility shall change, relocate, or remove the same in accordance with the order of the director; provided that the costs of the change, relocation, or removal, including the costs of installing such facilities in a new location, must be ascertained and paid to the affected utility by the state out of state highway funds as part of the cost of such federally aided project, unless such payment would violate a legal contract between the utility and the state.

2. As used in this section, the term "utility" includes all cooperatively, municipally, publicly, or privately owned utilities, for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public or any part thereof. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

3. The department, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The department shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.

4. The department shall coordinate utility facility relocations with the affected utility in an effort to minimize cost associated with utility facility relocations.

5. When a utility facility needs to be relocated, the department shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for

reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.

6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

24-01-41.1. Relocation of property other than utilities. The legislative assembly assents that highway relocation assistance payments, as provided in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. 4601 et seq.], and such changes or amendments thereof which Congress may hereafter enact, are to be considered a necessary cost in the construction or reconstruction of public highways which are eligible for federal aid funds. The director is authorized and empowered to expend highway funds for the cost of the state's participation in highway relocation assistance payments. Relocation assistance payments as provided in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and such changes or amendments thereof which Congress may hereafter enact, may not be construed as creating any element of damages recognized in eminent domain.

24-01-41.2. Relocation of utility facilities - Political subdivision roads.

1. Whenever a political subdivision determines and orders that any utility facility that is or may be located in, over, along, or under a road right of way under its authority, qualifying for federal aid, should be changed, removed, or relocated to accommodate the construction of a project, the utility owning or operating the facility shall change, relocate, or remove the utility facility in accordance with the order of the political subdivision; provided that the costs of the change, relocation, or removal, including the cost of installing the facilities in a new location, must be ascertained and paid to the affected utility by the political subdivision as part of the cost of the federally aided project unless the payment would violate a legal contract between the utility and the political subdivision or where the roadway existed before the utility facility.

2. As used in this section:

   a. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

   b. "Political subdivision" includes a county, city and county, city, home rule city, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other municipal, quasi-municipal, or public organization.

   c. "Utility" includes all cooperatively, municipally, publicly, or privately owned utilities for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public.

3. The political subdivision, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The political subdivision shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.

4. The political subdivision shall coordinate utility facility relocations with the affected utility in an effort to minimize costs associated with utility facility relocations.

5. When a utility facility needs to be relocated, the political subdivision shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.

6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

24-01-42. Construction of utility facility - Limitation. No person, firm, or association may construct any electrical supply or communication line, gas, oil, or water, or other pipeline parallel to and within one hundred feet [30.48 meters] of the centerline of any state highway right of way or within seventy-five feet [22.86 meters] of the centerline of any county highway right of way without first obtaining the consent of the director or board of county commissioners except that such prohibition does not apply to highways or streets located within areas platted as townsites or additions and subdivisions thereof.

24-01-43. Utility facility - Removal. Any utility or transmission line hereinafter constructed contrary to the provisions of section 24-01-42 must be removed at the expense of the utility, when such removal is required for purposes of highway expansion.

24-01-44. Utility facility - Right of way for relocation. Whenever highway improvements require the relocation of utility facilities, and it is deemed to be in the best interest of the state, the director or the board of county commissioners may acquire such right of way as may be required for such relocation, in the manner they are authorized by law to acquire highway right of way.

24-01-45. Controlled-access facility - Commercial establishments prohibited. No automotive service station or other commercial establishment for serving motor vehicle users may be constructed or located within the right of way of, or on publicly owned or publicly leased land acquired or used for or in connection with, a controlled-access facility.

24-01-46. Clearing record title of right of way. Any political subdivision, department, or agency of the state, holding an interest of record in any part of the right of way for any highway on the state highway system, shall upon application of the director, cause such interest to be conveyed to the state of North Dakota for the use and benefit of the department of transportation and no consideration for such conveyance may be required. This section may not be construed to require that lands or interest therein held by political subdivisions, departments, or agencies of the state, for other than highway purposes, be conveyed to the state without full consideration.

24-01-47. Legislative intent - Access routes. It is the intent of the legislative assembly that the director have sufficiently broad authority to provide, within means available, and with cooperation from political subdivisions, for an integrated highway system, including reasonable access from the interstate highways to the municipalities most directly affected by the construction of such highway.

24-01-48. Access routes to controlled-access facility. Whenever the construction of an interstate, controlled-access highway, results in the removal from the state highway system, a highway which passes through or approaches within one mile [1.61 kilometers] of any incorporated municipality, the director may if conditions warrant, expend state highway funds to the extent of not over twenty-five percent of the cost to construct access routes on the federal aid secondary county system. Only such access routes may be constructed as are not over three miles [4.83 kilometers] in length and are necessary to provide as good or better access from such municipalities to the network of the state highway system, as existed prior to the construction of such interstate highway.

Such access routes may be constructed from the municipal limits to the interstate highway or in such other locations as will, in the opinion of the director, comply with the intent of the provisions of sections 24-01-47 and 24-01-48.

24-01-49. Approach or escape road to be built at all dead end roads or intersections of county and state highways. Whenever any highway on the state or county highway system has an intersection or dead end, there must be constructed, whenever feasible, an approach or escape road, and when not feasible, other protective devices such as warning signs, rumble strips, or barricades. This section applies to new road construction and reconstruction after July 1, 1975.

24-01-50. No-mow transfer to interstate highways. The department, in consultation with the game and fish department, shall negotiate with the United States fish and wildlife service and any other appropriate federal agency for the purposes of substituting the no-mow acres contained in the rights of way of United States highway 2 and United States highway 83 to the rights of way of interstate highway 94 or interstate highway 29, or both.

24-01-51. Haying of no-mow areas. Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow area may hay the no-mow or managed-mow area after July fifteenth without any payment or penalty.

24-01-52. Multilane highway for United States highway 52. The director of the department of transportation shall include, as part of the department's project development process, a four-lane alternate when it develops the environmental document for the next major reconstruction project for United States highway 52 from reference point 52-101.683 to reference point 52-122.789. It is recommended that the four-lane alternative be selected as the preferred alternate and be constructed if environmental clearance is obtained.

24-01-53. (Effective through July 31, 2011) Cost recovery for relocation of utility facilities due to implementation of the American Recovery and Reinvestment Act of 2009. Notwithstanding any other provision of state law, costs associated with changing, removing, relocating, or installing utility property as a result of or caused by a project funded through implementation of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5] must be paid to the affected utility by the state or the political subdivision from funds provided by the Act, if allowed by federal law, as part of the costs of the project. The payment does not constitute a violation of a legal contract.

24-01-54. Theodore Roosevelt expressway - United States highway 85. Notwithstanding any previous designation, the department shall designate United States highway 85 from the South Dakota border to the junction of United States highway 2 and United States highway 2 from the Montana border to the junction of United States highway 85 as the Theodore Roosevelt expressway and at a minimum shall place signs along the highway designating that name and may use any appropriate signs donated to the department.

24-02-07.3. Prequalification, selection, and contracting for consultants - Solicitations.

1. The director may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety, business administration, and related matters. The prequalification of the consultant must be based on detailed information regarding firm organization, qualifications of personnel, type of work the firm is qualified to perform, previous work experience, and financial status and must be provided to the director in a form approved by the director. If a consultant meets the criteria set by the director, the director shall prequalify the consultant, noting any limitations as to the type or amount of the work the consultant may perform. When a consultant is prequalified, the consultant is entitled to receive requests for proposals, proposals, and other solicitations for work in the areas in which the consultant is prequalified without any other screening or qualification process. The period of prequalification may not exceed three years. The qualifications of the consultant for a specific project must be determined according to the criteria in subsection 5 of section 54-44.7-03. The director shall publish a prequalification solicitation at least once each year and need not comply with the provision in subdivision c of subsection 2 of section 54-44.7-03 requiring the publication of an invitation for a specific project. The selection and contract negotiation must be performed according to subsections 6 and 7 of section 54-44.7-03.

2. The director is not required to comply with subsection 3 of section 54-44.7-03 or 54-44.7-04 and may procure the services of consultants for:

    a. Projects with consultant costs estimated to be not more than twenty-five thousand dollars through direct negotiation with a selected prequalified firm, after considering the nature of the project; the proximity of the architect, engineer, construction management, or land surveying services to the project; the capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time; past performance; and the ability to meet project budget requirements. Fees paid pursuant to this subdivision during the twelve months immediately preceding negotiation of the contract by the department of transportation for professional services performed by any one architectural, engineering, or land surveying individual or firm may not exceed fifty thousand dollars. A person seeking to render professional services under this section shall furnish the department a list of professional services previously provided to the department, including the fees paid during the twelve months immediately preceding the contract being negotiated.

    b. Projects with consultant costs estimated to be greater than twenty-five thousand dollars but not more than one hundred thousand dollars by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.

    c. Projects with consultant costs estimated to be greater than one hundred thousand dollars by notifying all prequalified firms, allowing a minimum of twenty-one calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.

24-02-08. Engineering consulting services - Coordinator of highway, road, and street program within state. The director may provide consulting engineering services upon request of any governmental unit.

The director has the authority and responsibility for the coordination of the total highway, road, and street program within this state, including the designation of systems, which the director may functionally classify as to the types of service, and the development of construction standards as hereinafter provided for.

CHAPTER 24-06
LOCAL ROAD IMPROVEMENTS

24-06-01. Board of township supervisors has supervision over township roads.

The board of township supervisors of any township in the state has general supervision over the roads, highways, and bridges throughout the township.

24-06-02. Township may purchase road machinery - Credit terms.

The board of supervisors of any township may contract for and purchase, upon credit or otherwise, any road machinery, implements, or equipment for the use of such township.

24-06-03. Election required if road machinery costs more than four hundred dollars.

Repealed by S.L. 1975, ch. 241, § 1.

24-06-04. Cost of township road machinery - How paid.

Road implements purchased by a township must be paid out of the highway taxes of the township and may be paid in not to exceed five annual installments. A copy of the note or contract issued upon the purchase must be filed in the office of the township clerk, and such township clerk shall present a statement of the sum due thereon to the board of township supervisors at each regular meeting held thereafter for the audit of the township claims and charges, and the board shall audit the same. Not more than one-half of the highway taxes of the township may be applied to the payment thereof in any one year.

24-06-05. Overseer responsible for machinery.

Each overseer of highways is responsible personally for the proper use and care of all implements while in the overseer's charge, or in use in the overseer's district, and any overseer of highways, or other person who, through negligence or willfully injures or damages such implements or permits them to be injured, is liable for such damage to the township, in an action to be brought by the chairman of the board of township supervisors in the township or any adjoining township.

24-06-06. Storage of implements.

Each board of township supervisors shall provide suitable places for the storage and proper housing of all tools, implements, and machinery owned by the township and shall cause such tools, implements, and machinery to be stored and housed therein when not in use.

24-06-07. Road machinery - Sale, purchase, lease.

In townships owning road machinery, the board of township supervisors may make such disposition of the same as in its discretion is best for the interests of the township, or it may purchase or lease such machinery as may be necessary.

24-06-08. Contracts for township road improvements - Notice - Bids.

Repealed by S.L. 1953, ch. 181, § 1.

24-06-09. Contract for township road and bridge work by county, township, or soil conservation district.

The board of supervisors of any township may enter into a contract with the board of county commissioners of the county, the board of supervisors of another township, or the directors of a soil conservation district for the construction, improvement, or repairing of township roads and bridges without the necessity of advertising for bids.

24-06-10. Roads contiguous to municipality - Grades - How established.

In all places where highways are improved and graded under the contract system in a township where land contiguous to, adjoining, and outside of the limits of any city has been surveyed into a block or blocks and divided into city lots, the person to whom such contract is

awarded shall comply strictly with the ordinances of such city as to roads, streets, grades, space for sidewalks, berms, and gutters, if, in the opinion of the board of township supervisors having control of the same, the cost of such grading is one hundred dollars or upwards. An estimate, profile, and cross section of such desired improvement must be made by the county surveyor of said county, and the contract for such improvement must be let to the lowest responsible bidder not a member of the said board and the work done under such contract may not be accepted or paid for until said surveyor has reported that the said contract has been complied with substantially. All roads and streets in city additions of outlots must be graded according to the requirements of such city ordinance or custom as to space for sidewalks, berms, and gutters.

24-06-11. Construction of crossings over ditches, drains, and roads.

Whenever a township constructs a ditch or drain in connection with road building, and such ditch, drain, or road interferes with the ingress or egress of any owner of adjoining land, the township shall install crossings at such point or points as will afford the owner or owners of the premises suitable ingress thereto or egress therefrom.

24-06-12. Townships may unite efforts.

The electors of any township, at the annual township meeting, may direct such portion of the road tax to be expended on the highways in an adjoining township as they deem conducive to the interests of the township. In such instance, labor and taxes must be expended under the joint direction of the townships interested and furnishing the same.

24-06-13. Townships composed of more than one congressional township - Expenditure of road taxes.

Where more than one congressional township is included within a civil township, the road taxes raised within the limits of each congressional township must be expended within such congressional township, unless raised to be expended outside of such civil township.

24-06-14. District overseer of highways.

In unorganized territory, the board of county commissioners shall appoint a district overseer of highways whose power and duties are the same as in an organized township, and whose compensation must be fixed by the board of county commissioners to be paid on presentation of a verified bill at the regular meeting of the board of county commissioners. The board may, by resolution, appoint one or more of its members as district overseers.

24-06-15. Road taxes in unorganized territory - How expended.

The board of county commissioners shall order the expenditure of all road taxes paid into the county treasury from unorganized territory in the improvement of the highways, paying the district overseer of highways, purchasing implements, and repairing bridges in the road district in which such taxes were levied, under such regulations as it may deem most expedient for the public interests, and for this purpose shall order the payment of such sum by the treasurer to the persons performing such labor upon the certificate of the overseer of highways.

24-06-16. Report of district overseer of highways.

On or before the first Monday in January in each year, each district overseer of highways appointed by the board of county commissioners shall make a report to the board of the overseer's doings as such during the preceding year, the amount of labor performed, and the number of days' labor necessarily performed by the overseer in the discharge of the overseer's duties, and the board of county commissioners thereupon shall cause a warrant to be drawn on the county treasurer in favor of such overseer for such services.

24-06-17. Road taxes must be paid in cash.

All road taxes and assessments upon persons or property must be paid in cash, and the township clerk, immediately after the board of township supervisors has made the levy of taxes for road purposes, shall notify the county auditor of the amount of the levy. The county auditor

shall enter the same upon the county tax lists to be collected by the county treasurer in the same manner as other township taxes are collected. Such taxes, when collected, constitute a road fund belonging to the township in which it is levied, and must be returned by the county treasurer to the township treasurer.

24-06-18. Road taxes to be paid to local subdivisions.

Repealed by S.L. 1953, ch. 179, § 2.

24-06-19. Expenditure of road taxes.

The board of township supervisors shall order the expenditure of all road taxes paid into the township treasury in the improvement of the highways under such regulations as it may deem most expedient for the public interests, and for this purpose, shall issue a warrant upon the road funds of the township upon the certificate of the township overseer that such work has been performed satisfactorily; provided, however, that not over fifty percent of the township road and bridge fund, collected within each tax year may be expended upon highways which are a part of a state or county highway system as designated under the provisions of section 24-01-02, 24-01-05, or 24-05-16, unless such expenditure is specifically authorized by resolution adopted by a majority of the electors of the township present and voting at any special or annual township meeting. This limitation also applies to any special road fund as set up under section 57-15-19.2.

24-06-20. Work on roads to proceed upon levy of taxes.

The officers charged with the duty of expending road taxes may proceed at once, upon the levy of taxes, with the work upon the roads in their districts and may cause warrants to be issued in payment thereof in anticipation of the current year's taxes.

24-06-21. Road tax may be worked out.

Repealed by S.L. 1951, ch. 178, § 5.

24-06-22. Supervisors to fix compensation for road work, when.

Repealed by S.L. 1951, ch. 178, § 5.

24-06-23. County commissioners to fix rate, when.

Repealed by S.L. 1951, ch. 178, § 5.

24-06-24. Compensation for road work when not fixed.

Repealed by S.L. 1951, ch. 178, § 5.

24-06-25. Work done prior to August first.

Repealed by S.L. 1951, ch. 178, § 5.

24-06-26. Ditches to drain highways - Proceedings to establish.

Whenever any overseer of highways files with the board of township supervisors or with the board of county commissioners, as the case may be, the overseer's affidavit stating that a certain road in the overseer's district runs into or through swamp, bog, meadow, or other lowland, and that it is necessary or expedient that a ditch should be constructed and maintained through land belonging to any person, and also stating the probable length of such ditch and the width and depth of the same as near as may be, the point at which it is to commence, its general course and the point at or near which it is to terminate, the names of the persons owning the land, if known, and a description of the land over which such ditch must pass, the board of township supervisors or board of county commissioners, as the case may be, if the right to construct and maintain such ditch is not given voluntarily by the person owning the land over which it is to pass, shall cause proceedings to be instituted in its name under the provisions of chapter 32-15 to acquire the right to construct and maintain the same.

24-06-26.1. Township road and drainage construction standards.

Whenever the construction or reconstruction of a township road or bridge, the insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain in connection with a township road affects the flow of surface waters and increases the surface waterflow through ditches, drains, bridges, and culverts in other townships, the board of township supervisors or the township overseer of highways of the township undertaking the construction or reconstruction shall give notice to the boards of township supervisors or township overseers of highways in all townships affected by the construction or reconstruction projects.

The boards of township supervisors of townships affected by any road or bridge construction that changes or increases the flow of surface waters shall cooperate in the construction projects expending on any portion of the projects the portions of the road and bridge tax as deemed conducive to the interests of the township. The board of township supervisors shall construct the ditches, drains, bridges, and culverts in accordance with stream crossing standards prepared by the department and the state engineer. A township, board of township supervisors, and township overseer of highways are not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

24-06-26.2. Maintenance of township road ditches - Limited duty.

The party with an interest in land adjacent to a township road is not responsible for maintaining that ditch unless improper conservation practices on that party's adjoining land have led to unreasonable wind and water erosion, not commonly experienced in the locality, which resulted in conditions adversely affecting the ditch. On the occurrence of such improper conservation practices, the board of township supervisors may require the adjoining party with an interest in the land to clean the ditch at that party's expense. If that party fails to clean the ditch, the procedures applicable to the duty to cut weeds under chapter 63-05 apply with respect to the cleaning of the ditch.

24-06-26.3. Maintenance of township road ditches by private party - Power of board of township supervisors - Approval - Standards of construction.

The board of township supervisors may authorize any private party to maintain, clean, or shape a ditch along a township road at that party's own expense and in accordance with this section. In maintaining, cleaning, or shaping a ditch, the private party may not spread any soil or debris from that ditch along adjoining land without the permission of all parties with an interest in that land. The ditch may be on a continuous grade from the bottom of the upstream water outlet to the bottom of the downstream water outlet structure. The grade ratio in that distance must be a slope that, in light of the soil types and potential for vegetative cover in the ditch, will resist erosion. In order for any action to be considered maintenance of a ditch in accordance with this section, the ditch must be entirely contained within the township right of way, must have a bottom that is not wider than twelve feet [3.66 meters], and may not alter the side slope of the ditch to a slope steeper than the existing side slope. The board of township supervisors may not approve private maintenance of a ditch that does not comply with the standards of this section. If the board of township supervisors denies permission to maintain a ditch under this section, the petitioner may appeal that decision to the water resource board that has jurisdiction over the ditch. This section does not relieve any person from compliance with any requirements for a drainage permit which are required by statute or rule.

24-06-27. Penalty for injuring ditch.

Any person who obstructs or in any way injures any ditch opened as provided in section 24-06-26 is liable to pay to the overseer of highways of such road district double the damages caused by such injury, which must be assessed by the jury or court, and also is guilty of a class B misdemeanor, and the civil damages, when collected by the overseer, must be deposited in the road fund established by section 24-06-17, and must be expended in accordance with section 24-06-19.

24-06-28. Obstruction of section lines prohibited - Exception - Certain fences not considered obstructions - Obstructions and traffic safety hazards - Penalty.

1. A person may not place or cause to be placed any permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as appropriate. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.
2. A person may not place or cause to be placed any obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or board of township supervisors, as appropriate.
3. Subsection 1 may not be construed to prohibit construction of fences:
   a. Along or across section lines which have been closed pursuant to section 24-07-03 or which have not been opened because construction of a road is impracticable due to the topography of the land along the section line, but such fences are subject to removal as provided in section 24-06-30.
   b. Across section lines which have not been closed pursuant to section 24-07-03 if cattle guards are provided in accordance with chapter 24-10 where fences cross the section lines.
4. The construction of fences pursuant to subsection 3 may not be considered an obstruction of section lines and any person who damages any fence or who opens and fails to close any gate constructed under subsection 3 is guilty of an infraction.
5. Subsection 2 does not apply to a railroad company performing maintenance and repair work of railroad track, crossings, or other railroad facilities.

24-06-29. Removal of permanent obstructions - Removal of obstructions and traffic safety hazards - Cost.

1. If a person places or causes to be placed a permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, the board of county commissioners or board of township supervisors, as appropriate, when a public highway is opened, shall notify the owners of adjacent property to remove the permanent obstruction. Written notice by registered mail to the record owner of the adjacent property mailed to the owner's last-known address and to any other persons in possession of the property constitutes valid notice. If the owners fail to remove the permanent obstruction within thirty days after the notice is mailed, the board of county commissioners or the board of township supervisors, as appropriate, shall remove the permanent obstruction. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.
2. If a person places or causes to be placed an obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway road surface, the board of county commissioners or board of township supervisors, as appropriate, shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of county commissioners or board of township supervisors, as appropriate, shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or traffic safety hazard is responsible and may be billed for any costs incurred by the county or township for removal of the obstruction or traffic safety hazard.
3. Subsection 2 does not apply to railroad facilities.

24-06-30. Removal of fences - Notice - Cost.

When a public highway is opened along any section line, the board of county commissioners or the board of township supervisors, as the case may be, shall notify the owner of adjacent property to remove any fences not constructed pursuant to subsection 2 of section 24-06-28 within thirty-three feet [10.06 meters] of the section line in the manner provided for notice to remove stones, trees, or rubbish. If the owner of adjacent property fails to remove the fences within thirty days after the notice is given, the board of county commissioners or the board of township supervisors, as the case may be, shall remove the fences. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.

24-06-31. Obstructions in highway.

Each overseer of highways having personal knowledge, or on being notified in writing, of any obstruction in the highway or public street in the overseer's district immediately shall remove or cause any such obstruction to be removed. The overseer's district may seek recovery of costs incurred for the removal of any obstruction from the individual who is responsible for causing or placing any obstruction in the highway or public street. If the individual responsible is an adjacent landowner, the removal cost may become a part of the taxes to be levied against the landowner for the ensuing year to be collected in the same manner as other real estate taxes are collected.

24-06-32. Penalty for refusal to serve as road overseer.

Repealed by S.L. 1949, ch. 193, § 1.

24-06-33. Method of construction of highway ditches.

Repealed by S.L. 1953, ch. 177, § 120.

24-06-34. Notice to water resource districts.

Whenever a county or township plans to construct or reconstruct a bridge, install or modify a culvert, or construct or reconstruct a drain in connection with a roadway or railway, the county or township shall provide notice in any way to the water resource board of the water resource district in which is located the bridge, culvert, or drain. This notice must be given at least thirty days prior to the date construction or reconstruction is to begin. The water resource board may submit comments concerning the construction or reconstruction to the appropriate officials of the county or township. This section does not apply in times of emergency, unexpected events, or acts of God.

CHAPTER 24-07
OPENING AND VACATING HIGHWAYS

24-07-01. Public roads by prescription. All public roads and highways within this state which have been or which shall be open and in use as such, during twenty successive years, hereby are declared to be public roads or highways and confirmed and established as such whether the same have been laid out, established, and opened lawfully or not.

24-07-02. Established roads are public highways. Every road laid out by the proper authorities, as provided for in this chapter, from the laying out of which no appeal has been taken within the time limited for taking such appeal, hereby is declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal, as provided for in this chapter, are debarred forever from any further redress.

24-07-03. Section lines considered public roads open for public travel - Closing same under certain conditions. In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 40-50.1-01 through 40-50.1-17 or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines.

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, after public hearing and a finding by the commissioners of public benefit, may close section lines or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing the section line to be a deadend, providing the closing of the dead-end section line does not deprive adjacent landowners access to the landowners' property. After the section lines are closed, they may be used to the benefit of the adjacent landowners. However, survey or property reference monuments may not be disturbed, removed, or destroyed. If drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming the lands.

24-07-03.1. Improvement of section line by landowner. A person having a surface interest in a parcel of land connected by a section line to another parcel of land in which that person has a surface interest or to a highway may petition the board of county commissioners in an unorganized township or the board of township supervisors in an organized township to authorize the petitioner to improve the section line or a portion of the section line for the purpose of travel for agricultural purposes. The petition may be approved if the section line cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not have a readily accessible alternative route of travel to the parcel of land. The petitioner must improve the section line or a portion of the section line at the petitioner's expense.

24-07-04. Jurisdiction of proceedings to open or vacate highway. Except as otherwise provided in this title, all proceedings for the opening, vacating, or changing of a highway outside of the limits of an incorporated city, including the acquisition of right of way when necessary, must be under the charge and in the name of:

1. The board of county commissioners, if the road is in territory not organized into a civil township.

2. The board of township supervisors of an organized township.

3. The board of county commissioners of each county in case the road is between or in two or more counties.

4. The board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.

5. The board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township.

6. The board of county commissioners in any case arising under subsection 4 when the boards of township supervisors of the respective civil townships cannot agree or will not take action on petition so to do.

24-07-05. Petition for laying out, altering, or discontinuing roads. The board having jurisdiction as provided in this chapter may alter or discontinue any road or lay out any new road upon the petition of not less than six qualified electors who have an ownership interest in real estate in the vicinity of the road to be altered, discontinued, or laid out. Said petition must set forth in writing a description of the road and what part thereof is to be altered or discontinued, and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate.

24-07-06. Public road may be established to give access to highway. Whenever any tract of land is surveyed or sold in tracts less than the original subdivision as established by the government survey thereof, so that any part thereof does not touch upon a public road so as to allow the owner of such tract access to a public highway, the board of county commissioners or board of township supervisors, upon petition of such owner, may open a public road to gain access to any such tract or tracts when in the judgment of such board such public road is necessary and that it is of sufficient benefit to the county or township as a whole, but no such public road may exceed two rods [10.06 meters] in width unless in the judgment of such board a roadway of such width is not sufficient to accommodate the travel thereon.

24-07-07. Survey of proposed road - Deviation from petition. Whenever a petition is received by the board having jurisdiction, requiring a new road to be laid out, said board, when in its judgment circumstances warrant the same, shall employ a competent surveyor to survey and lay out said road, and such survey must include a line of levels to be run over the laid out road and a grade line to be established thereon, such grade line not to be greater than ten percent when completed. In laying out said road the board may deviate or depart, or may direct a deviation or departure, from the road described in the petition when it is practicable and less expensive to do so in order to obtain a grade line not exceeding ten percent. Such surveyor shall prepare a plan and profile of the surveyor's survey and shall file a copy of the same with the township clerk or the county auditor, as the case may be, and the board having jurisdiction shall require that such road, when completed, must conform to the plan and profile of the surveyor as filed with the township clerk or county auditor.

24-07-08. State land subject to chapter. The provisions of this chapter apply to all lands owned by the state or any institution thereof, or held by virtue of any contract with the state, and notice of the altering, laying out, or discontinuing of any cartway or highway pursuant to this chapter must be served by registered or certified mail upon the board of university and school lands or other state agency having the control of the land affected, not less than thirty days prior to the taking of action by such board in regard to altering, laying out, or discontinuing such cartway or highway.

24-07-09. Copy of petition to be posted. The petitioners for the alteration or discontinuance of any road, or for laying out any new road, shall cause copies of their petition to be posted in three of the most public places in the county or township having jurisdiction thereof, twenty days before any action is had in relation thereto.

24-07-10. Notice to all parties to be given - What deemed to be notices. Within thirty days after the board having jurisdiction receives a petition in compliance with provisions of this chapter for laying out, altering, or discontinuing any highway, it shall make out a notice and fix

therein a time and place at which it will meet and decide upon such application, and the applicant, ten days previous to the time so fixed, shall cause such notice to be given to all occupants of the land through which such highway may pass. Such notice must be served personally or by copy left at the abode of such occupant. The board also shall cause copies of such notice to be posted in three public places in said county or township at least ten days previous to such meeting. Every such notice must specify, as nearly as practicable, the highway proposed to be laid out, altered, or discontinued, and the tract of land through which the same may pass.

24-07-11. When notice dispensed with. When at least seventy percent of the qualified electors who are owners or part owners of land bordering on any existing or proposed road or highway have signed the original petition and thereby released all their claims to damages arising from altering, discontinuing, or laying out such road or highway, it is not necessary to post copies of the petition as provided for in section 24-07-09, nor to post notices or serve notices as provided for in section 24-07-10, except that the notices must be served personally or left at the abode of such occupants as may have failed to sign the petition and whose land borders on the road or highway proposed to be opened, altered, or discontinued. The general knowledge, and the fact, that seventy percent of the qualified electors have signed the original petition in compliance with this provision must be deemed sufficient notice to all concerned and for all intents and purposes.

24-07-12. Petition must be filed with county auditor. If the petition is for the opening, altering, or discontinuing of a road or highway between two or more counties, it must be filed with the auditor of one of the counties affected at least fifteen days before any action is taken, and the auditor immediately shall transmit certified copies of such petition to the auditors of all other counties to be affected by such changing, discontinuing, or laying out of roads or highways. Each county auditor shall lay such petition before the board of county commissioners of the auditor's county at its next meeting for action in the matter as provided in this chapter.

24-07-13. Examination of proposed highway. The board having jurisdiction, upon being satisfied that copies of the petition have been posted and notices have been served and posted as required, or that at least seventy percent of the qualified electors who are owners of lands affected have signed the original petition and that notices have been served personally or left at the abode of those who may have failed to sign the original petition, proof of which shall be shown by affidavit, shall proceed to examine the proposed highway and shall hear any reasons for or against the laying out, altering, or discontinuing of the same, and shall decide upon the application as it deems proper.

24-07-14. Proceedings when road is laid out, altered, or discontinued. Whenever the board of county commissioners or the board of township supervisors shall lay out, alter, or discontinue any highway, it shall cause a survey thereof to be made when necessary, and it shall make out an accurate description of the highway so altered, discontinued, or laid out, and shall incorporate the same in an order to be signed by the members of such board, and shall cause such order, together with all the petitions and affidavits of service and posting of notices to be filed in the office of the county auditor, if by the board of county commissioners, and in the office of the township clerk, if by the board of township supervisors. The auditor or clerk shall note the time of filing the same. On the refusal of either board to lay out, alter, or discontinue a road, it shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, must be made out and filed within five days after the date of the order for laying out, altering, or discontinuing a highway. But the county auditor or township clerk may not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed. When the order, together with the award, has been recorded by the county auditor or township clerk, as the case may require, the same must be filed in the office of the county auditor. In case the board having jurisdiction fails to file such order within twenty days, it must be deemed to have decided against such application.

24-07-15. Order or certified copy - Competent evidence. The order laying out, altering, or discontinuing any highway, or a copy of the record duly certified by the county auditor or township clerk, as each case may require, must be received in all courts as competent

evidence of the facts therein contained and must be prima facie evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal, when such appeal has been taken within the time limited in this chapter.

24-07-16. Damages - How ascertained. The damages sustained by reason of laying out, altering, or discontinuing any road may be ascertained by the agreement of the owners and the board of county commissioners or the board of township supervisors, as the case may be, and unless such agreement is made, or the owners in writing shall release all claim to damages, the same must be assessed in the manner herein prescribed before the road is opened, worked, or used. Every agreement and release must be filed in the township clerk's office, when with a township, and in the county auditor's office, when with a county, and precludes such owners of land forever from all further claim for damages. In case the board and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered, or discontinued, is unknown, the board in its award of damages shall specify the amount of damages awarded to each such owner, giving a brief description of such parcel of land in the award. The board having jurisdiction shall assess the damages at what it deems just and right to each individual claimant with whom it cannot agree. The board of township supervisors shall deposit a statement of the amount of damages assessed with the township clerk, and the board of county commissioners shall deposit the same with the county auditor. The auditor or clerk shall note the time of filing the same. The board in assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same as well as the disadvantages. Any person living on land belonging to the United States who has made that person's declaratory statement for the same in the proper land office, for all the purposes of this chapter, must be considered the owner of such lands.

24-07-17. When damages not allowed. Except as otherwise provided in this chapter, no damages may be assessed or allowed to any person, corporation, or limited liability company by reason of the laying out of any new road or the altering of any old one, if the title of the land on which such road passes was vested in the state or the United States at the time of the location of such road.

24-07-18. Determination final for one year. The determination of a board of county commissioners, or a board of township supervisors in refusing to lay out, alter, or discontinue any highway, is final, unless such determination is appealed from as is provided in this chapter, for the term of one year after the filing of such order or determination in the county auditor's or township clerk's office, as the case may be, and no application for laying out, altering, or discontinuing any such highway again may be acted upon by such board within said period of one year, and in case the determination of any such board in laying out, altering, or discontinuing any highway is appealed from, as provided in this chapter, and such determination is reversed on appeal, the said board may not, within one year after the making of the determination so reversed on appeal, act again upon an application to lay out, alter, or discontinue any such highway.

24-07-19. Notice to party to remove fences. Whenever any public road has been laid out through any enclosed, cultivated, or improved lands, pursuant to this chapter and the decision of the board laying out the road has not been appealed from, the board shall give the owner or occupant of the land through which the road is laid out thirty days' written notice to remove the owner's or occupant's fences. If the owner does not remove the fences within thirty days after the notice, the board shall cause the fences to be removed and shall direct the road to be opened and worked, but no enclosure may be ordered opened between April first and October first.

24-07-20. Notice to overseer of highways. When any highway is to be changed or laid out, the county auditor or clerk of the township, as the case may be, shall notify the overseer of highways of each district affected and shall furnish the overseer of highways with a certified copy of the proceedings of the board.

24-07-21. Repair of highways across railroads, canals, or ditches. Whenever highways are laid out across railroads, canals, or ditches on public lands, the owners at their own

expense shall so repair their railroads, canals, or ditches that the public highway may cross the same without damage or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, canal, or ditch, no damages must be awarded for the simple right to cross the same.

24-07-22. Appeals - When and where taken. Any person who feels aggrieved by any determination or award of damages made by the board having jurisdiction, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, within thirty days after the filing of such determination or award of damages, as provided in this chapter, may appeal therefrom to the district court in accordance with the procedure provided in section 28-34-01.

24-07-23. Appeals - How taken - Notice - Bond. The appeal provided for in section 24-07-22 must be taken by the service and filing of a notice of appeal and an undertaking for costs. The notice of appeal must specify:

1. The court to which the appeal is taken.

2. Whether the appeal is taken in relation to damages assessed or in relation to the laying out, altering, or discontinuing, or to the refusal to lay out, alter, or discontinue any highway.

3. Whether the appeal is taken from the whole of the order of the board or only from a part thereof, and if from a part only, then what part.

4. The grounds upon which the appeal is taken.

The undertaking must be made in favor of the county or township, as the case may be, and must be conditioned for the payment of all costs that may arise upon such appeal if the determination appealed from is affirmed.

24-07-24. Appeals - Filing - Approval of undertaking - Service. The notice of appeal and undertaking to the district court must be filed with the clerk of the court and the undertaking must be approved by the judge thereof or by the county auditor. The notice of appeal must be served upon some member of the board by which the determination was made.

24-07-25. Trial in county court. Repealed by S.L. 1991, ch. 326, § 203.

24-07-26. Trial in district court. Upon an appeal to the district court, the issues must be submitted to a jury unless the parties otherwise agree, and must be tried as other cases are tried in district court upon appeal.

24-07-27. Scope of review upon appeal. An appeal as provided for in this chapter brings before the appellate court the propriety of the amount of damages allowed and all matters referred to in the notice of appeal. The court or jury, as the case may be, shall reassess the damages. The rules for ascertaining and fixing the damages must be based upon the principles which the board was required to adopt in originally determining the same.

24-07-28. Judgment - Copy filed. When judgment has been entered upon an appeal taken as provided in this chapter, the clerk of the district court shall file with the county auditor or clerk of the township a certified copy of the judgment.

24-07-29. Costs of appeal. If the determination of the board appealed from is affirmed, or if the amount of damages allowed is reduced, the party appealing shall pay all costs and disbursements incurred in the appellate court, but if the amount of damages allowed is increased, or if the determination is altered, modified, or reversed, otherwise than as to the amount of damages, such costs and disbursements must be paid by the township or county, as the case may be. Said costs and disbursements must be taxed as in other cases in the appellate court, and judgment entered therefor in like manner.

24-07-30. When appeal sustained - Duty of the board. When an appeal has been made from the determination of any board of township supervisors or board of county commissioners, and such determination has been reversed or altered, the board from whose determination such appeal was taken shall proceed to lay out, alter, or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon must be the same as if the board originally had determined to lay out, alter, or discontinue such highway. The amount of damages finally determined and awarded by the board or by the court or jury, together with all the charges of officers and other persons necessarily employed in laying out, altering, or discontinuing any township or county road, must be audited by the board of county commissioners or board of township supervisors, as the case may be, specifying the amount of charges and damages due each individual, and the respective amounts must be certified by said board and by it deposited with the county auditor or township clerk and paid by the county or township, as the case may be. Before any road may be opened or used, warrants of the county or township, as the case may be, equal to the damages assessed to individuals, must be issued and deposited with the county auditor or township clerk, as the case may be, for the use and benefit of said individuals, and must be delivered to them on demand. The issuing and depositing of said warrants must be deemed to be sufficient security for the payment of said damages. In no case may a township be compelled to pay any damages that may be awarded in laying out, altering, or discontinuing any county road.

24-07-31. Nonuse for ten years will vacate highway. Any road or part thereof laid out by authority of a board of county commissioners or a board of township supervisors, and not opened to public use within ten years from the time when it was laid out, or which thereafter is abandoned and not used for ten years, hereby is declared vacant.

24-07-32. Highways on county and township lines. A public highway established on a county or township line, or a public highway laid out parallel and adjacent to a county or township line, where such line is occupied by a railroad or other obstruction, must be opened, established, and repaired by the supervisors of the proper road districts on each side thereof.

24-07-33. Public lands - Damages. When any person acquires the title to government land over which any road has been or hereafter may be laid out, subsequent to the laying out of such road, the person so acquiring such title, within three months after the receipt of the person's patent therefor, shall assert the person's claim for damages in the manner provided in this chapter in case of locating highways, and such roads must remain and be public highways, but the person's damages, if any, must be paid, and in case of a failure to assert the person's claim for damages within the time aforesaid, the person thereafter is barred from asserting such claim.

24-07-34. Roads on lines between township and city. Whenever the board of supervisors of any township and the governing body of any incorporated city shall receive a petition praying for the location of a road or for the altering or discontinuing of any road on the line between such township and such city, such road may be laid out, altered, or discontinued by the action of both boards. The provisions of this chapter applicable to the laying out, altering, or discontinuing of a road on the line between two townships are applicable to a road on the line between any township and an incorporated city.

24-07-35. Designation of minimum maintenance road. A board having jurisdiction as described in this chapter, and the governing body of a city, may designate a road under its jurisdiction as a minimum maintenance road in accordance with sections 24-07-35 through 24-07-37. The designation may be made only if the board or governing body determines that the road to be so designated is used only occasionally or intermittently for passenger and commercial travel. Further, the designation cannot be made if the road is used as a schoolbus route, mail route, or as the only access to any existing residence. In its action designating the minimum maintenance road, the board or governing body shall identify the beginning and end of the road. The board or governing body shall notify each adjoining political subdivision of a designation made under this section. If a road runs along the boundary of political subdivisions, the designation as a minimum maintenance road is not applicable unless the board or governing body of each adjoining political subdivision agrees with the designation.

24-07-36. Required signs on minimum maintenance roads. The body making a designation of a minimum maintenance road shall post signs at the beginning of the road and at regular intervals along the road. The signs must conform to standards adopted by the director by rule. If the signs are properly posted, that fact is prima facie evidence that adequate notice of the road's status as a minimum maintenance road has been given to the public.

24-07-37. Limitations on designation of minimum maintenance roads. A road is not eligible for designation as a minimum maintenance road if federal highway aid to this state would be reduced as a result of that designation. A road is not eligible for that designation if additional right of way or easement by eminent domain is required for constructing or designating the road as a minimum maintenance road, unless the consent of the landowner is given or the designation is necessary for drainage or public safety.

CHAPTER 32-15
EMINENT DOMAIN

32-15-01. Eminent domain defined - How exercised - Condemnor defined - Exceptions.

1. Eminent domain is the right to take private property for public use.
2. Private property may not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. When private property is taken by a person, no benefit to accrue from the proposed improvement may be allowed in ascertaining the compensation to be made therefor. Private property may not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business. A determination of the compensation must be made by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.
3. Notwithstanding any other provision of law, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.
4. For the purpose of this chapter, "condemnor" means a person empowered to take property under the power of eminent domain.

32-15-02. Purposes for which exercised.

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, park district, or school district; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city, or for draining any county or city; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other uses for the benefit of any county, city, or park district, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, railroads and street railways, electric light plants and power transmission lines and canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, and irrigating, draining, and reclaiming lands.
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, outlets, natural or otherwise, for the flow, deposit, or conduct of the tailings or refuse from mines and mill dams.
6. Byroads leading from highways to residences and farms.
7. Telegraph and telephone lines.
8. Sewage disposal of any city, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or of any college or university.
9. Cemeteries and public parks.
10. Oil, gas, coal, and carbon dioxide pipelines and works and plants for supplying or conducting gas, oil, coal, carbon dioxide, heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such

gas, oil, coal, carbon dioxide, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof.

11. Lands sought to be acquired by the state or any duly authorized and designated state official or board, which lands necessarily must be flooded in widening or raising the waters of any body or stream of navigable or public water in the state of North Dakota.

32-15-03. What estate subject to be taken.

The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, for an outlet for a flow or a place for the deposit of debris or tailings of a mine, or for the construction of parking lots and facilities for motor vehicles.
2. An easement, when taken for highway purposes or for any other use except, upon a proper allegation of the need therefor, the court shall have the power to order that a fee simple be taken for such other use.
3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for a public use.

However, the provisions of this section shall not authorize the state or any political subdivision thereof to obtain any rights or interest in or to the oil, gas, or fluid minerals on or underlying any estate or right in lands subject to be taken for a public use.

32-15-03.1. Declaration of legislative intent.

Repealed by omission from this code.

32-15-03.2. Termination of estates greater than an easement.

No transfer to the state of North Dakota or any of its political subdivisions of property for highway purposes shall be deemed to include any interest greater than an easement, and where any greater estate shall have been so transferred, the same is hereby reconveyed to the owner from which such land was originally taken, or to the heirs, executors, administrators, or assigns of such owner. Such reconveyance shall be subject to any existing contracts or agreements covering such property, and all rights and benefits thereof shall accrue to the grantee.

32-15-04. What property may be taken.

The private property which may be taken under this chapter includes:

1. All real property belonging to any person.
2. Lands belonging to this state or to any county, city, or park district, not appropriated to some public use.
3. Property appropriated to public use, but such property shall not be taken unless for a more necessary public use than that to which it has been appropriated already, and use by a public corporation shall be deemed a more necessary public use than use for the same purpose by a private corporation or limited liability company, and whenever a right of way shall have been taken and the person, firm, corporation, or limited liability company taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, corporation, or limited liability company to appropriate such right of way shall be considered a more necessary public use.
4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use.
5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system.

6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.
7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

32-15-05. What must appear before property taken.

Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.
2. That the taking is necessary to such use.
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

32-15-06. Entry for making surveys.

In all cases when land is required for public use, the person or corporation, or the person's or corporation's agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever is in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

32-15-06.1. Duty to negotiate - Just compensation - Appraisals.

1. A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.
2. Before initiating negotiations for the purchase of property, the condemnor shall establish an amount which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.
3. In establishing the amount believed to be just compensation, the condemnor shall disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired or by the reasonable likelihood that the property will be acquired for that project, other than a decrease due to physical deterioration within the reasonable control of the owner.
4. The condemnor shall provide the owner of the property with a written appraisal, if one has been prepared, or if one has not been prepared, with a written statement and summary, showing the basis for the amount it established as just compensation for the property. If appropriate, the compensation for the property to be acquired and for the damages to remaining property shall be separately stated.

32-15-06.2. Disclosures.

The condemnor, upon request, shall provide the property owner or the owner's representative with the names of at least ten neighboring property owners to whom offers are being made, or a list of all offerees if fewer than ten owners are affected. A current and relevant map showing all neighboring property affected by a project shall also be provided to the property owner. Upon request by an owner or the owner's representative, the condemnor shall provide the names of any other property owners within that county and adjacent counties whose property may be taken for the project. The owner or the owner's representative shall have the right, upon request, to examine any maps in the possession of the condemnor showing property

affected by the project. The owner or the owner's representative may obtain copies of such maps by tendering to the condemnor the reasonable and necessary costs of preparing copies.

32-15-07. Proceedings by civil action.
Repealed by omission from this code.

32-15-08. Form of summons - When served.
Repealed by omission from this code.

32-15-09. Service by publication.
Repealed by omission from this code.

32-15-10. Copy of summons served through mails.
Repealed by omission from this code.

32-15-11. Service complete, when.
Repealed by omission from this code.

32-15-12. When note of issue filed.
Repealed by omission from this code.

32-15-13. Jury may be demanded.
Whenever in an action brought under the provisions of this chapter an issue is formed whereby it appears that the attendance of a jury will be necessary to assess the damages in such action, the plaintiff therein may apply to the judge of the district court where the same is pending for an order requiring a jury to be summoned to assess the damages in such action. Thereupon the judge shall issue an order to the clerk of said court requiring a jury to be summoned, and in such order shall specify the number of jurors to be drawn, the place where they are to appear, and the time when they shall come, which shall be not less than eight days nor more than thirty days from the date thereof.

32-15-14. When sheriff's fees to be advanced by plaintiff - Surety for jury fees.
Repealed by S.L. 1981, ch. 354, § 1.

32-15-15. Note of issue, filing.
Repealed by omission from this code.

32-15-16. Special term of court to hear issue.
The court shall sit at a special term to hear the case according to law and the practice of the court, and shall have the same power to complete the jury as is now provided by law, and the pay of such jurors, and the penalty for failure or refusal to appear, shall be the same as in other cases.

32-15-17. Issues tried at any term of court.
The trial of any action under this chapter may be had at any general, special, or adjourned term of district court, held or called in the county in which such action may be pending, and such action may be tried at any such term. If issue is not joined prior to the commencement of any regular, special, or adjourned term, the plaintiff nevertheless may require said cause to be tried on such day thereof as the court may order, but plaintiff shall serve upon the opposite party, or parties, a seven days' notice of trial, specifying the date of trial, as fixed by order of the court.

32-15-18. What complaint must contain.
The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of the plaintiff.
4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.
5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract.

32-15-19. Joinder, consolidation, and separation of proceedings.

All parcels of land lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

32-15-20. Who may defend.

All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to such person's own property or interest, or that claimed by such person, in like manner as if named in the complaint.

32-15-21. Power of court.

1. The court shall have power:
   a. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
   b. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages for the property.
   c. To determine the respective rights of different parties seeking condemnation of the same property.
2. Notwithstanding any other provision of law, if a route permit is required under chapter 49-22 or 49-22.1, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

32-15-22. Assessment of damages.

The jury, or court, or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein. If it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.
3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.
4. If the property is taken or damaged by the state or a public corporation, separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subsections 2 and 3, the owner of the parcel shall be allowed no compensation except the value of the portion taken, but if the benefit shall be less than the damages so assessed the

former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the portion taken.

5. As far as practicable, compensation must be assessed separately for property actually taken and for damages to that which is not taken.

32-15-22.1. Eminent domain - Compensation for moving personal property.

Repealed by S.L. 1973, ch. 407, § 17.

32-15-23. When right to damages accrues.

For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the taking and its actual value at that date shall be the measure of compensation for all property actually to be taken, and the basis of damages to the property not actually taken, but injuriously affected, in all cases when such damages are allowed as provided in section 32-15-22. The time of the taking shall be determined by the court.

32-15-24. When title defective.

If the title acquired is found to be defective from any cause, the plaintiff again may institute proceedings to acquire the same as in this chapter prescribed.

32-15-25. When judgment paid.

The plaintiff, within thirty days after the entry of final judgment, must pay the sum of money assessed, except where school or public land upon which no contract is outstanding is taken for public use under this chapter, the plaintiff shall pay for such land as follows: one-fifth of the sale price in cash at the time of the sale; one-fifth of the purchase price each five years thereafter on the anniversary date of the sale, with interest at the rate of not less than three percent per annum, payable annually in advance.

32-15-26. Payment or deposit - Proceedings annulled.

Payment may be made to the defendant entitled thereto, or the money may be deposited in court for the defendant and be distributed to those entitled thereto. If the money is not so paid or deposited, the defendant may have execution as in civil actions, unless execution is stayed by order of the court pending a motion for a new trial or on appeal, and if the money cannot be made on execution, the court upon a showing to that effect must set aside and annul the entire proceedings.

32-15-27. Final order - Filing.

When payments have been made as required in sections 32-15-25 and 32-15-26, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

32-15-28. Public corporation bound by judgment.

In the event that any property is being acquired by any public corporation through condemnation proceedings, such public corporation shall be bound by the judgment rendered therein and within six months after the entry of such a judgment shall pay into court the full amount of the judgment on account of damages. If the public corporation shall dismiss the action prior to the entry of judgment thereon, the court shall award to the defendant reasonable actual or statutory costs, or both, which shall include reasonable attorney's fees.

32-15-29. When possession taken - How money paid defendant - Acceptance - Abandonment of defenses.

At any time after the entry of judgment, whenever the plaintiff shall have paid to the defendant, or into court for the defendant, the full amount of the judgment, the district court in

which the proceeding was tried, upon notice of not less than three days, may authorize the plaintiff to take possession of and use the property during the pendency of and until the final conclusion of the litigation and, if necessary, may stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into court for the defendant upon judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. The court, or a judge thereof, upon application made by such defendant, shall order and direct that the money so paid into court for the defendant be delivered to the defendant upon the defendant's filing a satisfaction of the judgment, or upon the defendant's filing a receipt therefor and an abandonment of all defenses to the action or proceeding except as to the amount of damages that the defendant may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses interposed by the defendant, except the defendant's claim for greater compensation.

32-15-30. Payment of money into court at risk of plaintiff.

The payment of the money into court as provided for in this chapter shall not discharge the plaintiff from liability to keep the said fund full and without diminution, but such money shall be and remain as to all accidents, defalcations, or other contingencies as between the parties to the proceedings at the risk of the plaintiff, and shall remain so until the amount of the compensation or damages finally is settled by judicial determination and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until the defendant is authorized or required by order of court to take it. If for any reason the money at any time shall be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation finally is brought to an end, and until paid over or made payable to the defendant by order of the court, as provided in section 32-15-29, and until such time or times the clerk of court shall be deemed to be the custodian of the money and shall be liable to the plaintiff upon the clerk's official bond for the same, or any part thereof, if for any reason it is lost, or otherwise abstracted or withdrawn.

32-15-31. Deposit of money with state treasurer.

The court may order the moneys to be deposited in the state treasury and in such case the state treasurer shall receive all such moneys, duly receipt for and safely keep the same in a special fund to be entered on the state treasurer's books as a condemnation fund for such purpose, and for such duty the state treasurer shall be liable to the plaintiff upon the state treasurer's official bond. The state treasurer shall pay out such money so deposited in such manner and at such times as the court or judge thereof by order may direct.

32-15-32. Costs.

The court may in its discretion award to the defendant reasonable actual or statutory costs or both, which may include interest from the time of taking except interest on the amount of a deposit which is available for withdrawal without prejudice to right of appeal, costs on appeal, and reasonable attorney's fees for all judicial proceedings. If the defendant appeals and does not prevail, the costs on appeal may be taxed against the defendant. In all cases when a new trial has been granted upon the application of the defendant and the defendant has failed upon such trial to obtain greater compensation than was allowed the defendant upon the first trial, the costs of such new trial shall be taxed against the defendant.

32-15-33. Rules of practice.

Except as otherwise provided in this chapter, the provisions of the North Dakota Rules of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

32-15-34. New trials and appeals.

The provisions of this code relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter, but upon the payment of the damages assessed the plaintiff shall be entitled to enter into, improve, and hold possession of the property sought to be condemned as provided in section 32-15-29 and to devote the same to the public use in question, and no motion for a new trial or appeal after such payment shall retard the contemplated improvement in any manner. Any money which shall have been deposited, as provided in section 32-15-29, shall be applied to the payment of the recovery upon a new trial and the remainder, if there is any, shall be returned to the plaintiff.

32-15-35. Eminent domain proceedings - Costs of defendant to be paid when proceedings withdrawn or dismissed by party bringing the proceedings.

Whenever the state acting by and through its officers, departments, or agencies, or any municipality or political subdivision of this state acting by and through its officers, departments, or agencies, or any public utility, corporation, limited liability company, association, or other entity which has been granted the power of eminent domain by the state, shall commence eminent domain proceedings against any land within this state and thereafter withdraws or has such proceedings dismissed without agreement of the defendant, the state, municipality, political subdivision, public utility, corporation, limited liability company, association, or entity commencing such eminent domain proceedings shall be liable for and pay to the owner of such land all court costs, expenses, and fees, including reasonable attorney's fees as shall be determined by the court in which the proceedings were filed.

CHAPTER 32-16
ACTION FOR PARTITION OF REAL PROPERTY

32-16-01. When may be brought. When several cotenants hold and are in possession of real or personal property as partners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein and for a sale of such property or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners. Real and personal property may be partitioned in the same action.

32-16-02. What complaint must show. The interests of all persons in the property, whether such persons are known or unknown, must be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, or is uncertain, or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder so that such parties cannot be named, that fact must be set forth in the complaint.

32-16-03. Necessary parties - Only interests of record. No person having a conveyance of, or claiming a lien on, the property, or some part of it, need be made a party to the action, unless such conveyance or lien appears of record.

32-16-04. Lis pendens required. Immediately after filing the complaint in the district court, the plaintiff must record in the office of the recorder of the county, or of the several counties in which the property is situated, a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of filing such notice for record, all persons shall be deemed to have notice of the pendency of the action.

32-16-05. To whom summons directed. The summons must be directed to all the joint tenants and tenants in common and all persons having an interest in or any lien of record by mortgage, judgment, or otherwise upon the property or upon any particular portion thereof, and generally to all persons unknown who have or claim any interest in the property.

32-16-06. Service by publication - Notice required. When service of the summons is made by publication, the summons as published must be accompanied by a notice that the object of the action is to obtain a partition of the property which is the subject of the action, briefly describing the same.

32-16-07. Requisites of answers. The defendants who have been served personally with the summons and a copy of the complaint, or who have appeared without such service, must set forth in their answer, fully and particularly, the origin, nature, and extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon, whether the same has been secured in any other way or not, and, if secured, the nature and extent of such security, or they are deemed to have waived their right to such lien.

32-16-08. Title, proofs, and judgment. The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action, and when a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court before the judgment of sale can be made, and when service of the complaint has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered, except that when there are several unknown persons having an interest in the property their rights may be considered together in the action as not between themselves.

32-16-09. When partial partition adjudged. Whenever from any cause in the opinion of the court it is impracticable or highly inconvenient to make a complete partition in the first instance among all the parties in interest, the court first may ascertain and determine the shares or interests respectively held by the original cotenants and thereupon adjudge and cause a partition to be made as if such original cotenants were the parties and sole parties in interest and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained or allotted as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof as they may desire.

32-16-10. Referee to determine outstanding liens. If it appears to the court, by the certificate of the recorder, or the clerk of the district court, or by the verified statement of any person who may have examined or searched the records, that there are outstanding liens or encumbrances of record upon the real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court either must order such persons to be made parties to the action by an amended or supplemental complaint, or must appoint a referee to ascertain whether or not such liens or encumbrances have been paid, or, if not paid, what amount remains due thereon, and their order among the liens or encumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner and, if secured, the nature and extent of the security.

32-16-11. Notice to appear before referee - Service - Report. The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee, appointed as provided in section 32-16-10, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place to make proof, by such person's own affidavit or otherwise, of the amount due or to become due contingently or absolutely thereon. In case such person is absent or such person's residence is unknown, service may be made by publication or notice to such person's agent under the direction of the court in such manner as may be proper. The report of the referee thereupon must be made to the court and must be confirmed, modified, or set aside and a new reference ordered as the justice of the case may require.

32-16-12. Sale or partition. If it is alleged in the complaint and established by evidence, or if it appears by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the making of requisite proof, it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor, and must designate the portion to remain undivided for the owners whose interests remain unknown or unascertained.

32-16-13. Method and rule of partition. In making the partition, referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them. Before making partition or sale the referees, whenever it will be for the advantage of those interested, may set apart a portion of the property for a way, road, or street, and the portion so set apart shall not be assigned to any of the parties, nor sold, but shall remain an open and public way, road, or street, unless the referees shall set the same apart as a private way for the use of the parties interested, or some of them, their heirs or assigns, in which case it shall remain such private way.

32-16-14. Referee's report. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust, and describing the property divided and the share allotted to each party with a particular description of each share.

32-16-15. Judgment on report - Effect. The court may confirm, change, modify, or set aside the report of the referees and, if necessary, may appoint new referees. Upon the

confirmation of the report, judgment must be rendered that such partition be effectual forever, and such judgment shall be binding and conclusive:

1. On all persons named as parties to the action and their legal representatives, who at the time have any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

2. On all persons interested in the property, who may be unknown, to whom notice has been given in the action for partition by publication.

3. On all other persons claiming from such parties or persons, or either of them.

No judgment is invalidated by reason of the death of any party before final judgment or decree, but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent as if it had been entered before the decedent's death.

32-16-16. What tenants not affected. The judgment does not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

32-16-17. Payment of expenses. The expenses of the referees, including those of a surveyor and the surveyor's assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

32-16-18. Liens follow owner's share. When a lien is on an undivided interest or estate of any party, such lien, if partition is made, thenceforth shall be a charge only on the share assigned to such party, but such share first must be charged with its just proportion of the costs of the partition, in preference to such lien.

32-16-19. Certain estates set off. When a part of the property only is ordered to be sold, if there is an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

32-16-20. How proceeds of encumbered property applied. The proceeds of the sale of encumbered property must be applied under the direction of the court as follows:

1. To pay its just proportion of the general costs of the action.

2. To pay the costs of the reference.

3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due, and the amount due to be verified by affidavit at the time of payment.

4. The residue among the owners of the property sold, according to their respective shares therein.

32-16-21. Lienor having other security. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other security for the payment of the amount of such lien, the court in its discretion may order such security to be exhausted before distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

32-16-22. Distribution by referee. The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto,

whenever the court so directs. In case no direction is given, all of such proceeds and securities must be paid into court, or deposited therein, or as directed by the court.

32-16-23. Part of action continued. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court, if necessary, may require such parties to present the facts or law in the controversy by pleading as in an original action.

32-16-24. How sales made. All sales of real property made by referees under this chapter must be made at public auction to the highest bidder upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice.

32-16-25. Terms of sale fixed by court. The court, in the order for sale, must direct the terms of credit which may be allowed for the purchase money of any portion of the real property of which it may direct a sale on credit and for that portion of which the purchase money is required to be invested for the benefit of unknown owners, infants, and owners out of the state.

32-16-26. Security for purchase money. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, on such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age, in the name of such owner, and for the shares of an infant, in the name of the guardian or conservator, if any, of such infant, and for other shares, in the name of the clerk of the district court, and the clerk's successors in office.

32-16-27. Estate for life or years - Compensation. The person entitled to a tenancy for life or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate which the person so entitled may consent, by an instrument in writing filed with the clerk of the court, to accept in lieu of such estate. Upon the filing of such consent the clerk must enter the same in the minutes of the court.

32-16-28. Compensation when consent not given. If such consent is not given, filed, and entered as provided in section 32-16-27 at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party or deposited in court for that party, as the case may require.

32-16-29. Compensation when tenant unknown. If the person entitled to such estate for life or years is unknown, the court may provide for the protection of the person's rights in the same manner, as far as may be, as if the person was known and had appeared.

32-16-30. Value of future estates settled by court. In all cases of sales, when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportionate value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over in such manner as will protect the rights and interests of the parties.

32-16-31. Terms of sale made known at time of sale - Separate parcels. In all cases of sales of property the terms must be made known at the time of sale, and if the premises consist of distinct farms or lots, they must be sold separately.

32-16-32. Who can purchase. No referee, nor any person for the benefit of any referee, can be interested in the purchase of any real property which is the subject of the action. Neither can any guardian or conservator of an infant party to such action be interested in the purchase of

such property except for the benefit of the infant. All sales contrary to the provisions of this section are void.

32-16-33. Report of sale. After completing a sale of property, or any part thereof, ordered to be sold, the referees must report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report must be filed in the office of the clerk of the district court where the action is pending.

32-16-34. Order to convey. If the sale is confirmed by the court, an order must be entered directing the referees to execute conveyances and take securities pursuant to such sale. Such order also may give directions to them respecting the disposition of the proceeds of sale.

32-16-35. Interested party may apply share on purchase price. When a party entitled to a share of the property, or an encumbrancer entitled to have that encumbrancer's lien paid out of the sale, becomes a purchaser, the referees may take their receipt for so much of the proceeds of the sale as belongs to them.

32-16-36. Record and bar of conveyance. The conveyance must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

32-16-37. Investment of unknown owner's or nonresident's share. Where there are proceeds of a sale belonging to an unknown owner or to a person without the state who has no legal representative within it, the same must be invested in bonds of the United States for the benefit of the persons entitled thereto.

32-16-38. Securities taken in name of clerk. When security for the proceeds of a sale is taken, or when an investment of any proceeds is made, it must be done, except as herein otherwise provided, in the name of the clerk of the district court of the county where the papers are filed, and the clerk's successors in office, who must hold the same for the use and benefit of the parties interested, subject to the order of the court.

32-16-39. Securities - When taken - The name of parties. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they respectively are entitled, or when shares and proportions previously have been adjudged by the court, such securities must be taken in the names of and must be payable to the parties respectively entitled thereto, and must be delivered to such parties upon their receipts therefor. Such agreement and receipts must be returned and filed with the clerk.

32-16-40. Clerk's duty. The clerk of the district court in whose name a security is taken, or by whom an investment is made, and the clerk's successor in office, must receive the interest and principal as it becomes due and apply and invest the same as the court may direct, and must deposit with the county treasurer all securities taken, and, in a book provided and kept for that purpose in the clerk's office, must keep an account, free for inspection by all persons, of investments and moneys received by the clerk thereon, and the disposition thereof.

32-16-41. Compensation for inequality. When it appears that the partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them, and a partition is ordered, the court may adjudge compensation to be made by one party to another on account of the inequality, but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it appears that such infant has personal property sufficient for that purpose and that the infant's interest will be promoted thereby. In all cases, the court has power to make compensatory adjustment between the respective parties according to the ordinary principles of equity.

32-16-42. To whom infant's share paid. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to the infant's guardian or conservator, if the infant has one, or as provided in section 30.1-26-03, or to the guardian ad litem appointed for the infant in the action, upon the guardian ad litem giving the security required by law or directed by order of the court.

32-16-43. Share of insane and incompetent. The guardian or conservator who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting the person's own affairs, whose interest in real property has been sold, may receive in behalf of such person such person's share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking approved by a judge of the court, that the guardian or conservator will discharge faithfully the trust imposed in the guardian or conservator, and will render a true and just account to the person entitled thereto or to that person's legal representative.

32-16-44. Guardian may consent to partition without action. Repealed by S.L. 1973, ch. 257, § 82, effective July 1, 1975.

32-16-45. Costs, fees, and disbursements. The costs of a partition, including reasonable counsel fees, expended by the plaintiff or any of the defendants, for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided in proportion to their respective interests therein and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

32-16-46. Single referee. The court, with the consent of the parties or when the complaint petitions and prays for the appointment of a single referee and there is no objection thereto, may appoint a single referee instead of three referees in the proceeding under this chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties of the three referees.

32-16-47. Abstract of title - How cost paid. If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any of the defendants shall have had such abstract afterwards made, the cost of the abstract, with interest thereon, from the time the same is subject to the inspection of the respective parties, must be allowed and taxed. Whenever such abstract is produced by the plaintiff before the commencement of the action, the plaintiff must file with the complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. If the plaintiff shall have failed to procure such abstract before commencing the action and any defendant shall procure the same to be made, the defendant, as soon as the defendant has directed it to be made, shall file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished. The court or the judge thereof may direct, from time to time during the progress of the action, who shall have the custody of the abstract.

32-16-48. Interest on disbursements. Whenever during the progress of the action for partition any disbursements shall have been made under the direction of the court by a party thereto, interest must be allowed thereon from the time of making such disbursements.

CHAPTER 32-17
ACTIONS TO QUIET TITLE AND DETERMINE CLAIMS TO REAL ESTATE

32-17-01. Action to determine adverse claims. An action may be maintained by any person having an estate or an interest in, or lien or encumbrance upon, real property, whether in or out of possession thereof and whether such property is vacant or unoccupied, against any person claiming an estate or interest in, or lien or encumbrance upon, the same, for the purpose of determining such adverse estate, interest, lien, or encumbrance.

32-17-02. Use and occupation - Waste - Pleading - Possession. A recovery may be had in the action by any party against a defendant personally served or who has appeared, or against the plaintiff, for the value of the use and occupation of the premises and for the value of the property wasted or removed therefrom, in the case of a vendor holding over, or a trespasser, as well as in a case where the relation of vendor and vendee has existed. If such recovery is desired by plaintiff, the plaintiff shall allege the fact, stating particularly the value of the use and occupation, the value of the property wasted or removed, and the value of the real property aside from the waste or removal, and shall demand appropriate relief in the complaint. A recovery of possession also may be had by the plaintiff or any defendant asking for affirmative relief.

32-17-03. Joinder of plaintiffs. Any two or more persons having an estate or interest in, or lien or encumbrance upon, real property, under a common source of title, whether holding as tenants in common, joint tenants, copartners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, or lien or encumbrance thereon, for the purpose of determining such adverse claim, or establishing such common source of title, or declaring the same to be held in trust, or of removing a cloud upon the same.

32-17-04. Complaint form - Description of property. In an action for the determination of adverse claims, the property must be described in the complaint with such certainty as to enable an officer upon execution to identify it. In other respects the complaint, exclusive of the venue, title, subscription, and verification, may be substantially in the following form, the blanks being properly filled:

> The plaintiff for claim for relief shows to the court that the plaintiff has an estate or interest in, or a lien or encumbrance upon, as the case may be, the following described real property, situated in the above-named county and state, to wit:
>
> _____
>
> That the defendants claim certain estates or interests in, or liens or encumbrances upon, the same, as the case may be, adverse to the plaintiff. (Here allege the facts concerning use and occupation and value thereof, and any property wasted or removed and the value thereof, if pertinent. Where the state is named as a party defendant, the complaint must state the interest the state or its agencies or departments might have in the property; or in the alternative state that the complainant is not aware of any specific interest that the state might have in the property.)
>
> Wherefore, the plaintiff prays:
>
> 1. That the defendants be required to set forth all their adverse claims to the property above described, and that the validity, superiority, and priority thereof be determined.
>
> 2. That the same be adjudged null and void, and that they be decreed to have no estate or interest in, or lien or encumbrance upon, said property.
>
> 3. That this title be quieted as to such claim, and that defendants be forever debarred and enjoined from further asserting the same.

4. That the plaintiff recover possession of the premises described, if possession is desired.

5. That the plaintiff recover _____ dollars as the value of the use and occupation and value of property wasted and removed therefrom.

6. That the plaintiff have such other general relief as may be just, together with costs and disbursements.

32-17-05. Joinder of defendants. In an action to determine adverse claims, all persons appearing of record to have estates or interests in, or liens or encumbrances upon, the property, and all persons in possession, may be joined as defendants, and all others may be joined by inserting in the title of the action the following: "All other persons unknown claiming any estate or interest in, or lien or encumbrance upon, the property described in the complaint".

32-17-06. Who joined as unknown persons. All persons having or claiming an estate or interest in, or lien or encumbrance upon, the property described in the complaint, whether as heirs, devisees, legatees, or personal representative of a deceased person, or under any other title or interest, and not in possession, nor appearing of record in the office of the recorder, the clerk of the district court, or the county auditor of the county in which the land is situated, to have such claim, title, or interest therein, may be proceeded against as persons unknown, and any order, judgment, or decree entered in the action shall be valid and binding on such unknown persons whether of age or minors, and on those claiming under them.

32-17-07. Service on unknown defendants - How made - Affidavit for publication. Service of the summons in an action may be had upon all unknown persons defendant by publication in the manner provided by law for service by publication upon defendants whose residence is unknown, but as to such unknown persons defendant the affidavit for publication shall be required to state in substance the following facts: That the interests of such unknown persons defendant in the land described in the complaint are not shown of record in the office of the recorder, the clerk of the district court, or the county auditor of the county in which such land lies, and the affiant does not know and is unable to ascertain the names, residences, or post-office addresses of any of the persons who are proceeded against as unknown persons defendant. The affidavit or complaint shall show further that the relief sought in the action consists wholly or partly in excluding the defendants from any interest in or lien upon specific real property in this state, and where jurisdiction is sought to be obtained against unknown persons under the provisions of this section, the summons shall state where the complaint is or will be filed, and there shall be subjoined to the summons as published a notice signed by the plaintiff's attorney containing a description of the land to which such action relates. Unknown corporations and limited liability companies claiming interests are included within the word "persons" as used in this chapter.

32-17-08. Answer - Counterclaim. In an action to determine adverse claims, a defendant in the defendant's answer may deny that the plaintiff has the estate, interest, lien, or encumbrance alleged in the complaint, coupled with allegations setting forth fully and particularly the origin, nature, and extent of the defendant's own claim to the property, and, if such defendant claims a lien, the original amount secured thereby and the date of the same, and the sum remaining due thereon, whether the same has been secured in any other way or not, and if so secured, the nature and extent of such security, or the defendant likewise may set forth the defendant's rights in the property as a counterclaim and may demand affirmative relief against the plaintiff and any codefendant, and in such case the defendant also may set forth a counterclaim and recovery from plaintiff or a codefendant for permanent improvements made by the defendant or those under whom defendant claims, holding under color of title in good faith adversely to the plaintiff or codefendant against whom the defendant seeks a recovery. Such counterclaim shall set forth among other things the value of the land aside from the improvements thereon, and, as accurately as practicable, the improvements upon the land and the value thereof, and in such case such defendant also may set forth as a counterclaim the defendant's demand for recovery of the value of the use and occupation of the premises and value of property wasted or removed therefrom. The answer shall be deemed served on

codefendants by filing the same in the office of the clerk of court of the county where the action is pending at any time within twenty days after the service of summons on such defendant is complete. Where affirmative relief is demanded against codefendants, the allegations constituting counterclaims shall be deemed controverted by all the parties, as upon a direct denial or avoidance, as the case may require, without further pleading.

32-17-09. Reply - What it may contain - Relief. No reply shall be necessary on the part of the plaintiff, except when the defendant in the defendant's answer claims a lien or encumbrance upon the property which, prior to the commencement of the action, was barred by the statutes of limitation, or which shall have been discharged in bankruptcy, or which constitutes only a cloud, the plaintiff may reply setting up such defense and availing plaintiff of the benefit thereof, and in all cases where the plaintiff has made permanent improvements on the property in good faith, while in possession under color of title, the plaintiff may recover the reasonable value thereof as against the defendant recovering the property when the reply shall allege the facts, stating particularly the value of the improvements and the value of the property, and shall demand appropriate relief. The reply shall be served on such defendant and filed with the clerk within twenty days after the service of defendant's answer.

32-17-10. Trial - Findings - Possession - Costs. The plaintiff or any defendant who has answered may bring the case on for trial as other civil actions are brought on for trial. A defendant interposing a counterclaim for purposes of trial shall be deemed plaintiff, and the plaintiff and codefendants against whom relief is sought shall be deemed defendants as to the counterclaiming defendant. The court in its decision shall find the nature and extent of the claim asserted by the various parties, and shall determine the validity, superiority, and priority of the same. Any defendant in default for want of an answer, or not appearing at the trial, or a plaintiff not appearing at the trial, shall be adjudged to have no estate or interest in, or lien or encumbrance upon, the property, and such defendant also shall be adjudged to pay the amount demanded against such defendant in any counterclaim or reply for the use and occupation of the premises, property removed therefrom, and waste committed, except in the case of a defendant served by publication and not appearing. If any counterclaim for improvements has been urged against one recovering property, the value of such improvements thereof and the value of the land aside from the improvements shall be specifically found. There likewise shall be findings on all other counterclaims urged at the trial. If possession of the premises is demanded by the plaintiff or by any defendant asking for affirmative relief, such possession shall be awarded to the party asking for possession who has the paramount claim to the property, and such party thereupon may have a writ for possession as against all other parties to the action. Costs shall be awarded to the prevailing parties against each adversary in the action by the court, except that no costs shall be allowed against a defendant not appearing.

32-17-11. Judgment - When right fails after action brought. In an action for the recovery of real property, when a party shows a right to recover at the time when the action was commenced, but it appears that the party's right has terminated during the pendency of the action, the findings and judgment must be according to the facts, and the party may recover whatever such party may show such party is entitled to up to the time that the party's right terminated.

32-17-12. Adjustment of cross judgments. If the decision of the court is in favor of one party for the recovery of the real property and in favor of another for improvements, the former shall have the option for sixty days after receiving notice that the findings are filed to pay the value of such improvements less such sums as may be found due for use and occupation and waste, or to take judgment against the other party for the value of the land aside from the improvements, as determined by the findings, and such sums as may be found due for use and occupation and waste. If such option is not exercised in writing by such party or such party's attorney, and filed with the clerk within sixty days, the other party thereupon may exercise the option for such party in like manner. If the party entitled to the possession of the property received in lieu thereof a money judgment, the other party may be subrogated to all the former's rights therein, including all the relief that party otherwise would be entitled to under the findings, and judgment thereupon shall be entered accordingly. Until payment is made by the party

recovering the land, or until tender and deposit in the office of the clerk of the court in which the action is pending, no writ for the possession of the property shall be issued.

32-17-13. When defendant permitted to defend. A defendant in an action to determine adverse claims, proceeded against by name or as an unknown party, or the defendant's representative, on application and sufficient cause shown at any time before trial, must be allowed to defend on such terms as may be just, and any such defendant or defendant's representatives upon good cause shown, and on such terms as may be just, may be allowed to defend after trial and within one year after the rendition of judgment therein, but not otherwise.

32-17-14. Both parties have right of entry. The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, on motion, upon notice by either party, for good cause shown, may grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof and of any tunnels, shafts, or drifts thereon for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

32-17-15. Order for entry - Service. The order for entry must describe the property and a copy thereof must be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants and make such survey and measurement, but if any unnecessary injury is done to the property such party is liable therefor.

32-17-16. Purchaser may recover for waste. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to the purchaser's interest, after the purchaser's estate becomes absolute, may recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyances.

32-17-17. Alienation not to affect action. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person either before or after the commencement of the action.

32-17-18. Mining customs govern mining claims. In an action respecting a mining claim, proof of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim must be admitted, and such customs, usages, or regulations, when not in conflict with the laws of this state and the United States, must govern the decision of the action.

32-17-19. Court may determine heirs or devisees of deceased entrymen. When any person holding a homestead or tree claim under the laws of the United States shall have died before patent therefor has been issued, and, by reason of such death, a patent or final certificate afterward shall be granted to "the heirs" or to "the devisees" of such person, the district court of the county in which the lands are situated, in a civil action brought for that purpose, may determine who are such heirs or devisees and what are their respective shares in said homestead or tree claim. Such action shall be governed by the provisions of this chapter insofar as the same may be applicable.

32-17-20. Claimants on public land. Any person settled upon the public lands belonging to the United States on which settlement is not prohibited expressly by Congress, or some department of the general government, may maintain an action for any injuries done to the same, or an action to recover the possession thereof, in the same manner as if the person possessed a fee simple title to such lands.

32-17-21. Holder of contract for purchase of land from state may sue. Any person who shall hold any contract from the state through the board of university and school lands, or otherwise, for the purchase of any real property within the state, may maintain any action for injuries done to the same, or an action to recover possession thereof, in the same manner as though the person possessed the fee simple title to such lands. However, in any action or proceeding by or against a railway company with reference to right of way or otherwise, the court, in any judgment which it may enter, shall protect the interest of the state in and to such real

property to the extent that the value of such lands taken, at the price agreed to be paid per acre to the state therefor, shall be directed to be paid to the proper officials of the state, and, upon such payment, any claim of the state or any of its boards to such part of said property as shall be taken by the railway company shall be at an end.

32-17-22. Waste - When actionable. If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commits waste thereon, any person aggrieved by the waste may bring an action against the one committing waste therefor, and in such action there may be judgment for treble damages, forfeiture of the estate of the party offending, and eviction from the premises.

32-17-23. When judgment of forfeiture for waste given to holder of reversion. Judgment of forfeiture and eviction shall not be given in favor of the person entitled to the reversion against the tenant in possession unless the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

CHAPTER 32-29.3
UNIFORM ARBITRATION ACT

32-29.3-01. Definitions. As used in this chapter:

1. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers in an arbitration proceeding or is involved in the appointment of an arbitrator.

2. "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

3. "Court" means the district court.

4. "Knowledge" means actual knowledge.

5. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

32-29.3-02. Notice.

1. Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

2. A person has notice if the person has knowledge of the notice or has received notice.

3. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

32-29.3-03. When chapter applies.

1. This chapter governs an agreement to arbitrate made after July 31, 2003.

2. This chapter governs an agreement to arbitrate made before August 1, 2003, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

3. After July 31, 2005, this chapter governs an agreement to arbitrate whenever made. Until August 1, 2005, chapter 32-29.2, as it existed on July 31, 2003, applies to agreements made after June 30, 1987.

32-29.3-04. Effect of agreement to arbitrate - Nonwaivable provisions.

1. Except as otherwise provided in subsections 2 and 3, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

2. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

   a. Waive or agree to vary the effect of the requirements of subsection 1 of section 32-29.3-05, subsection 1 of section 32-29.3-06, section 32-29.3-08, subsections 1 and 2 of section 32-29.3-17, section 32-29.3-26, or section 32-29.3-28;

b. Agree to unreasonably restrict the right under section 32-29.3-09 to notice of the initiation of an arbitration proceeding;

c. Agree to unreasonably restrict the right under section 32-29.3-12 to disclosure of any facts by a neutral arbitrator; or

d. Waive the right under section 32-29.3-16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

3. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection 1 or 3 of section 32-29.3-03, section 32-29.3-07, section 32-29.3-14, section 32-29.3-18, subsection 4 or 5 of section 32-29.3-20, section 32-29.3-22, section 32-29.3-23, section 32-29.3-24, subsection 1 or 2 of section 32-29.3-24, section 32-29.3-29, or section 32-29.3-30.

32-29.3-05. Application for judicial relief.

1. Except as otherwise provided in section 32-29.3-28, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

2. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court of serving motions in pending cases.

32-29.3-06. Validity of agreements to arbitrate.

1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

32-29.3-07. Motion to compel or stay arbitration.

1. On motion to a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

a. If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

b. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

2. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

3. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection 1 or 2, order the parties to arbitrate.

4. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

5. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 32-29.3-27.

6. If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

32-29.3-08. Provisional remedies.

1. Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

2. After an arbitrator is appointed and is authorized and able to act:

   a. The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

   b. A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

3. A party does not waive a right of arbitration by making a motion under subsection 1 or 2.

32-29.3-09. Initiation of arbitration.

1. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

2. Unless a person objects for lack or insufficiency of notice under subsection 3 of section 32-29.3-15 not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

32-29.3-10. Consolidation of separate arbitration proceedings.

1. Except as otherwise provided in subsection 3, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

   a. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

   b. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

   c. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

   d. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

2. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

3. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

32-29.3-11. Appointment of arbitrator - Service as a neutral arbitrator.

1. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

2. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

32-29.3-12. Disclosure by arbitrator.

1. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

   a. A financial or personal interest in the outcome of the arbitration proceeding; and

   b. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

2. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

3. If an arbitrator discloses a fact required by subsection 1 or 2 to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under subdivision b of subsection 1 of section 32-29.3-23 for vacating an award made by the arbitrator.

4. If the arbitrator did not disclose a fact as required by subsection 1 or 2, upon timely objection by a party, the court under subdivision b of subsection 1 of section 32-29.3-23 may vacate an award.

5. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under subdivision b of subsection 1 of section 32-29.3-23.

6. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under subdivision b of subsection 1 of section 32-29.3-23.

32-29.3-13. Action by majority. If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them must conduct the hearing under subsection 3 of section 32-29.3-15.

32-29.3-14. Immunity or arbitrator - Competency to testify - Attorney's fees and costs.

1. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

2. The immunity afforded by this section supplements any immunity under other law.

3. The failure of an arbitrator to make a disclosure required by section 32-29.3-12 does not cause any loss of immunity under this section.

4. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

   a. To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

   b. To a hearing on a motion to vacate an award under subdivision a or b of subsection 1 of section 32-29.3-23 if the movant establishes prima facie that a ground for vacating the award exists.

5. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in

violation of subsection 4, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

32-29.3-15. Arbitration process.

1. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

2. An arbitrator may decide a request for summary disposition of a claim or particular issue:

   a. If all interested parties agree; or

   b. Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

3. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

4. At a hearing under subsection 3, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

5. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 32-29.3-11 to continue the proceeding and to resolve the controversy.

32-29.3-16. Representation by lawyer. A party to an arbitration proceeding may be represented by a lawyer.

32-29.3-17. Witnesses - Subpoenas - Depositions - Discovery.

1. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

2. In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a

witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

3. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

4. If an arbitrator permits discovery under subsection 3, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

5. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

6. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

7. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

32-29.3-18. Judicial enforcement of preaward ruling by arbitrator. If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 32-29.3-19. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 32-29.3-22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 32-29.3-23 or 32-29.3-24.

32-29.3-19. Award.

1. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

2. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

32-29.3-20. Change of award by arbitrator.

1. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

   a. Upon a ground stated in subdivision a or c of subsection 1 of section 32-29.3-24;

   b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

   c. To clarify the award.

2. A motion under subsection 1 must be made and notice given to all parties within twenty days after the movant receives notice of the award.

3. A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

4. If a motion to the court is pending under section 32-29.3-22, 32-29.3-23, or 32-29.3-24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

   a. Upon a ground stated in subdivision a or c of subsection 1 of section 32-29.3-24;

   b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

   c. To clarify the award.

5. An award modified or corrected pursuant to this section is subject to subsection 1 of section 32-29.3-19 and sections 32-29.3-22, 32-29.3-23, and 32-29.3-24.

32-29.3-21. Remedies - Fees and expenses of arbitration proceedings.

1. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

2. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

3. As to all remedies other than those authorized by subsections 1 and 2, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 32-29.3-22 or for vacating an award under section 32-29.3-23.

4. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

5. If an arbitrator awards punitive damages or other exemplary relief under subsection 1, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

32-29.3-22. Confirmation of award. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award

at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 32-29.3-20 or 32-29.3-24 or is vacated pursuant to section 32-29.3-23.

32-29.3-23. Vacating award.

1. Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

   a. The award was procured by corruption, fraud, or other undue means;

   b. There was:

      (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

      (2) Corruption by an arbitrator; or

      (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

   c. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 32-29.3-15, so as to prejudice substantially the rights of a party to the arbitration proceeding;

   d. An arbitrator exceeded the arbitrator's powers;

   e. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection 3 of section 32-29.3-15 not later than the beginning of the arbitration hearing; or

   f. The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 32-29.3-09 so as to prejudice substantially the rights of a party to the arbitration proceeding.

2. A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 32-29.3-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 32-29.3-20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in subdivision e of subsection 1, it may order a rehearing. If the award is vacated on a ground stated in subdivision a or b of subsection 1, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision c, d, or f of subsection 1, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection 2 of section 32-29.3-19 for an award.

4. If the court denies a motion to vacate an award, the court shall confirm the award unless a motion to modify or correct the award is pending.

32-29.3-24. Modification or correction of award.

1. Upon motion made within ninety days after the movant receives notice of the award pursuant to section 32-29.3-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 32-29.3-20, the court shall modify or correct the award if:

a. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

b. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

c. The award is imperfect in a matter of form not affecting the merits of the decision on the claim submitted.

2. If a motion made under subsection 1 is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

32-29.3-25. Judgment on award - Attorney's fees and litigation expenses.

1. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

2. A court may allow reasonable costs of the motion and subsequent judicial proceedings.

3. On application of a prevailing party to a contested judicial proceeding under section 32-29.3-22, 32-29.3-23, or 32-29.3-24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

32-29.3-26. Jurisdiction.

1. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

2. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

32-29.3-27. Venue. A motion pursuant to section 32-29.3-05 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

32-29.3-28. Appeals.

1. An appeal may be taken from:

a. An order denying a motion to compel arbitration;

b. An order granting a motion to stay arbitration;

c. An order confirming or denying confirmation of an award;

d. An order modifying or correcting an award;

e. An order vacating an award without directing a rehearing; or

f. A final judgment entered pursuant to this chapter.

2. An appeal under this section must be taken as from an order or a judgment in a civil action.

3. Agreements to arbitrate between and among insurers and self-insured entities which explicitly renounce a right of appeal are fully enforceable in this state. This chapter does not alter those agreements to create a right of appeal.

32-29.3-29. Relationship to Electronic Signatures in Global and National Commerce Act. The provisions of sections 32-29.3-01 and 32-29.3-19 which relate to the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures must be construed to conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 15 U.S.C. 7001, 7002].

CHAPTER 35-27
CONSTRUCTION LIEN

35-27-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Contract" means any agreement for improving real property, written or unwritten, express or implied.
2. "Improve" means to build, erect, place, make, alter, remove, repair, or demolish any improvement upon, connected with, or beneath the surface of any land, or excavate any land, or furnish materials for any of such purposes, or dig or construct any fences, wells, or drains upon such improvement, or perform any labor or services upon such improvement; or perform any architectural services, construction staking, engineering, land surveying, mapping, or soil testing upon or in connection with the improvement; or perform any labor or services or furnish any materials in laying upon the real estate or in the adjoining street or alley any pipes, wires, fences, curbs, gutters, paving, sewer pipes or conduit, or sidewalks, or in grading, seeding, sodding, or planting for landscaping purposes, or in equipping any such improvement with fixtures or permanent apparatus.
3. "Improvement" means any building, structure, erection, construction, alteration, repair, removal, demolition, excavation, landscaping, or any part thereof, existing, built, erected, improved, placed, made, or done on real estate for its permanent benefit.
4. "Materials" means materials or fixtures which are incorporated in the improvement and those which become normal wastage in construction operations, custom or specially fabricated materials for incorporation in the improvement, building materials used for construction, but not remaining in the improvement, subject to diminution by the salvage value of such materials, tools, appliances, or machinery, excluding hand tools, used in the construction of the improvement to the extent of the reasonable value for the period of actual use. The rental value shall not be determinable by the contract for rental unless the owner is a party thereto.
5. "Owner" means the legal or equitable owner and also every person for whose immediate use and benefit any building, erection, or improvement is made, having the capacity to contract, including guardians of minors or other persons, and including any agent, trustee, contractor, or subcontractor of such owner.
6. "Person" means every natural person, fiduciary, association, corporation, or limited liability company.
7. "Subcontractor" means all persons contributing any skill, labor, or materials to the improvement except such as have contracts therefor directly with the owner; and, includes any person who enters into a contract with a subcontractor as above defined, for the performance of any part of such subcontractor's contract.

35-27-02. Persons entitled to construction lien - Notice.

Any person that improves real estate, whether under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner, has a lien upon the improvement and upon the land on which the improvement is situated or to which the improvement may be removed for the price or value of such contribution. Provided, however, that the amount of the lien is only for the difference between the price paid by the owner or agent and the price or value of the contribution. If the owner or agent has paid the full price or value of the contribution, no lien is allowed. Provided further that if the owner or an agent of the owner has received a waiver of lien signed by the person that improves the real estate, a lien is not allowed.

Any person that extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, upon demand, has the right to request and secure evidence of the legal description of the real estate upon which the improvement is located, including the name of the title owner of the real estate. Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien.

35-27-03. When lien attaches.

As against the owner of the land, subject to section 35-27-02, such liens attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement. As against a bona fide purchaser, mortgagee, or encumbrancer without notice, no lien may attach prior to the actual and visible beginning of the improvement on the ground. Subject to the exception set forth in section 35-27-04, all such liens are preferred to any mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof.

35-27-04. When lien attaches - Exception - Filing.

As against a mortgage given in good faith for the purpose of providing funds for the payment of materials or labor for the improvement, a lien may not be preferred even though such mortgage is recorded after the time the first item of material or labor is furnished upon the premises, or after the actual visible beginning of the improvement unless the person furnishing such labor, skill, or material for such improvement, before the recording of such mortgage, files for record a construction lien.

35-27-05. Notice of intention to claim lien - Recordation.

Repealed by S.L. 2009, ch. 293, § 16.

35-27-06. Extent and amount of lien.

If the contribution is made under a contract with the owner and for an agreed price, the lien as against the owner must be for the sum so agreed upon, otherwise, and in all cases as against others than the owner, it must be for the reasonable value of the work done and of the skill and material furnished.

35-27-07. Title of vendor or consenting owner - Subject to liens.

When land is sold under an executory contract requiring the vendee to improve the same and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor is subject thereto, but the vendor is not personally liable if the contract was made in good faith. When improvements are made by one person upon the land of another, all persons interested therein otherwise than as bona fide prior encumbrancers or lienors are deemed to have authorized such improvements, insofar as to subject their interests to liens therefor. Any person who has not authorized the same may protect the person's interest from such liens by serving upon the person doing work or otherwise contributing to such improvement within five days after knowledge thereof, written notice that the improvement is not being made at the person's instance, or by posting like notice, and keeping the same posted, in a conspicuous place on the premises. As against a lessor no lien is given for repairs made by or at the instance of the lessor's lessee, unless the lessor has actual or constructive notice thereof and does not object thereto.

35-27-08. Contractor or subcontractor improperly using proceeds of payment - Larceny.

Repealed by S.L. 1975, ch. 106, § 673.

35-27-09. Payment to contractors withheld.

The owner may withhold from the owner's contractor so much of the contract price as may be necessary to meet the demands of all persons, other than such contractor, having a lien upon the premises for labor, skill, or material furnished for the improvement, and for which the contractor is liable, and the owner may pay and discharge all such liens and deduct the cost thereof from such contract price. Any such person having a lien under the contractor in accordance with section 35-27-02 may serve upon the owner at any time a notice of that person's claim. The owner, within fifteen days after the completion of the contract, may require any person having a lien hereunder, by written request therefor, to furnish to the owner an itemized and verified account of the person's claim, the amount thereof, and the person's name

and address, and no action or other proceeding may be commenced for the enforcement of such lien until ten days after such statement is so furnished. The word "owner", as used in this section, includes any person interested in the premises otherwise than as a lienor thereunder.

35-27-10. Mingling of charges defeats right to lien.

The mingling of charges for materials to be used in the construction, alteration, repair, or improvement of the property of different persons, except in the cases of joint ownership or ownership in common, defeats the right to a lien against either or any of such persons.

35-27-11. Itemized account and demand conditions precedent to obtaining lien for materials.

Repealed by S.L. 2009, ch. 293, § 16.

35-27-12. Recorder to record notice.

Repealed by S.L. 2009, ch. 293, § 16.

35-27-13. How lien perfected - Construction lien recorded.

Every person desiring to perfect the person's lien shall record with the recorder of the county in which the property to be charged with the lien is situated, within ninety days after all the person's contribution is done, and having complied with the provisions of this chapter, a lien describing the property and stating the amount due, the dates of the first and last contribution, and the person with which the claimant contracted.

35-27-14. Lien not lost for failure to file within time - Exception.

A failure to file within ninety days does not defeat the lien except as against purchasers or encumbrancers in good faith and for value whose rights accrue before the lien is filed, and as against the owner to the extent of the amount paid to a contractor before the recording of the lien. A lien may not be filed more than three years after the date of the first item of material is furnished.

35-27-15. Account - Duty of clerk of court.

Repealed by S.L. 1981, ch. 361, § 6.

35-27-16. Inaccuracies in lien statement.

A lien given by this chapter is not affected by any inaccuracy in the particulars of the lien, but, as against all persons except the owner of the property, the lien claimant must be concluded by the dates therein given, showing the first and last items of the claimant's account. A lien may not exist for a greater amount than the sum claimed in the lien, nor for any amount, if it be made to appear that the claimant has knowingly demanded more than is justly due.

35-27-17. Single contract for several buildings - Amount of claim apportioned.

If labor is done or materials furnished under a single contract for several buildings, structures, or improvements, the person furnishing the same is entitled to a lien therefor, subject to section 35-27-02, as follows:

1. If the improvements are upon a single farm, tract, or lot, upon all such buildings, structures, and improvements and the farm, tract, or lot upon which the same are situated.
2. If the improvements are upon separate farms, tracts, or lots, upon all the buildings, structures, and improvements and the farms, tracts, or lots upon which the same are situated, but upon the foreclosure of the lien the court, in the cases provided for in this subsection, may apportion the amount of the claim among the several farms, tracts, or lots in proportion to the enhanced value of the same produced by means of the labor or materials, if such apportionment is necessary to protect the rights of third persons.

35-27-18. Construction lien on railway contracts obtainable.

Every person that furnishes any labor, skill, or material for constructing, altering, or repairing any line of railway, or any improvement or structure appertaining to any line of railway by virtue of any contract with the owner, or the owner's agent, contractor, or subcontractor authorized in writing to contract for the owner, has a lien upon such line of railway and the right of way of such railway, and upon all bridges, depots, offices, and other structures appertaining to the line of railway, and all franchises, privileges, and immunities granted to the owner of the line of railway for the construction and operation thereof, to secure the payment for the labor, skill, and materials, upon recording a lien, within ninety days from the last day of the month in which the labor or material was furnished, but a failure to record within the ninety days does not defeat the lien except to the extent specified in section 35-27-14.

35-27-19. Land subject to lien.

The entire land upon which any building, structure, or other improvement is situated, or to improve which labor is done or materials furnished, including that portion of the land not covered thereby, is subject to all liens created under this chapter to the extent of all the right, title, and interest of the owner for whose immediate use or benefit the labor was done or materials furnished.

35-27-20. Collateral security does not impair lien - Exception.

The taking of collateral or other security for an indebtedness for which a lien might be claimed under the provisions of this chapter in no way impairs the right to the lien unless the security, by express agreement, is given and received in lieu of the lien.

35-27-21. Complete and independent building - Lien independent of land - Notice to owner.

In addition to the lien provided by this chapter, but subject to the conditions of section 35-27-02, when material is furnished or labor performed in the erection or construction of an original, complete, and independent building, structure, or improvement, whether the same is placed upon a foundation or not, the lien attaches to the building or improvement in preference to any prior title, claim, lien, encumbrance, or mortgage upon the land upon which the building, erection, or improvement is erected. Upon the foreclosure of the lien, the building or improvement may be sold separately from the land and may be removed from the land within thirty days after the sale. The sale and removal of a structure or improvement separately from the land operates as a full satisfaction and discharge of the lien upon the real estate. At the time the material is furnished for such improvement, the seller shall notify the purchaser by delivering to the purchaser a written notice stating that the seller claims the right to foreclose the lien under the laws of the state, and in the event that there is a default in payment for the improvement, to remove the building from the real estate upon which it is placed regardless of whether or not said building is placed upon a foundation.

35-27-22. Order of priority of classes of construction liens.

1. Liens perfected under this chapter have priority in the following order:
   a. For manual labor.
   b. For materials.
   c. Subcontractors other than manual laborers.
   d. Original contractors.
2. Liens for manual labor filed within the ninety-day period must share ratably in the security. Liens for manual labor filed after the ninety-day period have priority in the order of the filing of such liens. Liens for materials filed within the ninety-day period must share ratably in the security and liens filed after the ninety-day period have priority in the order of the filing of such liens.

35-27-23. Improvements on leasehold interest - Extent of lien - Sale of building.

When the interest owned in land by the owner of the building, structure, or other improvement for which a lien is claimed, is only a leasehold interest, the forfeiture of the lease for nonpayment of rent or for noncompliance with any of the stipulations of the lease does not impair the lien so far as it applies to the building, structures, or improvements, but the improvements may be sold to satisfy the lien and may be removed by the purchaser within thirty days after the sale.

35-27-24. Action to enforce construction lien - Notice of - Deficiency judgment.

Any person having a lien by virtue of this chapter may bring an action to enforce the lien in the district court of the county in which the property is situated. Any number of persons claiming liens against the same property may join in the action and when separate actions are commenced the court may consolidate the actions. Before a lienholder may enforce a lien, the lienholder shall give written notice of the lienholder's intention so to do, which notice must be given by personal service upon the record owner of the property affected at least ten days before an action to enforce the lien is commenced, or by registered mail directed to the owner's last-known address at least twenty days before the action is commenced. The judgment may direct that in the event that a deficiency remains after the sale of the real property subject to the lien an execution may issue for such deficiency.

35-27-24.1. Costs and attorney's fees.

Any owner that successfully contests the validity or accuracy of a construction lien by any action in district court must be awarded the full amount of all costs and reasonable attorney's fees incurred by the owner.

35-27-25. Requiring suit to be commenced - Demand - Limitations of action.

Upon written demand by or on behalf of the owner which has been delivered to the lienor and filed with the county recorder, suit must be commenced and filed and a lis pendens as provided in chapter 28-05 must be recorded within thirty days after the date of delivery of the demand or the lien is forfeited. This thirty-day requirement applies regardless of the method of delivery and additional time may not be allowed based on the method of delivery. The demand must inform the lienor that if suit is not commenced and a lis pendens recorded within the thirty days required under this section, the lien is forfeited. A lien is not valid, effective, nor enforceable, unless the lienor commences an action and records with the county recorder a lis pendens within three years after the date of recording of the lien. If a lis pendens is not recorded within the limitations provided by this section, the lien is deemed satisfied.

35-27-26. Penalty for filing unlawful lien.

Repealed by S.L. 2009, ch. 293, § 16.

35-27-27. Assignment of claims.

Any claim for which a lien may be or has been filed and the right to recover therefor under the provisions of this chapter may be assigned by an instrument in writing. Such assignment vests in the assignee all rights and remedies herein given, subject to all defenses that might have been interposed if such assignment had not been made.

35-27-28. General provisions.

The general provisions of this title not in conflict with the provisions of this chapter are applicable to this chapter.

CHAPTER 38-02
LODE AND MINING CLAIMS

38-02-01. Length of lode claim - Limitations. The length of any lode claim located within this state may not exceed one thousand five hundred feet [457.2 meters] along the vein or lode.

38-02-02. Width of lode claims - Extension - Reduction. The width of lode claims is one hundred fifty feet [45.72 meters] on each side of the center of the vein or crevice, except that any county, at any general election by a majority of the votes cast on the question at such election, may determine upon a greater width not exceeding three hundred feet [91.44 meters] on each side of the center of the vein or lode. By a like vote, any county may determine upon a width less than that specified in this section, except that a width of less than twenty-five feet [7.62 meters] on each side of the vein or lode is prohibited.

38-02-03. Discoverer of lode to file location certificate - Contents of certificate. The discoverer of a lode, within sixty days from the date of discovery, shall record the discoverer's claim in the office of the recorder of the county in which such lode is situated by filing for record a location certificate containing all of the following:

1. The name of the lode.
2. The name of the locator.
3. The date of location.
4. The number of feet [meters] in length claimed on each side of the discovery shaft.
5. The number of feet [meters] width claimed on each side of the vein or lode.
6. The general course of the lode as near as may be.

Any certificate which does not contain such information and a description to identify the claim with reasonable certainty is void.

38-02-04. Duty of discoverer of lode before filing certificate of location. Before filing a location certificate, the discoverer shall:

1. Locate the discoverer's claim by sinking a discovery shaft thereon sufficient to show a well-defined mineral vein or lode.
2. Post at the point of discovery on the surface a plain sign or notice containing the name of the lode, the name of the locator, the date of discovery, the number of feet [meters] claimed in length on either side of the discovery, and the number of feet [meters] in width claimed on each side of the lode.
3. Mark the surface boundaries of the lode as is provided in section 38-02-07.

38-02-05. Tunnel, opencuts, crosscuts, adits, or drilling equivalent to discovery shaft. Any opencut, crosscut, or tunnel at a depth sufficient to disclose the mineral vein or lode, an adit of at least ten feet [3.05 meters] in along the lode from the point where the lode may be discovered, or the drilling of a hole or holes in the manner, and under the conditions and requirements hereinafter set forth, is equivalent to a discovery shaft. The hole or holes must be not less than one and one-half inches [3.81 centimeters] in diameter, must be sufficiently deep to reach and cut or expose the mineral vein or lode, and must be protected at the surface opening against injury to livestock. The discoverer shall designate one of the holes thus drilled as the discovery hole, in the event that more than one such hole has been drilled.

38-02-06. Discovery shaft to be sunk on lode within sixty days. From the time of uncovering or disclosing a lode, the discoverer has sixty days within which to sink a discovery shaft thereon.

38-02-07. Surface boundaries of lode - How marked. The surface boundaries of the lode must be marked by eight substantial posts hewed or blazed on the side facing the claim and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent and sunk in the ground as follows:

1. One at each corner.

2. One at the center of each side line.

3. One at each end of the lode.

If it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

38-02-08. What location in location certificate construed to contain. The location as described in the location certificate of any lode claim must be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth the top or apex of which lies inside of such lines extended vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim. Such location may not include any portion of such lodes or ledges beyond the end lines of the claim, or the end lines continued, whether by dip or otherwise, nor beyond the side lines in any manner other than by the dip of the lode.

38-02-09. Location claim not extended beyond the exterior line. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

38-02-10. Owner or occupant of surface may demand security from miner. If the right to a mine is separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if such security is refused, may enjoin such miner from working until the same is given. The injunctional order must fix the amount of the bond.

38-02-11. Additional certificate to correct or extend boundaries may be filed by locator or assigns - Limitations. If the locator of any mining claim, or the locator's assigns, shall apprehend that the original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or is desirous of changing the locator's surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, such locator or the locator's assigns may file an additional certificate subject to the provisions of this chapter. Such relocation may not interfere with the existing rights of others at the time of such relocation. No such relocation, nor the record thereof, may preclude the claimant from proving any such title as the claimant may have held under previous locations.

38-02-12. Amount of work to be done annually to hold possession of claim. The amount of work to be done or the improvements to be made during each year to hold possession of a mining claim must be the same as that prescribed by the applicable laws of the United States. The period within which the work required to be done annually on any unpatented claim so located commences on the first day of January succeeding the date of the location of such claim.

38-02-13. Abandoned lode claims - Regulations governing relocation. The relocation of an abandoned lode claim must be made by:

1. Sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or

2. Sinking the original shaft, cut, or adit to a sufficient depth to comply with sections 38-02-04 and 38-02-08, and the erection of new, or the adoption of the old, boundaries, and the renewal of any posts which have been removed or destroyed.

In either case, a new location stake must be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property.

38-02-14. Certificate containing more than one location is void - Exception. No location certificate may claim more than one location, whether the location is made by one or several locators. If the certificate purports to claim more than one location, it is absolutely void except as to the first location therein described. If the locations are described together in the certificate so that it is not clear which location first is described, the certificate is void as to all locations.

38-02-15. Actions relating to disputed mining property - Surveys ordered - Regulations governing. In an action in any district court of this state wherein the title or right of possession to any mining claim is in dispute, the court, upon the application of any of the parties to such suit, may enter an order for such survey of the underground as well as the surface of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order must designate some competent surveyor who is not related to any of the parties to such suit and who is not interested in the result of the same. Upon the application of the party adverse to such application, the court may appoint some competent surveyor selected by such adverse applicant, who shall attend upon such survey and observe the method of making the same. Such second survey must be made at the cost of the party requesting it. Such order may specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, and such witnesses may enter into such property and examine the same. The court may cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of such property when such removal is shown to be necessary to a just determination of the question involved. No order may be made for a survey and inspection except upon notice of the application for such order of at least six days, and not then except by an agreement of the parties or upon the affidavit of two or more persons that such survey and inspection are necessary to the just determination of the suit. Such affidavit must state the facts in the case and wherein the necessity for the survey exists. Such order may not be made unless it appears that the party asking for the same had been refused the privilege of survey and inspection by the adverse party.

38-02-16. Writs of injunction for restitution of property issued by district courts - Circumstances - Effect. Repealed by S.L. 1961, ch. 249, § 1.

38-02-17. Conspiracies and mobs against mines - Penalty. Repealed by S.L. 1961, ch. 249, § 1.

38-02-18. Trial against conspiracies or mobs taking mining property - Proof required. Repealed by S.L. 1961, ch. 249, § 1.

40-20-03. City engineer - Qualifications - Duties - Compensation - Plans or surveys - Preservation and transfer to successor. The city engineer must be a practical surveyor and engineer. The city engineer shall keep an office in some convenient place in the city and the governing body, by ordinance, shall prescribe the city engineer's duties and compensation for services performed for the city. All surveys, profiles, plans, or estimates made by the city engineer for the city are the property of the city and must be carefully preserved in the office of the engineer and must be open to the inspection of all interested persons. The surveys, profiles, plans, estimates, and all books and papers pertaining to the city engineer's office shall be delivered by the engineer at the expiration of the city engineer's term of office to the successor city engineer or to the governing body of the city.

40-20-04. When city engineer or chief of police to be street commissioner. In cities having no street commissioner, the city engineer shall perform the duties and have the authority of street commissioner, and in cities having no street commissioner or city engineer, the chief of police shall perform the duties and have the authority of street commissioner.

CHAPTER 40-39
OPENING AND VACATING STREETS, ALLEYS, AND PUBLIC PLACES

40-39-01. Survey, plat, and estimate made by city engineer. Whenever the governing body of a municipality shall deem it necessary to open, lay out, widen, or enlarge any street, alley, or public place within the municipality, it shall cause an accurate survey and plat to be made by the city engineer, county surveyor, or other competent civil engineer, with an estimate of the probable cost of the improvement. Such engineer or surveyor shall file the survey, plat, and estimate in the office of the city auditor and shall retain an office copy.

40-39-02. Taking private property by purchase or eminent domain - Special assessments levied - Limitation on general tax. If it is necessary to take private property in order to open, lay out, widen, or enlarge any street or alley in any incorporated municipality, it shall be done by purchase or, subject to chapter 32-15, by the exercise of the right of eminent domain. When property is purchased or a judgment for damages is entered for property taken for any such improvement, the governing body shall certify the purchase or judgment to the special assessment commission, which shall levy special assessments upon the property benefited to pay such judgment or the purchase price. Not more than three-fourths of the purchase price or judgment may be paid by the levy of a general tax upon all the taxable property in a city.

40-39-03. Grades of streets, alleys, and sidewalks - Established - Record - Changing - Liability. The governing body, by ordinance, may establish the grade of all streets, alleys, and sidewalks in the municipality as the convenience of its inhabitants may require. A record of the grades, together with a profile thereof, shall be kept in the office of the city engineer, or of the city auditor, if the city has no engineer. If the municipality changes the grade of any street after it has been established, it shall be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements made by them to conform to the grade as first established.

40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located - Conditions. No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way therefor, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents thereto, or unless perpetual easements for the maintenance of the sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines have been given. Any vacation of areas within which are located electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated areas.

40-39-05. Petition for vacation of streets, alleys, or public grounds - Contents - Verification. No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.

40-39-06. Petition filed with city auditor - Notice published - Contents of notice. If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall be not less than thirty days after the first publication of the notice.

40-39-07. Hearing on petition - Passage of resolution declaring vacation by governing body. The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highways described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.

40-39-08. Resolution to be published, filed, and recorded - Effect. Before the resolution declaring the vacation of a public ground, street, or alley shall go into effect, it shall be published as in the case of ordinances. A transcript of the resolution, duly certified by the city auditor, shall be filed for record and duly recorded in the office of the recorder of the county in which the municipality is situated, and such resolution thereafter shall have the effect of conveying to the abutting property owners all of the right, title, and interest of the municipality to the property vacated.

40-39-09. Expenses for vacating streets, alleys, and public ways - Deposit required. All expenses incurred in vacating any public grounds, street, or alley shall be paid by the petitioners, who shall deposit with the city auditor such sum as may be necessary before any such expense is incurred. The amount to be deposited shall be determined by the governing body, and any part thereof not used for such expenses shall be returned.

40-39-10. Aggrieved person may appeal to district court. Any person aggrieved by the decision of the governing body granting the vacation of any public grounds, street, or alley, within fifteen days after the publication of the resolution, may appeal to the district court of the county in accordance with the procedure provided in section 28-34-01. The judgment of the court therein is final.

CHAPTER 40-49
PARKS AND PARK DISTRICTS

40-49-01. Municipalities may acquire real estate for parks or public grounds by gift or devise - Extension of police power. A municipality may receive by gift or devise, real estate within its corporate limits, or within five miles [8.05 kilometers] thereof, for use as parks or public grounds. Such real estate shall be vested in the municipality upon the conditions imposed by the donors, and upon the acceptance of the gift or the devise by the executive officer and governing body of the municipality, the jurisdiction of the governing body shall be extended over such real estate. The governing body may enact bylaws, rules, and ordinances for the protection and preservation of any real estate acquired as provided in this section and may provide suitable penalties for the violation of any such bylaws, rules, or ordinances. The police powers of the municipality shall be extended at once over any real estate acquired in the manner provided in this section.

40-49-02. Cities may take advantage of chapter - Vote required - How taken. Any incorporated city by a two-thirds vote of its governing body, at a regular meeting of such governing body, may take advantage of the provisions of this chapter. The vote of the governing body on such question shall be taken by yeas and nays.

40-49-03. Ordinance required to create park districts - Territory embraced to be park district. Any municipality desiring to take advantage of this chapter shall do so by an ordinance regularly adopted expressing such intent or desire. The territory embraced in the municipality or within any park which may be acquired under the provisions of this chapter shall be a park district of the state of North Dakota.

40-49-04. Designation of park district - General powers - Park defined. A park district shall be known as "park district of the city of _____". The park district shall have a seal and perpetual succession, and may:

1. Sue and be sued.

2. Contract and be contracted with.

3. Acquire by purchase, gift, devise, or otherwise, and hold, own, possess, and maintain real and personal property in trust for use as parks, boulevards, and ways.

4. Exercise all the powers designated in this chapter.

"Park", as used in this chapter, and in other statutes relating to park districts, unless from the context a contrary intent plainly appears, includes public grounds used or acquired for use as airfields, parade grounds, public recreation areas, playgrounds and athletic fields, memorial or cemetery grounds, and sites or areas devoted to use and accommodation of the public as distinguished from use for purposes of municipal administration.

40-49-05. Board of park commissioners in city - Terms.

1. The powers of a park district in a city must be exercised by a board of park commissioners consisting of five or three members, as determined by the governing body of the city in creating the park district or pursuant to sections 40-49-07.1 and 40-49-07.2. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a successor is elected and qualified. The term of office of a commissioner begins two weeks after the regular biennial city election at which the commissioner is elected.

2. Members of a newly created five-member board shall hold office as follows:

   a. Three members until two weeks after the next regular biennial city election.

b. Two members until two years from the time mentioned in subdivision a.

3. Members of boards of park commissioners which existed before July 1, 1987, shall hold office on the staggered basis in effect on June 30, 1986.

4. Members of a newly created three-member board shall hold office as follows:

   a. Two members until two weeks after the next regular biennial city election.

   b. One member until two years after the next regular biennial city election.

40-49-06. Board of park commissioners in villages - Term - Term on first board. Repealed by S.L. 1967, ch. 323, § 285.

40-49-07. Election and qualification of members of board of park commissioners. The members of the board of park commissioners shall possess the qualifications of electors of the city and must be elected by the qualified electors of the park district. The members of the first board may be elected at any regular city election or at a special election called for that purpose by the governing body of the city. Thereafter, members of the board must be elected at the regular city elections. Such members shall qualify within two weeks after their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

40-49-07.1. Change in number of park commissioners - Election.

1. The number of park commissioners may be increased from three to five, or decreased from five to three, pursuant to this section.

2. The process for increasing or decreasing the number of park commissioners may be initiated:

   a. By resolution approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or

   b. By a petition signed by ten percent or more of the total number of qualified electors of the city park district voting for governor at the most recent gubernatorial election and submitted to the governing body of the city.

3. The governing body of the city shall submit the question of increasing or decreasing the number of park commissioners to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 2. The question requires an affirmative vote of a majority of those voting on the question for passage.

4. If an increase in the number of park commissioners is approved by the electors, the two additional park commissioners must be elected at the next regular city election or as specified in the resolution or petition pursuant to subsection 2. One of the additional commissioners shall hold office for a term of four years, and the other commissioner for a term of two years and until a successor is elected and qualified, unless other terms are specified in the resolution or petition pursuant to subsection 2.

5. If a decrease in the number of park commissioners is approved by the electors, the existing board members shall continue in office until the time when the terms of office of two members of the board expire simultaneously. At that time, those two offices are abolished. A different procedure for abolition of the two offices may be specified in the resolution or petition pursuant to subsection 2.

40-49-07.2. Dissolution of city park district - Election.

1. A city park district may be dissolved pursuant to a plan adopted pursuant to this section. A proposal for dissolving a city park district may be initiated:

   a. By resolution incorporating a dissolution plan, approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or

   b. By a petition incorporating a dissolution plan, signed by twenty-five percent or more of the total number of qualified electors of the city park district voting at the last regular city election and submitted to the governing body of the city.

2. The governing body of the city shall submit the question of dissolution to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 1. The plan incorporated in the resolution or petition is effective and becomes operative according to its terms if a majority of the qualified electors voting on the question approves the plan.

3. A plan for dissolving a city park district may specify:

   a. The disposition and maintenance of land and other property acquired by the board of park commissioners of the dissolved park district;

   b. The manner for payment of any current indebtedness, evidences of indebtedness in anticipation of user fee revenues, bonded indebtedness, and other obligations of the dissolved park district;

   c. The disposition of any outstanding special assessments or other anticipated revenues;

   d. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders and personnel such as delayed effective dates for implementation; and

   e. Other considerations and provisions that are consistent with state law.

4. The governing body of the city shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspaper of the city, not less than two weeks nor more than thirty days, before the date of the election. The governing body may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan.

40-49-08. Organization of board of park commissioners - City auditor to act as treasurer of board or board to appoint clerk. Two weeks after their election, the members of the board of park commissioners shall organize the board by selecting a president and a vice president. The city auditor shall be ex officio treasurer of the park district or the board may appoint a clerk and such other employees as shall be deemed needed for the efficient conduct of the district's business and shall fix their compensation. The clerk shall take the oath prescribed for civil officers and shall obtain such bond as may be required by the board.

40-49-09. Vacancies - How filled - Removal of residence creates vacancy. Vacancies on the board of park commissioners shall be filled by the board until the next regular election of members thereof at which time such vacancies shall be filled by election for the unexpired term. The removal of the person's residence from the park district by a member of the board shall create a vacancy thereon.

40-49-10. Members of board of park commissioners may receive compensation - Interest in contracts restricted. The members of the board of park commissioners are entitled to receive compensation for their services in the amount approved by the board in the park district annual budget. A park board member may not be directly or indirectly interested in any contract requiring the expenditure of park district funds unless the contract has been approved by two-thirds of the park board. Before the contract is approved, a motion must be made and approved that the service or property is not readily available elsewhere at equal cost. Regardless of this section, any park board, by resolution duly adopted, may contract with park board members for minor supplies or incidental expenses.

40-49-11. Regular and special meetings of the board of park commissioners - Procedure. The board of park commissioners shall hold a regular meeting at least once each month at a time and place to be designated by ordinance and such special meetings as it may deem necessary. A special meeting may be called at any time by the president or any two members of the board to consider matters specified in the call of such meeting. Written notice of any special meeting shall be given to each member of the board prior to such meeting. The board may adopt such rules of procedure as it deems necessary.

40-49-12. Powers of the board of park commissioners. A board of park commissioners may:

1. Acquire by purchase, gift, devise, or, subject to chapter 32-15, condemnation, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways. The board has the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon. Such parks, boulevards, and ways are considered for purposes of taxation and for all other purposes as being within the territorial limits of the municipality. If the board has acquired the legal title in fee to such lands, the board may sell and convey the same. A conveyance must be executed by the president and clerk of the board upon a resolution approved by not less than two-thirds of the members thereof.

2. Lay out, open, grade, curb, pave, and otherwise improve any path, way, or street, in, through, or around the parks, and construct, erect, build, maintain, manage, and govern any and all buildings, pavilions, play and pleasure grounds or fields, and such other improvements of a like character as may be deemed necessary.

3. Pass all ordinances necessary and requisite to carry into effect the powers granted to a board of park commissioners, with such penalties as the board may deem proper. No such penalty, however, shall exceed five hundred dollars.

4. Levy special assessments on all property especially benefited by the purchase, opening, establishment, and improvement of such parks or boulevards and of ways or streets about the same.

5. Employ such engineers, surveyors, clerks, and other employees, including a police force, as may be necessary, define and prescribe their respective duties, and fix and pay their compensation.

6. Issue negotiable bonds of the park district as provided in title 21.

7. Levy taxes upon all the property within the district for the purpose of maintaining and improving parks, boulevards, and ways, and to defray the expenses of the district. The proceeds of the taxes shall be available also for use in payment for any land purchased during the year or previously, or for improvements previously made for park purposes.

8. Establish building lines for all property fronting on any park, boulevard, or way under the direction and control of the board, and control the subdivision and platting of property within four hundred feet [121.92 meters] thereof.

9. Borrow money to defray the expenses of the year, subject to the limitations contained in title 21, in anticipation of taxes already levied, and issue therefor the warrants or other obligations of the district.

10. Connect any park or parks owned or controlled by it with any other park or parks, and for that purpose, it may select and take charge of any connecting street or streets or parts thereof; and the board shall have the sole and exclusive charge and control of any street or streets taken for such purpose.

11. Plant, set out, maintain, protect, and care for shade trees in any of the public streets or highways of the park district. The board may specify and regulate the kinds of trees that shall be planted in any such street or highway, the size and location of such trees, and the methods to be used in the planting and cultivation thereof and may pass such ordinances as may be necessary for the protection and control of such trees.

12. Plat and lay out such portions of park property as are not needed for the accommodation of the general public, and lease and demise lots or portions thereof for residential or concession purposes. The board may prescribe by ordinances the use that may be made of such leaseholds and the character of structures that may be placed thereon and may regulate generally the use and enjoyment thereof by the lessees or their successors.

13. Levy taxes upon all the property within the district, within the general fund levy authority of section 57-15-12, for the purpose of funding a comprehensive health care program for district employees.

40-49-13. Ordinances - Powers exercised by - Readings - Adopting - Approving - Publication - Enacting clause. The powers of the board of park commissioners shall be exercised by ordinance unless otherwise provided in this chapter. All ordinances shall be read twice, and at least eight days shall intervene between the readings. Ordinances shall be adopted by a yea and nay vote, shall be approved by the president, shall be published once in the official newspaper of the municipality, and shall go into effect within three days after the publication thereof. The enacting clause of all ordinances shall be: "Be it enacted by the board of park commissioners of the park district of the city of _____".

40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board. Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and is sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in chapter 48-01.2, all contracts exceeding twenty-five thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here _____

_____

If signed for a firm or company,
show authority on this line.

40-49-15. Purchase of land by city park district on installment contract - Conditions and limitations. After declaring by resolution duly passed that an emergency exists in that it is desirable and necessary that additional lands, as described in the resolution, be acquired for park purposes, the board of park commissioners of any city may enter into a contract or contracts for the purchase of such additional land for park purposes and for the payment of the purchase price therefor in annual installments. The power to enter into such contract shall be subject to the following limitations and conditions:

1. All moneys to be paid annually under any such contract shall be available and paid only from revenues to be derived from the authorized tax levy of the park district.

2. Contracts which at any time shall create aggregate future obligations of the park district in an amount in excess of one-fifth of one percent of the value of all taxable property within the park district may not be entered into under the provisions of this section.

3. The total amount contracted to become payable within any year by any park board shall not exceed twenty percent of the authorized tax revenue of the park district for the year in which any such contract is made.

40-49-16. City engineer is ex officio engineer and surveyor for board of park commissioners. The city engineer of any city included within a park district shall be ex officio engineer and surveyor for the board of park commissioners and shall render to the board such services as it may require.

40-49-17. Jurisdiction to determine actions involving violations of ordinances of board of park commissioners. Full and exclusive jurisdiction to try and determine all claims for relief involving violations of rules or ordinances enacted by the board of park commissioners is vested in the municipal judge. The procedure, including the right of appeal, is the same as in actions involving offenses against city ordinances.

40-49-18. General code provisions to govern park districts. Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrants and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established.

40-49-19. Dissolution of village park district - Petition for election - Notice of election - Order of dissolution. Repealed by S.L. 1967, ch. 323, § 285.

40-49-20. Park districts may adopt civil service systems. The board of park commissioners of a park district in any city which has adopted a civil service system pursuant to the provisions of chapter 40-44, may, with the consent of the governing body of such city, provide that the employees of such park district shall be subject to the provisions of said chapter 40-44; provided, that appointments to positions of employment within such park district shall be made by the board of park commissioners of the district.

40-49-21. Park districts may provide for employees' pensions. A board of park commissioners may provide for employees' pensions pursuant to an authorized city pension plan with the consent of the city governing body and the consent of not less than a majority of the city employees covered by the city pension plan. In addition, a board of park commissioners may provide for employer pensions pursuant to chapter 54-52 or under a program approved by the internal revenue service. Payments made by employees or taxes levied by the park district must be paid into the employees' pension fund. If a board of park commissioners wishes to leave an existing city pension plan, the board, upon the request of the pension fund governing body, shall fund an actuarial study of the financial impacts to the pension fund. Any losses or costs to the fund by the park district leaving the pension plan are the responsibility of the park district. A park district may not leave the city's pension plan without the approval of the pension fund governing body.

40-49-22. Tax levy for park district employees' pension fund. A park district adopting the provisions of section 40-49-21 may levy a tax not exceeding the limitation in subsection 1 of section 57-15-12.2. The proceeds of the tax levy must be placed in the employees' pension fund.

40-49-23. Land transfers or abandonment. Any municipality or park district may abandon and discontinue as a park or recreational area any land acquired by any municipality or park district for park and recreational purposes under the provisions of section 11-27-08 and any municipality or park district may sell, convey, or transfer any such lands free from any restrictions as to their use for park and recreational purposes.

40-49-24. Park district authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of park commissioners may prescribe and collect user fees for facilities or activities furnished by the park district and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving, and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.

2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.

3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.

4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest at such rate or rates, as may be determined in the resolution.

40-49-25. Medal of honor monument. Upon completion of the medal of honor monument in Roosevelt park in Minot, ownership and responsibility for the monument's maintenance belongs to the Minot park board or its successor.

CHAPTER 40-50.1
PLATTING OF TOWNSITES

40-50.1-01. Laying out townsites, additions, and subdivisions - Survey and plat required - Contents of plat. Any person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land shall cause the land to be surveyed and a plat made of the land. The written plat must comply with the following:

1. The plat must describe particularly and set forth all the streets, alleys, and public grounds, and all outlots or fractional lots within or adjoining the townsite or jurisdiction, together with the names, widths, courses, boundaries, and extent of all such streets, alleys, and public grounds, and giving the dimensions of all lots, streets, alleys, and public grounds.

2. All lots and blocks, however designated, must be numbered in progressive numbers and their precise length, width, and area be stated on the map or plat. The streets, alleys, or roads which divide or border the lots must be shown on the map or plat.

3. The plat must indicate that all outside boundary monuments have been set and indicate those interior monuments that have been set. There must be shown on the plat all survey and mathematical information, including bearings and distances, and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines appearing on the plat. All interior lot lines and exterior boundary lines of the plat must be correctly designated on the plat and show bearings on all straight lines, or angles at all angle points, and central angle, radius, and arc length for all curves. All distances must be shown between all monuments as measured to the hundredth of a foot [0.3048 centimeter]. All lot distances must be shown on the plat to the nearest hundredth of a foot [0.3048 centimeter] and all curved lines within the plat must show central angles, radii, and arc distances. A north arrow and the scale of the plat must be shown on the plat. The scale must be of a dimension that the plat may be easily interpreted. If a curved line constitutes the line of more than one lot in any block of a plat, the central angle for that part of each lot on the curved line must be shown.

4. Ditto marks may not be used on the plat for any purposes.

5. If a river, stream, creek, or lake constitutes a boundary line within or of the plat, a survey line must be shown with bearings or angles and distances between all angle points and their relation to a waterline, and all distances measured on the survey line between lot lines must be shown, and the survey line shown as a dashed line.

6. The unadjusted outside boundary survey and the plat survey data must close by latitude and departure with an error that does not exceed one part in ten thousand parts.

7. All rivers, streams, creeks, lakes, and all public highways, streets, and alleys of record must be correctly located and plainly shown and designated on the plat.

8. The names and adjacent boundary lines of any adjoining platted lands must be dotted on the plat.

9. The scale must be shown graphically and the basis of bearings must be shown. The plat must be dated as to the completion of the survey and preparation of the plat.

10. The purpose of any easement shown on the plat must be clearly stated. Building setbacks may not be shown on the plat.

11. Any plat which includes lands abutting upon any lake, river, or stream must show a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

40-50.1-02. Monuments required for survey - Destruction - Penalty. Durable ferromagnetic monuments must be set at all angle and curve points on the outside boundary lines of the plat. The monuments must be at least eighteen inches [45.72 centimeters] in length and at least one-half inch [1.72 centimeters] in sectional dimension. Any monument of the survey must bear the registration number of the land surveyor making the survey. Any person who disturbs, removes, or destroys any survey or reference monument or landmark evidencing a property line or cornerpost is guilty of a class B misdemeanor.

40-50.1-03. Instruments of dedication - Certifying and recording plat. The plat must contain a written instrument of dedication, which is signed and acknowledged by the owner of the land. When there is divided ownership, there must be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat must be written with black ink, not ballpoint ink. The instrument of dedication must contain a full and accurate description of the land platted. The registered land surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correct and monuments are placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat. The dedication and certificate must be sworn to before an officer authorized to administer an oath. The plat must be presented for approval to the governing body affected by the plat, together with a copy of a title insurance policy or an attorney's opinion of title, running to the benefit of the governing body affected by the plat, stating the name of the owner of record.

40-50.1-04. Recording plat. Upon final approval of a plat under section 11-33.2-11 or 40-48-21, the subdivider shall record the plat in the office of the recorder of the county where the plat is located. Whenever plat approval is required by a jurisdiction, the recorder may not accept any plat for recording unless the plat officially notes the final approval of the governing body of the jurisdiction and acknowledgment of the planning and zoning commission.

40-50.1-05. Conveyance of land by noting or marking map or plat - Status as general warranty - Land for public use. When the plat has been made out and certified, acknowledged, and recorded as required by sections 40-50.1-01, 40-50.1-03, and 40-50.1-04, every donation or grant to the public, or to any individual, religious society, corporation, or limited liability company, marked or noted as such on the plat or map is a sufficient conveyance to vest the fee simple title in the parcel of land as designated on the plat. The mark or note made on a plat or map is for all intents and purposes a general warranty against the donors, their heirs and representatives, to the donees or grantees for the expressed and intended uses and purposes named in the plat and for no other use or purpose. The land intended to be used for the streets, alleys, ways, or other public uses in any jurisdiction or addition thereto must be held in the corporate name of the jurisdiction in trust for the uses and purposes set forth and expressed and intended.

40-50.1-06. Correction of plats - Declaration of necessity by resolution - Publication. If any part of any platted addition, outlot, or parcel of ground, in any jurisdiction, is found to be inadequately or erroneously described in the plat, or if the plat is in error or is deficient as to marked or scaled distances, angles, or descriptions, or has other defects which make it incorrect or deficient, the governing body of the jurisdiction, by resolution, may declare it necessary to correct the plat or plats or to replat the property. In that case, the resolution must be published in the official newspaper of the jurisdiction at least ten days before the meeting of the governing body to consider objections to the procedure.

40-50.1-07. Resolution declaring necessity for correcting plat - Contents. The resolution mentioned in section 40-50.1-06 must set forth:

1. The description of the property affected.

2. The nature of the errors or defects.

3. An outline of the proposed corrections.

4. An estimate of the probable cost of having the corrections made.

5. Notice that any interested owner may file objections to the proposed work or to its cost and that the objections will be heard and considered at a meeting designated for that purpose.

6. The time the governing body of the jurisdiction will meet to consider all the objections.

40-50.1-08. Governing body to order work done after hearing objections. After all the objections filed before the meeting have been heard and considered, the governing body of the jurisdiction, if it deems the work advisable and if the owners of the majority of the property affected have not filed a protest, shall order a land surveyor registered in this state to do the work in accordance with the resolution. If no interested owner has demanded the resurvey, the jurisdiction shall pay for the resurvey.

40-50.1-09. Requirements governing land surveyor in correcting plat or in replatting - Affidavit and certification. The land surveyor designated to make the correction or to do the replatting shall follow the original hubs, stakes, monuments, and lines, and, by actual survey and measurements on the ground, shall make the plat conform to the divisions, subdivisions, blocks, lots, outlots, pieces, and parcels of land as originally laid out. All lost or disputed points, lines, and angles must be determined by actual survey and made to conform with the original survey and must be marked on the ground in a manner customary and as is provided in sections 40-50.1-01 through 40-50.1-17. All numbers, letterings, and names of references to blocks, lots, outlots, additions, streets, avenues, and alleys must be the same as on the original plat and the revised and corrected plat must be a true plat of the survey as made originally. The registered land surveyor shall make an affidavit and certificate that the plat has been made to the best of the land surveyor's ability. The registered land surveyor shall affix that affidavit and certificate to the plat.

40-50.1-10. Filing completed plat - Publication of notice of completed plat. The completed plat must be filed with the chief administrative officer of the jurisdiction, who shall publish a notice of the filing. The notice must stipulate that all interested parties may view the plat. The notice must set the date the governing body of the jurisdiction will meet to hear and consider objections to the survey as made and must be published at least ten days before the hearing.

40-50.1-11. Resurveys to determine merits of objections. After hearing objections to the corrected plat, the governing body may order surveys and resurveys to determine the merit of any claim or objection. The governing body may adjourn the hearing until the necessary information is available.

40-50.1-12. Acceptance or rejection of corrected plat - Recording - Effect of corrected plat. After completing the hearing, the governing body shall affirm or reject the corrected plat by resolution. If the plat is affirmed by a majority vote of the governing body, the plat must be recorded in the office of the recorder within sixty days and a blueprint of the plat must be filed in the office of the chief administrative officer. The plat so recorded and filed is the true and correct plat of the property described and supersedes all previous plats.

40-50.1-13. Assessment of costs of new plat - Publication of assessments - Approval of assessments. The chief administrative officer shall assess the cost of making the plat against the properties benefited proportionally to the benefits received. The assessments are subject to the approval of the governing body of the jurisdiction after due consideration and hearing of all objections at a meeting designated for that purpose. At least ten days before the hearing, the assessments must be published in full by the chief administrative officer of the jurisdiction in the official newspaper of the jurisdiction. The chief administrative officer shall certify the assessments, when approved by the governing body.

40-50.1-14. Notice of errors on recorded plat - Certificate by original surveyor. Notwithstanding section 40-50.1-06, if a plat, or what purports to be a plat, has been signed and filed in the office of the recorder of the county where the land is situated, and the plat fails to identify or correctly describe the land to be so platted or subdivided, or to show correctly on its face the tract of land intended or purported to be platted or subdivided, or is defective because the plat or subdivision and the description of land purported to be so platted or subdivided is inconsistent or incorrect, the registered land surveyor who prepared the plat may sign a certificate stating the nature of the error, omission, or defect and stating the information that surveyor believes corrects the error, supplies the omission, or cures the defect, referring, by correct book and page or document number, to the plat or subdivision and designating its name, if it has a name. The registered land surveyor shall date and sign the certificate.

40-50.1-15. Filing and recording of surveyor's certificate. The recorder of the county in which the land platted or subdivided is located shall accept each certificate for filing and recording upon payment of a fee commensurate with the length of the certificate. Neither witnesses nor an acknowledgment is required on any such certificate, but it must be signed by the registered land surveyor and must include a statement that the signing surveyor holds valid registration in this state. The recorder shall make suitable notations on the record of the plat or subdivision to which the certificate refers to direct the attention of anyone examining the plat or subdivision to the record of that certificate. No such certificate has the effect of destroying or changing vested rights acquired based on an existing plat or subdivision despite errors, defects, or omissions.

40-50.1-16. Vacation of plat - Before and after sale of lots - Effect.

1. Before the sale of lots, a plat, any part of a plat, a subdivision of land, or a townsite may be vacated by the proprietors by a written instrument declaring the plat to be vacated. The instrument must be signed, acknowledged or approved, and recorded in the office in which is recorded the instrument to be vacated. The signing and recording of that instrument destroys the force and effect of the recording of the plat which is so vacated and divests all public rights in the streets, alleys, easements, and public grounds laid out as described in the plat.

2. If lots have been sold, a plat or any part of a plat may be vacated by all owners of the lots in the plat joining in the signing of the instrument declaring the vacation. Vacation of streets and public rights is not effective without endorsement by the governing body that has the power to approve the plat. The endorsement must indicate the public rights to be vacated.

40-50.1-17. Action by recorder. The recorder shall write in plain, legible letters, in black ink that is not ballpoint ink, across that part of a plat which has been vacated the word "vacated" and shall make a reference on the plat to the volume and page or document number in which the instrument of vacation is recorded.

CHAPTER 43-19.1
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

43-19.1-01. General provisions.

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and land surveying in this state is hereby declared to be subject to regulation in the public interest, and it hereby is declared necessary that a state board of registration for professional engineers and land surveyors be established, which in the exercise of its powers is deemed to be an administrative agency within the purview of chapter 28-32. It is unlawful for any person to practice, or to offer to practice, professional engineering or land surveying in this state, as defined in the provisions of this chapter, or to use in connection with the person's name or otherwise assume, or advertise any title or description tending to convey the impression that the person is an engineer or land surveyor, unless such person has been duly registered or exempted under the provisions of this chapter. The right to engage in the practice of engineering or land surveying is deemed a personal right, based on the qualifications of the individual as evidenced by the individual's certificate of registration, which is not transferable.

43-19.1-02. Definitions.

In this chapter unless the context otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors.
2. "Engineer" means a professional engineer.
3. "Engineer intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. "Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, which include locating or laying out alignments, positions, or elevations for the construction of fixed works. The term does not include the surveying of real property for the establishment of land boundaries, rights of way, easements, and the dependent or independent surveys or resurveys of the public land survey system.
5. "Land surveyor" means an individual engaged in the practice of land surveying.
6. "Land surveyor intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.
7. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering if the person practices any branch of the profession of engineering; if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer and is able to practice engineering in this state if the person through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or if the person holds out as able to perform, or does perform any engineering service or work or any other service that is recognized as engineering, for a valuable consideration for others, including the public at large.

8. "Practice of land surveying":
   a. Means making land boundary determinations by providing or offering to provide professional services using such sciences as mathematics, geodesy, and photogrammetry and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth; improvements on the earth; and improvements on the space above, on, or below the earth and providing, utilizing, or developing the same into land survey products such as graphics, data, maps, plans, reports, descriptions, or projects. As used in this subsection, professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:
      (1) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;
      (2) Determining by performing geodetic land surveys the size and shape of the earth or the position of any point on the earth;
      (3) Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement;
      (4) Making any land survey for the division, subdivision, or consolidation of any tract of land;
      (5) Locating or laying out alignments, positions, or elevations for the construction of fixed works;
      (6) Determining by the use of principles of land surveying the position for any survey monument, boundary or nonboundary, or reference point and establishing or replacing any such monument or reference point; and
      (7) Creating, preparing, or modifying electronic or computerized or other data for the purpose of making land boundary determinations relative to the performance of the activities in paragraphs 1 through 6.
   b. Includes:
      (1) Engaging in land surveying;
      (2) By verbal claim, sign, advertisement, letterhead, card, or any other way representing to a person to be a professional land surveyor;
      (3) Through the use of some other title implying to be a professional land surveyor or that the person is licensed or authorized under this chapter; and
      (4) Holding out as able to perform or performing any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.
9. "Professional engineer" means an individual who by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been registered and licensed by the state board of registration for professional engineers and land surveyors.
10. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.
11. "Responsible charge" means direct control and personal supervision of engineering or surveying work.
12. "Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.

43-19.1-03. Board - Appointments - Terms.

A state board of registration for professional engineers and land surveyors is hereby created the duty of which is to administer this chapter. The board consists of one professional land

surveyor and four professional engineers. The board members who are professional engineers must be appointed by the governor from among a list of nominees submitted to the governor by the North Dakota society of professional engineers who must have the qualifications required by section 43-19.1-04, such list must include the names of at least three nominees for each vacancy to be filled. The governor shall appoint the professional land surveyor member of the board from a list of nominees submitted by the North Dakota society of professional land surveyors. The list must include the names of at least three nominees for the vacancy to be filled. The members must possess the qualifications required by section 43-19.1-04. The members of the board must be appointed for five-year terms that are staggered so the term of one member expires June thirtieth of each year. Each member of the board shall receive a certificate of appointment from the governor and shall file with the secretary of state a written oath or affirmation for the faithful discharge of the member's official duties. On the expiration of the term of any member, the governor shall appoint for a term of five years a board member having the qualifications required in section 43-19.1-04 to take the place of the member whose term on the board is about to expire. A member may be reappointed. Each member shall hold office until the expiration of the term for which appointed or until a successor has been duly appointed and has qualified.

43-19.1-04. Board - Qualifications.

Each professional engineer board member must be a professional engineer who is a citizen and resident of this state, has been registered in this state a minimum of eight years, has been engaged in the lawful practice of engineering for at least twelve years, and has had responsible charge of important engineering work for at least five years. Each professional land surveyor board member must be a professional land surveyor who is a citizen and resident of this state, has been registered as a professional land surveyor in this state a minimum of eight years, and has been responsible for important land surveying work for at least five years.

43-19.1-05. Board - Compensation and expenses.

Each member of the board is entitled to receive per diem, in an amount established by the board which may not exceed one hundred thirty-five dollars, when attending to the work of the board or any of the board's committees and for the time spent in necessary travel and is entitled to be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

43-19.1-06. Board - Removal of members - Vacancies.

The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any sufficient cause, in the manner prescribed by law for removal of state officials. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in section 43-19.1-03.

43-19.1-07. Board - Organization and meetings.

The board shall hold at least two regular meetings each year. The board shall elect or appoint annually the following officers: a chairman, a vice chairman, and a secretary. A quorum of the board consists of not fewer than three members.

43-19.1-08. Board - Powers.

The board may:

1. Adopt and amend all bylaws, rules of procedure, and regulations to administer and carry out the provisions of this chapter and for the conduct of the board's affairs and functions which may be reasonably necessary for the proper performance of the board's duties and the regulation of the board's proceedings, meetings, records, and examinations and the conduct thereof, and to adopt a code of ethics that must be binding upon all persons registered under or subject to this chapter.
2. Adopt and have an official seal, which must be affixed to each certificate issued.

3. Employ such clerks, technical experts, and attorneys as the board determines necessary or desirable to carry out this chapter.
4. Hold hearings, administer oaths, and take and record testimony; under the hand of the board's chairman and the seal of the board, subpoena witnesses and compel the witnesses' attendance; require the submission of books, papers, documents, or other pertinent data in any disciplinary matters, or in any case when a violation of this chapter or of the rules or regulations adopted by the board is alleged; and make findings, orders, and determinations that have the force and effect of law which are subject to review by the courts of this state in the manner provided by chapter 28-32. Upon failure or refusal of any person to comply with any such order of the board or to honor the board's subpoena, the board may apply to a court of any jurisdiction to enforce compliance with the order or subpoena.
5. Apply in the name of the state for relief by injunction, without bond, to enforce the provisions of this chapter or to restrain any violation of this chapter. In such proceedings, it is not necessary to allege or prove, either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board are not personally liable under this proceeding.

43-19.1-09. Receipts and disbursements.

The secretary of the board shall receive and account for all moneys derived under the provisions of this chapter and shall deposit and disburse the money derived under this chapter in accordance with section 54-44-12. The secretary shall give a surety bond to the state in such sum as may be required by the board. The premium on the bond is a proper and necessary expense of the board. The secretary shall receive such salary as the board shall determine. The board shall employ clerical or other assistants as are necessary for the proper performance of the board's work and shall make expenditures of this fund for any purpose the board determines is reasonably necessary for the proper performance of the board's duties under this chapter, including the expenses of the board's delegates to meetings of and membership fees to the national council of examiners for engineering and surveying and any of the organization's subdivisions. Under no circumstances may the total amount of warrants issued in payment of the expenses and compensation provided for in this chapter exceed the amount of moneys collected.

43-19.1-10. Records and reports.

The board shall:

1. Keep a record of the board's proceedings and of all applications for registration. The record must show the name, age, and last-known address of each applicant; the date of application, the place of business of such applicant, the applicant's education, experience, and other qualifications; type of examination required; whether the applicant was rejected; whether a certificate of registration was granted; the date of the action of the board; and such other information as may be deemed necessary by the board. The record of the board is prima facie evidence of the proceeding of the board and a transcript of board proceedings which is certified by the secretary under seal is admissible as evidence with the same force and effect as if the original were produced.
2. Annually, in compliance with state law, submit a report of the board's transactions of the preceding year.

43-19.1-11. Roster.

A complete roster showing the names and last-known addresses of all professional engineers and land surveyors must be made available by the secretary of the board at intervals as established by board regulations. Copies of this roster must be made available to each registrant and all county auditors and city auditors and may be distributed or sold to the public.

43-19.1-12. General requirements for registration.

To be eligible for registration as a professional engineer or land surveyor or for certification as an engineer intern or land surveyor intern, an applicant must be of good character and reputation and shall submit a written application to the board containing such information as the board may require together with five references, three of which references must be professional engineers in the case of engineers or three of which references must be professional land surveyors in the case of land surveyors, having personal knowledge of the applicant's engineering or land surveying experience, or in the case of an application for certification as an engineer intern or land surveyor intern, by three character references.

43-19.1-12.1. Conviction not bar to registration - Exceptions.

Conviction of an offense does not disqualify an individual from registration under this chapter unless the board determines that the offense has a direct bearing upon an individual's ability to serve the public as an engineer or land surveyor or that following conviction of any offense the individual is not sufficiently rehabilitated under section 12.1-33-02.1.

43-19.1-13. Registration without examination - Professional engineers.

An applicant otherwise qualified must be admitted to registration as a professional engineer without examination if the applicant is:

1. An individual holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to that applicant by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country and who, in the opinion of the board, based upon verified evidence, meets the requirements of this chapter; or
2. An individual registered as a professional engineer by the state of North Dakota under chapter 43-19, on the thirtieth day of June 1967.

43-19.1-14. Registration with examination - Professional engineers.

An applicant otherwise qualified must be admitted to registration as a professional engineer if the applicant has successfully passed a written examination of at least eight hours in the principles and practice of engineering, as prescribed by the board, and has one of the following additional qualifications:

1. Is an engineer intern with a baccalaureate degree in engineering from an institution offering accredited programs approved by the board as being of satisfactory standing, who has a specific record of an additional four years or more of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering.
2. Is an engineer intern with a baccalaureate degree in engineering from a program that is not accredited but is approved by the board, who has eight years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering.
3. Is an engineer intern with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character that indicates to the board that the applicant is competent to practice engineering, who has been approved for the fundamentals of engineering examination by the board before July 1, 2004, and who holds a valid engineer intern certificate as of January 1, 2006.
4. Is an engineer intern who meets one of the educational requirements listed in subsection 1, 2, or 5, who has been a teacher of engineering in a college or university offering an approved engineering curriculum of four years or more, and who has had a minimum of two years of nonteaching engineering experience that is of a character and grade that indicates to the board that the applicant is competent to practice engineering.

5. Is an engineer intern with a baccalaureate degree in an engineering-related program, who has at least twelve years of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering.

43-19.1-15. Additional qualifications of engineer interns.

Except in the case of an individual who filed an application before July 1, 1967, and any subsequent reapplication by such individual, an applicant otherwise qualified must be admitted to certification as an engineer intern. An engineer intern is an individual who has:

1. A baccalaureate degree in engineering from an institution that offers accredited programs approved by the board and has passed the board's written examination of at least eight hours in the fundamentals of engineering shall be certified or enrolled as an engineer intern.
2. A baccalaureate degree in engineering from a program that is not accredited but is approved by the board, who has a specific record of at least four years of experience in engineering work of a grade and character satisfactory to the board, and who passes the board's written examination of at least eight hours in the fundamentals of engineering.
3. A baccalaureate degree in an engineering-related program, who has a specific record of at least six years of experience in engineering work of a grade and character satisfactory to the board, and who passes the board's written examination of at least eight hours in the fundamentals of engineering.

43-19.1-16. Registration - Professional land surveyor.

Any individual who shows, to the satisfaction of the board, that the individual is otherwise qualified and is over the age of eighteen years is eligible for registration as a professional land surveyor, if the individual:

1. Holds a certificate of registration to engage in the practice of land surveying issued on the basis of a minimum sixteen-hour written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown by the individual's application which, in the opinion of the board, are equal to or higher than the requirements of this chapter;
2. Has a baccalaureate degree in engineering or surveying from an institution that offers accredited programs approved by the board, followed by at least four years of land surveying experience of a character satisfactory to the board, who has passed a written examination of at least sixteen hours designed to show that the individual is qualified to practice land surveying;
3. Has at least eight years of active experience in land surveying of a character satisfactory to the board, and who has passed a written examination of at least sixteen hours designed to show that the individual is qualified to practice land surveying; or
4. Is registered as a land surveyor by the state of North Dakota, under the provisions of former chapter 43-24, on the thirtieth day of June 1967.

43-19.1-16.1. Qualifications of land surveyor interns.

An applicant for certification as a land surveyor intern who has at least four years of qualifying land surveying experience of a character satisfactory to the board, of which a formal education in an accredited engineering or land surveying curriculum may constitute a part thereof, may receive from the board, upon passing a written examination on the fundamentals of mathematics and the basic principles of land surveying, a certificate stating that the applicant has passed the examination and been recorded as a land surveyor intern.

43-19.1-17. Application for registration.

Application for registration as a professional engineer or land surveyor or for certification as an engineer intern or land surveyor intern must be on a form prescribed and furnished by the

board containing statements made under oath, showing the applicant's education, a detailed summary of the applicant's technical experience, and references as required by this chapter and must be accompanied by registration fees.

43-19.1-17.1. Retired registrant.

The board may recognize an individual who is no longer practicing as an engineer or land surveyor as a retired registrant.

43-19.1-18. Registration fees.

The board shall establish registration fees for professional engineers, land surveyors, engineer interns, and land surveyor interns in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter. The registration fees may not exceed the amount of one hundred dollars for a one-year period or two hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

43-19.1-19. Examinations.

Written examinations must be held at such times and places as the board shall determine. Examinations required on fundamental engineering or land surveying subjects may be taken at any time prescribed by the board. The final examinations may not be taken until the applicant has completed a period of engineering or land surveying experience as provided in this chapter. The board shall establish the minimum passing grade on any examination. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Any candidate for registration having an average grade that does not meet the standards set by the board may not apply for reexamination for one year from the date of such examination.

43-19.1-20. Certificates.

The board shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant who in the opinion of the board has met the requirements of this chapter. Enrollment cards must be issued to those who qualify as engineer interns or land surveyor interns. Certificates of registration must carry the designation "professional engineer" or "professional land surveyor", must show the full name of the registrant without any titles, must be numbered, and must be signed by the chairman and the secretary under seal of the board. The issuance of a certificate of registration by the board is prima facie evidence the individual named on the certificate is entitled to all rights and privileges of a professional engineer or land surveyor during the term of which the certificate providing the same has not been revoked or suspended.

43-19.1-21. Seals.

Each registrant under this chapter upon registration may obtain a seal of the design authorized by the board, bearing the registrant's name, registration number, and the legend "registered professional engineer" or "registered professional land surveyor". Final engineering drawings, specifications, maps, plats, reports, or other documents prepared by a person required to be registered under this chapter, when presented to a client, contractor, subconsultant, or any public agency, must be signed, dated, and stamped with the seal or facsimile of the seal. A working drawing or unfinished document must contain a statement to the effect the drawing or document is preliminary and not for construction, recording purposes, or implementation. It is unlawful for a registrant to affix or permit the registrant's seal and signature or facsimiles thereof to be affixed to any engineering drawings, specifications, maps, plats, reports, or other documents after the expiration or revocation or during the suspension of a certificate, or for the purpose of aiding and abetting any other person to evade or attempt to evade any provision of this chapter.

43-19.1-22. Expirations and renewals.

A certificate of registration expires on December thirty-first of the year of issuance if registration is on an annual basis and of the year after issuance if issued on a biennial basis and becomes invalid after that date unless renewed. The secretary of the board shall notify every registrant under this chapter of the date of the expiration of the registrant's certificate of registration and the amount of fee required for its renewal. The notice must be mailed to the registrant at the registrant's last-known address at least one month in advance of the expiration of the registrant's certificate. Renewal may be effected at any time before or during the month of December by the payment of a fee as established by the board, not to exceed the fees established in section 43-19.1-18. Renewal of an expired certificate may be effected under rules adopted by the board regarding requirements for reexamination and penalty fees.

43-19.1-23. Reissuance of certificates.

A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board. The board may establish a reasonable charge for such issuance.

43-19.1-24. Code of ethics.

The board shall cause to have prepared and shall adopt a code of ethics, a copy of which must be made available to every registrant and applicant for registration under this chapter, and which must be published in the roster provided under this chapter. Such publication constitutes due notice to all registrants. The board may revise and amend this code of ethics from time to time and shall notify each registrant of such revisions or amendments. The code of ethics applies to all certificate holders, including specialists in a particular branch of the engineering or surveying profession.

43-19.1-24.1. Engineer not liable for contractor's fault unless responsibility assumed - Liability for own negligence.

An engineer is not liable for the safety of persons or property on or about a construction project site, or for the construction techniques, procedures, sequences and schedules, or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees, unless the engineer assumes responsibility therefor by contract or by the engineer's actual conduct. Nothing herein may be construed to relieve an engineer from liability for negligence, whether in the engineer's design work or otherwise.

43-19.1-25. Disciplinary action - Revocations, suspensions, or reprimand.

The board may suspend, refuse to renew, or revoke the certificate of registration of and may reprimand any registrant. These powers apply to any registrant who is found guilty of any of the following:

1. The practice of any fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of engineering or land surveying.
3. Any offense determined by the board to have a direct bearing upon an individual's ability to serve the public as a professional engineer and land surveyor; or when the board determines, following conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
4. The violation of the code of ethics adopted by the board.

43-19.1-26. Disciplinary action - Procedure.

Any person may file charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant. Such charges must be in writing and must be filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within six months following the filing of charges unless the accused registrant waives this requirement. The matters considered at the hearing must include all charges made in the original filing, together with any related or

additional matters or charges that arise in connection with the investigation of the original charges, and which are set forth in a specification of issues for the hearing. The time and place for the hearing must be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, and a specification of the issues to be considered at the hearing must be served upon the accused registrant either personally or sent by registered mail to the last-known address of the registrant at least thirty days before the date fixed for hearing. At any hearing the accused registrant has the right to appear in person or by counsel, or both; to cross-examine witnesses appearing against the accused; and to produce evidence and witnesses in defense of the accused. If the accused fails or refuses to appear, the board may proceed to hear and determine the validity of the issues set forth in the specification of issues. Following the hearing, the board members who did not serve on the investigative panel shall deliberate in executive session and if a majority of the board members who did not serve on the investigative panel vote in favor of sustaining all or part of the issues set forth in the specification of issues, the board shall make findings of fact and conclusions of law and shall issue the board's order and serve the findings, conclusions, and order upon the accused. In the order the board may reprimand, suspend, refuse to renew, or revoke the accused registrant's certificate of registration. Any registrant who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that registrant's certificate of registration may appeal the board's action to the district court under the procedures provided by chapter 28-32.

43-19.1-27. Right to practice.

1. A person may not practice or offer to practice professional engineering or land surveying unless the person is an individual registered to practice under or exempt from the provisions of this chapter. The practice of engineering by a professional engineer which includes service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional land surveyor. The practice of land surveying by a professional land surveyor which includes a service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional engineer.
2. The following are not considered offering to practice engineering or surveying in the solicitation of work if the engineer or surveyor is licensed in another jurisdiction:
    a. Advertising in a publication or electronic media if there is no holding out of professional services in jurisdictions in which not licensed.
    b. Responding to a letter of inquiry regarding a request for proposals if there is written disclosure the engineer, surveyor, or firm is not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest.
    c. Responding to a letter of inquiry from a prospective client if there is written disclosure that the engineer, surveyor, or firm is not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest.
    d. Using the title or designation "professional engineer", "licensed engineer", "P.E.", "professional surveyor", "licensed surveyor", "P.L.S.", or similar title or designation in correspondence or on business cards from an office in the jurisdiction in which licensure is held.
3. Notwithstanding subsection 2, a proposal may not be submitted, a contract may not be signed, or work may not be commenced until an engineer, surveyor, or firm becomes licensed as provided under this chapter.
4. A registered professional engineer or registered land surveyor may practice or offer to practice professional engineering or land surveying as an organization or as an individual operating under a trade name if the organization is registered under or exempt from the provisions of this chapter.
5. In addition to and without impairing any rights or exemptions granted others in this chapter, the practice of or offer to practice professional engineering or land surveying

by an organization or by an individual operating under a trade name is permitted in this state if:

a. All officers, employees, and agents of such an organization or the individual operating under a trade name who will perform the practice of engineering or of land surveying within this state are registered under this chapter;
b. Each person in responsible charge of the activities of any organization or individual operating under a trade name which activities constitute the practice of professional engineering and land surveying, is a professional engineer or land surveyor registered in this state or an individual authorized to practice professional engineering or land surveying as provided in this chapter;
c. Such organization or individual operating under a trade name has been issued a certificate of commercial practice by the board as provided by subsection 6;
d. Each organization or individual operating under a trade name is jointly and severally responsible with and for the conduct or acts of its agents, employees, officers, or managers in respect to any professional engineering or land surveying services performed or to be executed in this state. An individual practicing professional engineering or land surveying may not be relieved of the responsibility for the individual's conduct or acts performed by reason of the individual's employment by or relationship with such organization or individual operating under a trade name; and
e. All final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of professional engineering or land surveying, when presented to a client, contractor, subconsultant, or any public agency, must be dated and bear the seals and signatures of the professional engineers or land surveyors registered under this chapter by whom or under whose responsible charge they were prepared. A working drawing or unfinished document must contain a statement to the effect the drawing or document is preliminary and not for construction, recording purposes, or implementation. It is unlawful for a registrant to affix or permit the registrant's seal and signature or facsimiles thereof to be affixed to any engineering drawing, specification, map, plat, report, or other document after the expiration or revocation or during the suspension of a certificate or for the purpose of aiding and abetting any other person to evade or attempt to evade any provision of this chapter.

6. An organization or individual operating under a trade name desiring a certificate of commercial practice or the renewal thereof shall file a written application with the board setting forth the names and addresses of all partners, officers, directors, managers, or governors, if any, of such organization and the names and addresses of all employees who are duly registered to practice professional engineering or land surveying in this state, and who are or will be in responsible charge of any engineering or land surveying in this state by such organization or individual operating under a trade name, together with other information as the board may require. Upon the receipt of an application, and of a fee in an amount established by the board for the initial certificate or renewal thereof, but not to exceed the amount of two hundred dollars per year, the board shall issue to such organization or individual operating under a trade name a certificate of commercial practice or a renewal thereof, which certificate of commercial practice is not transferable. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in any of the information submitted on the application of any organization or individual operating under a trade name within the term of the certificate of commercial practice, the organization or individual operating under a trade name shall file with the board a written report with respect to the change within thirty days after the change occurs. The provisions with respect to issuance, expiration, renewal, and reissuance of the certificates of registration of individuals contained in this chapter also apply to certificates of commercial practice issued to an organization or individual operating

under a trade name under this subsection. An organization or individual operating under a trade name is subject to disciplinary proceedings and penalties and certificates of commercial practice are subject to suspension or revocation for cause in the same manner and to the same extent as is provided with respect to an individual and the individual's certificates of registration in sections 43-19.1-26, 43-19.1-29, and 43-19.1-31. "Registrant" and "certificate of registration" in sections 43-19.1-26, 43-19.1-29, and 43-19.1-31, and the provisions of such sections, include and apply respectively to any organization or individual operating under a trade name that holds a certificate of commercial practice issued under this chapter, and to such certificate of commercial practice.

43-19.1-28. Public works.

Except as otherwise provided by law, the state and its political subdivisions may not engage in the construction of public works involving the practice of professional engineering when the contemplated expenditure for the project exceeds the sum of one hundred fifty thousand dollars, unless the engineering drawings and specifications and estimates have been prepared by, and the construction administration and construction observation services are executed under the supervision of, a registered professional engineer. Any engineering contract executed in violation of this section is void.

43-19.1-29. Exemption clause.

This chapter does not prevent or affect:

1. The practice or offer to practice engineering by an individual not a resident or having no established place of business in this state, if that individual is legally qualified by registration to practice engineering in another state or country that extends similar privileges to individuals registered under this chapter. However, that individual shall make an application accompanied by the appropriate application fee to the board in writing before practicing or offering to practice engineering, and may be granted a one-time temporary permit for a definite period of time not to exceed one year to do a specific job. No right to practice engineering accrues to any applicant with respect to any other work not set forth in the temporary permit. A land surveyor may not receive a temporary permit under this subsection.
2. The work of an employee or a subordinate of an individual holding a certificate of registration under this chapter, or an employee of an individual practicing lawfully under subsection 1; provided such work does not include final engineering or surveying designs or decisions and is done under the direct supervision of and verified by an individual holding a certificate of registration under this chapter, or an individual practicing lawfully under subsection 1.
3. The practice of any other legally recognized profession or trade, nor does the chapter permit registered professional engineers to perform duties requiring the services of a licensed architect, as provided by the laws of the state of North Dakota licensing and regulating architects and architecture.
4. The practice of engineering or land surveying by any individual regularly employed to perform engineering services solely for that individual's employer or for a subsidiary or affiliated corporation or limited liability company of that individual's employer, providing the services performed are in connection with the property, products, or services of that individual's employer, unless the board determines the property, products, or services are of a unique type requiring registration to protect the public.
5. The performance of work ordinarily performed by a person that operates or maintains machinery or equipment.

43-19.1-30. Duties of recorder.

It is unlawful for the recorder of any county or any county or any proper public authority to file or record any map, plat, survey, or other document within the definition of land surveying which does not have impressed thereon and affixed thereto the personal signature and seal of a

registered professional land surveyor by whom the map, plat, survey, or other document was prepared.

43-19.1-31. Violation and penalties.

Any person that practices or offers to practice engineering or land surveying in this state without being registered in accordance with the provisions of this chapter; any person using or employing the words "engineer", "engineering", "professional engineer", "surveyor", "land surveyor", "professional land surveyor", or any modification or derivative of these terms in that person's name, form of business, or activity, except as authorized in this chapter; any person presenting or attempting to use the certificate of registration or the seal of another; any person giving any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate of registration; or any person falsely impersonating any other registrant of like or different name; any person attempting to use an expired or revoked or nonexistent certificate of registration practicing or offering to practice when not qualified; any person falsely claiming that person is registered under this chapter; or any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. It is the duty of all duly constituted officers of the state, and of all political subdivisions of the state, to enforce the provisions of this chapter.

43-19.1-32. Duty of attorney general - Legal counsel.

The attorney general of the state or the attorney general's assistant shall act as legal adviser to the board and render such legal assistance as may be necessary in carrying out the provisions of this chapter. The board may employ other counsel and necessary assistance to aid in the enforcement or administration of this chapter, and the compensation and expenses therefor must be paid from funds of the board.

43-19.1-33. Continuing professional education - Rules.

The board shall adopt rules to establish continuing education requirements for professional engineers and land surveyors. Compliance with these rules must be documented at the times, and in the manner, as is required by the board. A professional engineer or land surveyor who is exempt under subsection 4 of section 43-19.1-29 but who has voluntarily registered under this chapter is exempt from the continuing professional education requirements under this section.

CHAPTER 43-23.1
SUBDIVIDED LANDS DISPOSITION ACT

43-23.1-01. Short title. This chapter must be known and may be cited as the "Subdivided Lands Disposition Act".

43-23.1-02. Definitions. When used in this chapter, unless the context otherwise requires:

1. "Commission" means the state real estate commission.

2. "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit.

3. "Offer" includes any inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit.

4. "Person" means an individual, corporation, limited liability company, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

5. "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

6. "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

7. "Subdivision" and "subdivided lands" means any land situated outside the state of North Dakota which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also includes any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

43-23.1-03. Administration of chapter. This chapter must be administered by the state real estate commission.

43-23.1-04. Prohibitions on dispositions of interests in subdivisions. Unless the subdivided lands or the transaction is exempt under section 43-23.1-05, it is unlawful for any person in this state:

1. To offer or to dispose of any interest in subdivided lands located without this state prior to the time that the subdivided lands are registered in accordance with this chapter.

2. To dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

43-23.1-05. Exemptions.

1. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or disposition of an interest in land:

   a. By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;

b. If fewer than five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;

c. To persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage, in the business of construction of buildings for resale;

d. Pursuant to court order;

e. By any government or government agency; or

f. As cemetery lots or interests.

2. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to:

a. Offers and dispositions of securities currently registered with the North Dakota securities commissioner;

b. A subdivision as to which the plan of disposition is to dispose to ten or fewer persons; or

c. A subdivision as to which the commission has granted an exemption as provided in section 43-23.1-11.

3. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to the sale or lease of any improved land on which there is a residential, commercial condominium, or industrial building or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years.

43-23.1-06. Application for registration.

1. The application for registration of subdivided lands shall be filed as prescribed by the commission and shall contain the following documents and information:

a. An irrevocable appointment of the commission to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or the applicant's personal representative.

b. A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, waterways, schools, churches, shopping centers, public transportation facilities, and other offsite improvements.

c. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court.

d. The applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state.

e. The name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of that person's interest in

the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application.

f. A statement, in a form acceptable to the commission, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the commission.

g. Copies of the instruments which will be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign.

h. Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording.

i. If there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality.

j. Copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands.

k. A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands.

l. A statement of the existing provisions for legal and physical access or, if none exists, a statement to that effect; a statement of the existing or proposed provisions for sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance.

m. A narrative description of the promotional plan for the disposition of the subdivided lands, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision, together with copies of all advertising material which has been prepared for public distribution by any means of communication.

n. A copy of its articles of incorporation, with all amendments thereto, if the subdivider is a corporation; copies of its articles of organization, with all amendments thereto, if the subdivider is a limited liability company; copies of all instruments by which the trust is created or declared, if the subdivider is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the subdivider is a partnership, unincorporated association, or any other legal or commercial entity; and if the purported holder of legal title is a person other than the subdivider, copies of the above documents for such person.

o. The proposed public offering statement.

p. Such current financial statements, certified or otherwise, as the commission may require.

q. Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate for the protection of purchasers.

2. If the subdivider registers additional subdivided lands to be offered for disposition, the subdivider may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

3. The subdivider shall immediately report any material changes in the information contained in an application for registration.

43-23.1-07. Public offering statement.

1. A public offering statement must disclose fully and accurately the physical characteristics of the subdivided lands offered and must make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the commission must be in a form prescribed by it and must include the following:

   a. The name and principal address of the subdivider.

   b. A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering.

   c. The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations, affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands.

   d. A statement of the use for which the property is offered.

   e. Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands.

   f. Such of the information contained in the application for registration, and any amendments thereto, and such other information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers.

2. The public offering statement may not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the commission requires it.

3. The commission may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the commission and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

43-23.1-08. Inquiry and examination. Upon receipt of an application for registration in proper form, the commission shall forthwith initiate an examination to determine that:

1. The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and, when appropriate, that release clauses, conveyances in trust, escrow and impoundage provisions, and other safeguards have been provided;

2. There is reasonable assurance that all proposed improvements will be completed as represented;

3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the commission in its rules and regulations and afford full and fair disclosures;

4. The subdivider has not, or if a corporation or limited liability company, its officers, managers, governors, directors, and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;

5. There is no evidence which would reasonably lead the commission to believe that the subdivider, or if a corporation or limited liability company, its officers, managers, governors, directors, or principals are contemplating a fraudulent or misleading sales promotion; and

6. The public offering statement requirements of this chapter have been satisfied.

43-23.1-09. Notice of filing - Registration - Fees.

1. Upon receipt of the application for registration in proper form and of a registration fee of one hundred dollars, the commission shall issue a notice of filing to the applicant. Within ninety days from the date of the notice of filing, the commission shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety days from the date of notice of filing, the land must be deemed registered unless the applicant has consented in writing to a delay.

2. If the commission affirmatively determines, upon inquiry and examination, that the requirements of section 43-23.1-08 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

3. If the commission determines, upon inquiry and examination, that any of the requirements of section 43-23.1-08 has not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within ten days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which must include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and is entitled to a hearing.

4. Registration under this chapter is effective for a period of one year and may be renewed for additional periods of one year by filing, not later than fifteen days prior to the expiration of a registration, a renewal application in such form and containing such information as the commission shall prescribe, together with the payment of a renewal fee of one hundred dollars. The initial registration and any renewal fees may not be returned or refunded for any reason.

43-23.1-10. Annual report.

1. Within thirty days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the commission. The report must reflect any material changes in information contained in the original application for registration.

2. The commission, at its option, may permit the filing of annual reports within thirty days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

43-23.1-11. General powers and duties.

1. The commission has the authority to promulgate, to amend, and to repeal reasonable rules and regulations for the administration and enforcement of this chapter. Such rules and regulations must include, but not be limited to, provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land for which they contracted; provisions for operating procedures; and such other rules and regulations as are necessary or proper to accomplish the purposes of this chapter.

2. All advertising material of any nature whatsoever prepared for use in connection with the offer and disposition of any interests in subdivided lands registered under this chapter must be submitted to and approved by the commission prior to its use.

3. As a condition precedent to the registration of any subdivided lands, the commission shall require that the subdivider file an indemnity bond running to the state of North Dakota for the use, benefit, and protection of any person and conditioned for the faithful compliance by the subdivider, the subdivider's agents and employees with all of the provisions of this chapter, and with all rules, regulations, and orders made pursuant thereto and for the faithful performance and payment of all obligations of the subdivider, the subdivider's agents and employees in connection with the registration. The indemnity bond must be of such type and in such form as must be prescribed by the commission and must be in such amount as the commission deems necessary to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration, but in no event less than twenty-five thousand dollars. Any such bond must have as surety thereon a surety company authorized to do business in this state.

4. Whenever it appears that a person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of the provisions of this chapter or of a rule or regulation or order hereunder, the commission, with or without prior administrative proceedings, may bring an action in any district court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order must be granted without bond.

5. The commission may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the commission notice of the suit and copies of all pleadings.

6. The commission may:

   a. Accept registrations filed in other states or with the federal government;

   b. Contract with similar agencies in this state or other jurisdictions to perform investigative functions; and

   c. Accept grants-in-aid from any source.

7. The commission shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and regulations, and common administrative practices.

8. The commission may exempt a subdivision of ten or fewer lots, parcels, units, or interests from the provisions of this chapter if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is located.

43-23.1-12. Fraudulent practices. It is a fraudulent practice, and it is unlawful:

1. For any person knowingly to subscribe to or make or cause to be made any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

2. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to employ any device, scheme, or artifice to defraud;

3. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

4. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.

43-23.1-13. Investigations and proceedings.

1. The commission shall investigate any subdivision offered for disposition in this state and may:

    a. Rely upon any relevant information concerning a subdivision obtained from the federal housing administration, the United States veterans administration, or any other federal agency having comparable duties in relation to subdivisions;

    b. Require the applicant to submit reports prepared by competent engineers as to any hazard to which any subdivision offered for disposition is subject or any factor which affects the utility of interests within the subdivision, and require evidence of compliance in removing or minimizing all hazards reflected in engineering reports;

    c. Require an onsite inspection of the subdivision by a person or persons designated by it. All expenses incurred in connection with an onsite inspection must be defrayed by the applicant, and the commission shall require a deposit sufficient to defray such expenses in advance;

    d. Make public or private investigations within or outside this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter or in prescribing rules and regulations and forms hereunder; and

    e. Require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated.

2. For the purpose of any investigation or proceeding under this chapter, the commission or any person designated by it may administer oaths or affirmations, and upon its own motion or upon the request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

3. Upon failure to obey a subpoena or to answer questions propounded by the investigator and upon reasonable notice to all persons affected thereby, the agency may apply to the district court for an order compelling compliance.

4. The commission may permit a person registered with the commission whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against said person.

5. Except as otherwise provided in this chapter, all proceedings under this chapter must be in accordance with chapter 28-32.

43-23.1-14. Cease and desist orders.

1. If the commission determines after notice and hearing that a person has:

   a. Violated any provision of this chapter;

   b. Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;

   c. Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the commission;

   d. Disposed of any subdivided lands which have not been registered with the commission; or

   e. Violated any lawful order or rule or regulation of the commission;

   it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter.

2. If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission, whenever possible, by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order must include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

43-23.1-15. Revocation.

1. A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

   a. Failed to comply with the terms of a cease and desist order;

b. Been convicted of an offense determined by the commission to have a direct bearing upon a person's ability to serve the public as a real estate subdivider, or the commission determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1;

c. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

d. Failed faithfully to perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

e. Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

2. If the commission finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

43-23.1-16. Judicial review. A person who has exhausted all administrative remedies available within the commission and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the commission is entitled to judicial review in accordance with chapter 28-32.

43-23.1-17. Real estate license required. No real estate broker, salesperson, or mortgage broker may offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section 43-23.1-05, unless said real estate broker, salesperson, or mortgage broker is licensed pursuant to chapter 43-23.

43-23.1-18. Civil remedy.

1. Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, is voidable at the election of the purchaser. The person making such disposition, and every director, officer, salesperson, or agent of or for such person who has participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit, or interest, together with interest at the rate of six percent per year from the date of payment, property taxes and assessments paid, court costs, and reasonable attorney's fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, that person may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six percent per year on that amount from the date of disposition.

2. No action may be brought under this section for the recovery of the consideration paid after five years from the date of such disposition nor more than three years after the purchaser has received information as to matter or matters upon which the proposed recovery is based, whichever occurs first.

3. Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or regulation or order under it is void.

4. The rights and remedies provided by this chapter are in addition to any and all other rights and remedies that may exist at law or in equity.

43-23.1-19. Jurisdiction. Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims for relief arising under this chapter if:

1. The subdivider's principal office is located in this state; or

2. Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

43-23.1-20. Extradition. In proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

43-23.1-21. Service of process.

1. In addition to the methods of service provided for in the North Dakota Rules of Civil Procedure and statutes, service may be made by delivering a copy of the process to the office of the commission, but it is not effective unless:

   a. The plaintiff, which may be the commission in a proceeding instituted by it, forthwith sends a copy of the process and of the pleading by registered mail to the defendant or respondent at that person's last-known address.

   b. The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

2. If any person, including any nonresident of this state, engages in conduct prohibited by this chapter or any rule or regulation or order hereunder, and has not filed a consent to service of process and personal jurisdiction over that person cannot otherwise be obtained in this state, that conduct authorizes the commission to receive service of process in any noncriminal proceeding against that person or that person's successor which grows out of that conduct and which is brought under this chapter or any rule or regulation or order hereunder, with the same force and validity as if served on that person personally. Notice must be given as provided in subsection 1.

43-23.1-22. Evidentiary matters.

1. In any action, civil or criminal, when a defense is based upon any exemption provided for in this chapter, the burden of proving the existence of such exemption is upon the party raising such defense.

2. In any action, civil or criminal, a certificate signed and sealed by the commission stating compliance or noncompliance with the provisions of this chapter is admissible in any such action.

43-23.1-23. Penalties. Any person who willfully violates any provision of this chapter or who willfully violates any rule or regulation or order of the commission made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful, is guilty of a class C felony.

CHAPTER 43-51
PROFESSIONAL AND OCCUPATIONAL LICENSING

43-51-01. Definitions.

As used in this chapter, unless the context indicates otherwise:

1. "Board" means a board, commission, or other agency of state government created or identified in this title to regulate a particular occupation or profession.
   a. The term does not include the:
      (1) State board of accountancy;
      (2) State electrical board;
      (3) North Dakota real estate appraiser qualifications and ethics board;
      (4) State real estate commission;
      (5) Secretary of state with respect to contractor licensing;
      (6) State board of medical examiners; and
      (7) State board of dental examiners.
   b. "Board" also includes any agency of state government which is created or identified outside this title to regulate a particular occupation or profession if the agency elects, by administrative rule, to invoke the authority in this chapter.
2. "Foreign practitioner" means an individual who currently holds and maintains a license in good standing to engage in an occupation or profession in a state or jurisdiction other than this state and who is not the subject of a pending disciplinary action in any state or jurisdiction.
3. "Good standing" means a foreign practitioner holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked.
4. "License" means a license, certificate, permit, or similar authorization to practice an occupation or profession which is issued by a government agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state to obtain and maintain a license to practice the same profession or occupation.
5. "Military spouse" means a foreign practitioner who is the spouse of a member of the armed forces of the United States or a reserve component of the armed forces of the United States stationed in this state in accordance with military orders or stationed in this state before a temporary assignment to duties outside of this state.
6. "Occupation or profession" means activity for which a license is required from a board or similar activity for which a license is required in another state or jurisdiction.

43-51-02. Location of practice of an occupation or profession.

The provision of services to an individual in this state which fall within the standard of practice of a profession or occupation regulated by a board, regardless of the means by which the services are provided or the physical location of the person providing those services, constitutes the practice of that occupation or profession in this state and is subject to regulation by the appropriate board in this state.

43-51-03. Indirect practice without a license.

1. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through consultation with the person licensed by the board and if the foreign practitioner has no direct communication in this state with the individual receiving the services except in the presence of the individual who is licensed by the board. Both the foreign practitioner and the individual licensed by the board are responsible for the services provided under this subsection.
2. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without

obtaining a license from the appropriate board if the services are provided through a remote means and are a continuation of an existing relationship between the foreign practitioner and the individual receiving the services which was formed in the state or jurisdiction in which the foreign practitioner is currently licensed.

43-51-04. Emergency practice without a license.

Upon prior written notice to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board, if the services are provided for a period of time not to exceed sixty consecutive days in a calendar year and are provided in response to a disaster declared by the appropriate authority in this state. The notice provided by a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. A notice provided under this section, if accompanied by sufficient documentation, is deemed to be accepted unless denied by the board. If a notice under this section is denied, the foreign practitioner immediately shall cease providing services under this section and may not resume providing services until after a successful appeal of the board's decision under chapter 28-32 or after an application for privileges under this section is reviewed and approved by the board.

43-51-05. Limited practice without a license.

Upon prior written application to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board if the services are provided for no more than thirty full or partial days per year. The one-year period commences on the date the written application is approved by the board. An application from a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. The board may require payment of a fee of twenty-five dollars or other fee established by the board by administrative rule, not to exceed the higher of twenty-five dollars or one-tenth of the fee for an annual license from the board, as a condition of approving an application under this section.

43-51-06. Licensure without examination.

A board may issue a license, without examination, to any foreign practitioner who has practiced the occupation or profession for which the practitioner is licensed at least two years prior to submitting the application to the board, or for any shorter period of time provided in this title or established by the board by administrative rule, and who meets the other requirements for a license. A board is not prohibited from issuing a license under this section to a foreign practitioner if the state or jurisdiction in which the individual is licensed does not extend similar privileges to individuals licensed in this state. This section does not prohibit a board from requiring a foreign practitioner to take an examination regarding the laws of this state and the rules established by the board.

43-51-07. License compacts.

A board may establish, by administrative rule, conditions and procedures for foreign practitioners to practice in this state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public. Any compact or agreement by a board does not become binding on this state until implemented by administrative rules under this section.

43-51-08. Discipline.

A foreign practitioner's authority to practice an occupation or profession under this chapter is subject to denial, probation, suspension, revocation, or other form of discipline for the same grounds as individuals licensed by the appropriate board in this state. In addition to other grounds for disciplinary action authorized by law, a person who holds a license issued by a board may be subject to disciplinary action in this state for:

1. Failing to adequately review services provided by a foreign practitioner under this chapter;
2. Unauthorized practice of the person's occupation or profession in another state or jurisdiction, including the delivery of services by a licenseholder in this state to a recipient of services in another state or jurisdiction;
3. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if those acts occurred in this state; or
4. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if the person held a license in that state or jurisdiction.

A disciplinary action under this section against a foreign practitioner is subject to chapter 28-32.

43-51-09. Jurisdiction - Service of process.

A foreign practitioner who provides services in this state without a license as permitted in this chapter shall be deemed to have consented to the jurisdiction of this state and the appropriate board, to be bound by the laws of this state and the rules established by the appropriate board, and to have appointed the secretary of state as the foreign practitioner's agent upon whom process may be served in any action or proceeding against the practitioner arising out of the practitioner's activities in this state.

Service on the secretary of state of any process, notice, or demand is deemed personal service upon the foreign practitioner and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, with the filing fee of twenty-five dollars. A member of the legislative assembly or a state or county officer may not be charged for filing any process, notice, or demand for service. The secretary of state shall immediately forward a copy of the process, notice, or demand by registered mail, addressed to the foreign practitioner at the address provided by the filer.

43-51-10. Application with other laws.

This chapter applies notwithstanding any other limitation in state law on the practice of an occupation or profession. This chapter supplements and does not repeal the authority provided to each board. Nothing in this chapter prohibits a board from imposing conditions on foreign practitioners by administrative rule or compact which are more restrictive than those imposed in this chapter, if those restrictions are enacted to ensure the health, safety, and welfare of the public. Rules under this section may be adopted as emergency rules under chapter 28-32. Nothing in this chapter alters the scope of practice of a particular occupation or profession as defined by law.

43-51-11. Members of military - License renewal.

1. A board shall adopt rules to provide for or shall grant on a case-by-case basis exceptions to the board's license renewal requirements in order to address renewal compliance hardships that may result from:
   a. Activation of more than thirty days of a licensee who is a member of the national guard or armed forces of the United States.
   b. Service in the theater or area of armed conflict by a licensee who is a member of the regular active duty armed forces of the United States.
2. For purposes of this section, the term board includes the state board of accountancy, state electrical board, North Dakota real estate appraiser qualifications and ethics board, state real estate commission, secretary of state with respect to contractor licensing, state board of medical examiners, and state board of dental examiners.

43-51-11.1. Military spouses - Licensure.

1. A board shall adopt rules regarding licensure of a military spouse and shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
   a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section;
   b. The military spouse pays any fees required by the board from which the applicant is seeking a license; and
   c. The board determines the exception will not substantially increase the risk of harm to the public.
2. Under subsection 1, a board may issue a provisional license or temporary permit to a military spouse for which one or more of the licensure requirements have not been met. A provisional license or temporary permit issued under this subsection remains valid while the military spouse is making progress toward satisfying the necessary unmet licensure requirements. A military spouse may practice under a provisional license or temporary permit issued under this subsection until any of the following occurs:
   a. The board grants or denies the military spouse a North Dakota license under subsection 1 or grants a North Dakota license under the traditional licensure method;
   b. The provisional license or temporary permit expires; or
   c. The military spouse fails to comply with the terms of the provisional license or temporary permit.
3. A board that is exempted from this chapter under subdivision a of subsection 1 of section 43-51-01 may issue a license, provisional license, or temporary permit to a military spouse in the same manner as provided under subsections 1 and 2. A board that may elect to subject the board to this chapter under subdivision b of subsection 1 of section 43-51-01 may issue a license, provisional license, or temporary permit to a military spouse in the same manner as provided under subsections 1 and 2 regardless of whether the board has adopted rules to subject the board to this chapter. The state board of architecture and landscape architecture is exempt from the mandate in subsection 1; however, the board voluntarily may issue a license, provisional license, or temporary permit under subsections 1 and 2.
4. A military spouse issued a license under this section has the same rights and duties as a licensee issued a license under the traditional licensure method.

43-51-12. Foreign practitioners - Emergency practice exemption.

Notwithstanding contrary provisions of law, a foreign practitioner may practice in an emergency in this state, practice as a member of an organ harvesting team, or practice on board an ambulance as part of the ambulance treatment team.

TITLE 47
PROPERTY

CHAPTER 47-01
GENERAL PROVISIONS

47-01-01. Ownership defined.

The ownership of a thing shall mean the right of one or more persons to possess and use it to the exclusion of others. In this code the thing of which there may be ownership is called property.

47-01-02. Property - Classification.

Property is:

1. Real or immovable; or
2. Personal or movable.

47-01-03. Real property defined.

Real or immovable property consists of:

1. Land;
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;
3. That which is incidental or appurtenant to land; and
4. That which is immovable by law.

47-01-04. Land defined.

Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

47-01-05. Fixtures defined.

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs, or imbedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

47-01-06. Appurtenances defined.

A thing is deemed to be incidental or appurtenant to land when it by right is used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air, or heat from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are deemed affixed to the mine.

47-01-07. Personal property defined.

Personal property shall mean and include every kind of property that is not real.

47-01-08. What may be subject to ownership.

There may be ownership of the following:

1. All inanimate things which are capable of appropriation or of manual delivery.
2. All domestic animals.
3. All obligations.
4. Such products of labor or skill as the composition of an author, the good will of a business, trademarks, signs, and of rights created or granted by statute.
5. Animals, wild by nature, only when on the land of the person claiming them, or when tamed, taken and held in possession, or disabled and immediately pursued.

47-01-09. Public or private ownership - All property subject to.

All property in this state has an owner, whether that owner is the United States or the state, and the property public, or the owner an individual, and the property private. The state also may hold property as a private proprietor.

47-01-10. State ownership - Property appropriated or dedicated - Property having no owner.

The state is the owner of all property lawfully appropriated or dedicated to its own use and of all property of which there is no other owner.

47-01-11. Private ownership - Persons qualified - Citizen - Alien.

Except as provided in chapter 47-10.1, any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this state.

47-01-12. Scope of ownership - Above and below surface.

The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

47-01-13. Ownership of land includes water.

Repealed by S.L. 1963, ch. 419, § 7.

47-01-14. Land below high water mark - Regulated by federal or state law.

Repealed by S.L. 1995, ch. 435, § 2.

47-01-15. Banks and beds of streams - Boundary of ownership.

Except when the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on a navigable lake or stream, takes to the edge of the lake or stream at low water mark. All navigable rivers shall remain and be deemed public highways. In all cases when the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof shall become common to both.

47-01-16. Road or street - Boundary of ownership.

An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

47-01-17. Tree occupying lands of adjacent owner - Ownership determined from trunk.

Trees whose trunks stand wholly upon the land of one owner belong exclusively to that owner although their roots grow into the land of another. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

47-01-18. Lateral and adjacent support.

Each coterminous owner is entitled to the lateral and adjacent support which that owner's land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction on using ordinary care and skill, taking precautions to sustain the land of the other, and giving previous reasonable notice to the other of the intention to make such excavations.

47-01-19. Boundaries - Obligation of coterminous owners.

Coterminous owners are mutually bound to maintain equally the boundaries and monuments between them.

47-01-20. Extent of ownership - Products and accessions.

The owner of a thing also owns all its products and accessions.

47-01-21. Methods by which property may be acquired.

Property may be acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or
5. Succession.

47-01-22. Temporary easements to contain fixed termination date.

Whenever a temporary easement is acquired by the state or any of its agencies, departments, or institutions, or any political subdivision of the state in connection with highway or road construction or for any other purpose, a fixed date of termination shall be stated in such temporary easement, which date shall not be more than five years from the date of the easement.

47-01-23. Landowner immunity - Use and condition of roads.

A landowner may not be held liable for a claim resulting from the use or condition of a road across the landowner's property unless the landowner is primarily and directly responsible for the construction and maintenance of the road or an affirmative act of the landowner causes or contributes to the claim.

47-04-31. Highways, railways, or rights of way - Covenants of warranty. No covenants of warranty shall be considered as broken by the existence of a highway, railway, or a right of way for either, upon the land conveyed by any instrument of conveyance, unless otherwise particularly specified in the deed. Whenever in any instrument of conveyance delivered, filed, and recorded prior to the first day of January 1896, the grantor has conveyed real property in this state, but has reserved or sought to reserve a right of way over or across the same for the future construction of any railroad or highway without specifically locating or describing therein by metes and bounds such right of way, or proposed right of way, or by reference to permanent marks or monuments, such reservation shall be void in all things, and such conveyance shall have the same effect as if no such reservation had been made or attempted to have been made therein unless on July 1, 1907:

1. The grantor or the grantor's successor in interest was in actual possession of, or had located and permanently marked said right of way;

2. Within one year thereafter filed or caused to be filed in the office of the recorder of the county wherein the land is situated, a plat describing such selection and such right of way, properly acknowledged so as to entitle the same to be recorded, and so as to distinguish readily and designate such right of way from the entire premises described in the conveyance from which it was attempted to be reserved; or

3. Within such one-year period, an action was commenced in a court of competent jurisdiction for the purpose of definitely determining and locating such right of way, and establishing the owner's right thereto, and in such case had filed and recorded a proper notice of lis pendens in the office of the recorder of the county in which such land was located.

CHAPTER 47-05
SERVITUDES

47-05-01. Easements attached to other lands.

The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage.
2. The right of fishing.
3. The right of way.
4. The right of taking water, wood, minerals, and other things.
5. The right of transacting business upon land.
6. The right of conducting lawful sports upon land.
7. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.
8. The right of receiving water from or discharging the same upon land.
9. The right of flooding land.
10. The right of having water flow without diminution or disturbance of any kind.
11. The right of using a wall as a party wall.
12. The right of receiving more than natural support from adjacent land or things affixed thereto.
13. The right of having the whole of a division fence maintained by a coterminous owner.
14. The right of having public conveyances stopped or of stopping the same on land.
15. The right of a seat in church.
16. The right of burial.

47-05-01.1. Solar easement - Creation.

Any easement obtained for the purpose of exposure of a solar energy device to the direct rays of the sun shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements. The term "solar energy device" means the device, mechanism, or apparatus designed to receive the direct rays of the sun and convert those rays into heat, electrical, or other form of energy for the purpose of providing heating, cooling, or electrical power.

47-05-01.2. Solar easement - Contents.

Any instrument creating a solar easement shall include, but shall not be limited to, all of the following:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.
2. Any terms, conditions, or both under which the solar easement is granted or will be terminated.
3. Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

47-05-02. Servitudes not attached to land.

The following land burdens or servitudes upon land may be granted and held, though not attached to land:

1. The right to pasture, and of fishing.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals, or other things.

7. A historic easement granted with respect to a state historic site and buildings and structures thereon, or property listed in the national register of historic places, in accordance with the provisions of section 55-10-08.

47-05-02.1. (Effective through June 29, 2017) Requirements of easements, servitudes, or nonappurtenant restrictions on the use of real property.

Real property easements, servitudes, or any nonappurtenant restrictions on the use of real property, which become binding after July 1, 1977, shall be subject to the requirements of this section. These requirements are deemed a part of any agreement for such interests in real property whether or not printed in a document of agreement.

1. The area of land covered by the easement, servitude, or nonappurtenant restriction on the use of real property shall be properly described and shall set out the area of land covered by the interest in real property.
2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property must be specifically set out, and in no case may the duration of any interest in real property regulated by this section exceed ninety-nine years. The duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or the appropriate state agency after July 1, 1985, may not exceed fifty years. The duration of a wetlands reserve program easement acquired by the federal government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.
3. No increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction shall be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

(Effective after June 29, 2017) Requirements of easements, servitudes, or nonappurtenant restrictions on the use of real property.

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3. No increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction shall be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

47-05-03. Dominant tenement defined.

A dominant tenement means the land to which an easement is attached.

47-05-04. Servient tenement defined.

A servient tenement means the land upon which a burden or servitude has been placed.

47-05-05. Servitude - Creation.

A servitude can be created only by one who has a vested estate in the servient tenement.

47-05-06. Holding of servitude.

A servitude thereon cannot be held by the owner of the servient tenement.

47-05-07. Servitude - Extent.

The extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.

47-05-08. Partition of dominant tenement - Burden apportioned - Limitations.

In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

47-05-09. Right of future owner in easements.

The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easement, although such tenement is occupied by a tenant.

47-05-10. Enforcement of easement - Right of action.

The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

47-05-11. Public servitude - Effect on owner of fee - Action for possession.

The owner in fee of a servient tenement may maintain an action for the possession of the land against anyone unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

47-05-12. Extinguishment of servitude - Methods.

A servitude is extinguished:

1. By vesting of the right to the servitude and the right to the servient tenement in the same person;
2. By the destruction of the servient tenement;
3. By the performance of any act upon either tenement by the owner of the servitude or with the owner's assent if it is incompatible with its nature or exercise; or
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by prescription.

47-05-13. Restrictions on easements for forest purposes.

Notwithstanding any other provision of law, a person may not create, convey, or record any easement, servitude, or nonappurtenant restriction on the use of real property within thirty-three feet [10.06 meters] of the centerline of any section line if the purpose of that easement, servitude, or restriction is to retain or protect forests.

47-05-14. Wind easement - Definition.

Redesignated as section 17-04-02 under S.L. 2007, ch. 204, § 5.

47-05-15. Wind easements - Creation - Term - Development required.

Redesignated as section 17-04-03 under S.L. 2007, ch. 204, § 5.

47-05-16. Severance of wind energy rights limited.

Redesignated as section 17-04-04 under S.L. 2007, ch. 204, § 5.

47-05-17. Severance of the right of access for hunting access prohibited.

The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before August 1, 2007.

CHAPTER 47-06
REAL ESTATE TITLE BY OCCUPANCY AND ACCESSION

47-06-01. Title by occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

47-06-02. Title by prescription - Occupancy required. Occupancy for the period prescribed by any law of this state as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

47-06-03. Title to real property - Adverse possession. A title to real property, vested in any person who has been or hereafter shall be, either alone or including those under whom that person claims, in the actual open adverse and undisputed possession of the land under such title for a period of ten years and who, either alone or including those under whom that person claims, shall have paid all taxes and assessments legally levied thereon, shall be valid in law. Possession by a county under tax deed shall not be deemed adverse. A contract for deed shall constitute color of title within the meaning of this section from and after the execution of such contract.

47-06-04. Fixtures - When tenant may remove. When a person affixes that person's property to the land of another without an agreement permitting that person to remove it, the thing affixed belongs to the owner of the land, unless the owner of the land chooses to require the former to remove it. A tenant may remove from the demised premises, anytime during the continuance of the tenant's term, anything affixed thereto, for the purpose of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has become an integral part of the premises by the manner in which it is affixed. When any tenant upon agricultural land shall have built, erected, or placed upon such leased premises during the tenant's tenancy, any grain bin, granary, or structure for the purpose of housing grain, and no written agreement between the landlord and the tenant has been made as to its removal, the tenant may remove the same at any time within eight months after the termination of the tenant's lease and the vacating of said premises. The tenant shall not have said right of removal as against the owner or holder of any mortgage, deed, or conveyance which shall have been filed and recorded after the building, erection, or placing of such bin, granary, or structure, unless such tenant, within sixty days after such building, erecting, or placing, shall have filed in the office of the recorder a written notice describing the land, the character of the structure, and stating that the tenant intends to remove such structure as provided by law.

47-06-04.1. Mobile home storm shelters - Placement and transfer of ownership.

1. Upon approval of the mobile home park owner, the owner of a mobile home located in the park may construct a storm shelter in the mobile home park. The approval must be in writing and must include the type, location, and use of the shelter, and an agreement between the park owner and the mobile home owner concerning ownership and maintenance of the shelter.

2. Notwithstanding section 47-06-04, the agreement between the owner of the mobile home and the park owner must provide that the owner of the mobile home is the owner of the shelter and may remove the shelter provided the land is returned to its original condition during any time that person owns the mobile home.

3. The shelter owner may transfer ownership of the shelter to either a person who purchases the mobile home or to the mobile home park owner. The transfer must be in writing; must include the type, location, and use of the shelter; must include the maintenance responsibilities of the parties; and must be signed by both parties. If a mobile home owner transfers the shelter to a purchaser of the mobile home, the terms of the transfer must be the same as the terms of the agreement between the park owner and the mobile home owner required under subsection 1.

a. If a suitable price cannot be agreed upon with the mobile home park owner, the shelter owner is deemed to have transferred the ownership and maintenance responsibilities of the shelter to the park owner without cost, unless the shelter is removed or the shelter is transferred to a purchaser of the mobile home as provided in this section.

b. If the park owner is unwilling to assume ownership of the shelter, the park owner may require the mobile home owner to remove the shelter and return the land to its original condition.

4. The park owner is not liable for any injury or damages that may occur to the mobile home owner as a result of the installation or use of the mobile home storm shelter.

5. All shelters must meet with the approval of local governing bodies.

47-06-05. Riparian accretions. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

47-06-06. Avulsion - Title - Reclamation by original owner - Limitations. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

47-06-07. Ancient streambed taken by owners of new course as indemnity. If a stream, navigable or not navigable, forms a new course abandoning its ancient bed, the owners of the land newly occupied take by way of indemnity the ancient bed abandoned, each in proportion to the land of which the owner has been deprived.

47-06-08. Islands and relicted lands in navigable streams belong to state. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary. The control and management, including the power to execute surface and mineral leases, of islands, relictions, and accumulations of land owned by the state of North Dakota in navigable streams and waters and the beds thereof, must be governed by chapter 61-33.

47-06-09. Islands and relicted land in nonnavigable streams. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed, or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

47-06-10. Island formed by dividing stream - Title. If a stream, navigable or not navigable, in forming itself a new arm divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

CHAPTER 47-10
REAL PROPERTY TRANSFERS

47-10-01. Method of transfer.

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by the party's agent thereunto authorized by writing. This does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

47-10-02. Sale of realty - Duty of seller.

An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

47-10-03. Agreement to give usual covenants on sale - Duty imposed.

An agreement on the part of a seller of real property to give the usual covenants binds the seller to insert in the grant covenants of seizin, quiet enjoyment, further assurance, general warranty, and against encumbrances.

47-10-04. Form of covenants.

The covenants mentioned in section 47-10-03 must be in substance as follows:

The party of the first part covenants with the party of the second part that the former now is seized in fee simple of the property granted, that the latter shall enjoy the same without any lawful disturbance, that the same is free from all encumbrances, that the party of the first part and all persons acquiring any interest in the same through or for the party of the first part on demand will execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that reasonably may be required, and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

47-10-05. Grants - Execution - Witnesses sufficient - Seal unnecessary.

The execution of a grant of an estate in real property to entitle the same to be recorded, if it is not acknowledged, must be proved by a subscribing witness or as otherwise provided in sections 47-19-23 and 47-19-24. The absence of the seal of any grantor or grantor's agent from any grant of an estate made in real property shall not invalidate or in any manner impair the same.

47-10-05.1. Presumption of corporate authority of officers - Application.

An officer of any foreign or domestic corporation, or a manager of any foreign or domestic limited liability company, is presumed to have the power and authority to execute and acknowledge, in its behalf, any instrument granting, conveying, or otherwise affecting any interest in or lien upon any property of the corporation or limited liability company, including contracts, mortgages, deeds, plats, replats, easements, rights of way, options, dedications, restrictions, releases, and satisfactions. Any such instrument executed by an officer of the corporation or limited liability company prior to July 1, 1983, and otherwise proper, is valid and effective.

47-10-06. Form of grant.

A grant of an estate in real property may be made in substance as follows:

This grant made the _____ day of _____, in the year of _____, between A.B., of _____, of the first part, and C.D., of _____, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part in consideration of _____ dollars, now received, all the real property situated in _____, and bounded (or described) as follows:

_____

Witness the hand of the party of the first part.

A.B.

47-10-07. Deed - Execution - Post-office and street address of grantee a prerequisite.

Each deed executed in which real estate is described shall contain the post-office address, and any known or existing street address if within the corporate boundaries of a city, of each grantee named in such deed.

47-10-08. Grant conclusive against whom.

Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under the grantor, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that first is duly recorded.

47-10-09. Grant valid pro tanto.

A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than the owner could transfer lawfully, does not work a forfeiture of the owner's estate but passes to the grantee all the estate which the grantor could lawfully transfer.

47-10-10. Title to highway, street, alley, and public right of way - Vacation.

A transfer of land bounded by a highway, street, alley, or public right of way passes the title of the person whose estate is transferred to the soil of the highway, street, alley, or public right of way in front to the center thereof unless a different intent appears from the grant. Every conveyance of real estate, which abuts upon a vacated highway, street, alley, or other public right of way, shall be construed, unless a contrary intent appears, to include that part of such highway, street, alley, or public right of way which attaches either by operation or presumption of law, to such abutting real estate upon such vacation.

47-10-11. Easements - Pass by transfer of property to which attached.

A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property obviously and permanently was used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

47-10-12. Warranties - Lineal and collateral abolished - Exceptions.

Lineal and collateral warranties with all their incidents are abolished but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in, or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

47-10-13. Grant presumes fee simple title.

A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

47-10-14. Grant takes effect on performance of condition.

An instrument purporting to be a grant of real property to take effect upon a condition precedent passes the estate upon the performance of the condition.

47-10-15. After-acquired title.

When a person purports by proper instrument to convey real property in fee simple and subsequently acquires any title or claim of title to the real property, the real property passes by operation of law to the person to whom the property was conveyed or that person's successor. A quitclaim deed that includes the word "grant" in the words of conveyance, regardless of the words used to describe the interest in the real property being conveyed by the grantor, passes

after-acquired title. The use of a quitclaim deed, with or without the inclusion of after-acquired title in the deed, does not create any defect in the title of a person that conveys real property. This section applies to any conveyance regardless of when executed.

47-10-16. Reconveyance when estate defeated by nonperformance of condition subsequent.

When a grant is made upon condition subsequent and subsequently is defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or the grantor's successors by grant duly acknowledged for record.

47-10-17. Encumbrances defined.

The term encumbrances includes taxes, assessments, and all liens upon real property.

47-10-18. Liability of grantor.

Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all encumbrances, when an encumbrance appears of record to exist thereon, whether known or unknown to that person, shall be liable in an action of contract, to the grantee and the grantee's heirs, executors, administrators, successors, grantees, or assigns for all damages sustained in removing the same.

47-10-19. Covenants implied from use of word grant.

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for the grantor and the grantor's heirs to the grantee and the grantee's heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, nor any right, title, or interest therein, to any person other than the grantee; and
2. That such estate, at the time of the execution of such conveyance, is free from encumbrances done, made, or suffered by the grantor, or any person claiming under the grantor. Such covenants may be sued upon in the same manner as if they had been inserted expressly in the conveyance.

47-10-20. Attornment - When unnecessary.

Grants of rents, reversions, or remainders are good and effectual without attornments of the tenants, but no tenant, who before notice of the grant shall have paid rent to the grantor, must suffer any damage thereby.

47-10-21. Reservation of coal limited to description.

Repealed by S.L. 1979, ch. 187, § 108.

47-10-22. Reservation without description ineffectual.

Repealed by S.L. 1979, ch. 187, § 108.

47-10-23. Transfer by grantor to the grantor and another in joint tenancy.

Any person, firm, corporation, or limited liability company owning a legal or equitable title to or interest in any real property in the state of North Dakota may sell, transfer, and convey the same as grantor to the grantor and any other person, firm, corporation, or limited liability company, including the spouse of said grantor, in joint tenancy, with right of survivorship, without the necessity of any transfer or conveyance to or through any third person.

47-10-23.1. Nontestamentary transfer between spouses - Presumption.

A nontestamentary transfer of real property between spouses shall be presumed to be for a consideration, and not a gift, unless otherwise stated in writing at the time of transfer. This presumption is conclusive.

47-10-24. Description and definition of minerals in leases and conveyances.

All conveyances of mineral rights or royalties in real property in this state, excluding leases, shall be construed to grant or convey to the grantee thereof all minerals of any nature whatsoever except those minerals specifically excluded by name in the deed, grant, or conveyance, and their compounds and byproducts, but shall not be construed to grant or convey to the grantee any interest in any gravel, clay, or scoria unless specifically included by name in the deed, grant, or conveyance.

No lease of mineral rights in this state shall be construed as passing any interest to any minerals except those minerals specifically included and set forth by name in the lease. For the purposes of this paragraph the naming of either a specific metalliferous element, or nonmetalliferous element, and if so stated in lease, shall be deemed to include all of its compounds and byproducts, and in the case of oil and gas, all associated hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be included in the mineral named. The use of the words "all other minerals" or similar words of an all-inclusive nature in any lease shall not be construed as leasing any minerals except those minerals specifically named in the lease and their compounds and byproducts.

47-10-25. Meaning of minerals in deed, grant, or conveyance of title to real property.

In all deeds, grants, or conveyances of the title to the surface of real property executed on or after July 1, 1983, in which all or any portion of the minerals are reserved or excepted and thereby effectively precluded from being transferred with the surface, all minerals, of any nature whatsoever, shall be construed to be reserved or excepted except those minerals specifically excluded by name in the deed, grant, or conveyance and their compounds and byproducts. Gravel, clay, and scoria shall be transferred with the surface estate unless specifically reserved by name in the deed, grant, or conveyance.

47-10-26. Authority of trustee.

The trustee of a trust that holds title to real property is presumed to have the power to sell, convey, and encumber the real property unless restrictions on that power appear in the records of the county recorder.

47-10-27. Manufactured homes - Affixation to real property - Conveyance or encumbrance as real property.

1. For purposes of this section, "manufactured home" means a manufactured home as defined in section 41-09-02. Notwithstanding this definition, for purposes of 11 U.S.C. 1322(b)(2), a manufactured home is deemed real property. 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.
2. To convey or voluntarily encumber a manufactured home as real property, the following conditions must be met:
   a. The manufactured home must be permanently affixed to real property;
   b. The ownership interests in the manufactured home and the real property to which the manufactured home is or will be permanently affixed must be identical, provided, however, that the owner of the manufactured home, if not the owner of the real property, is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution and the consent of the lessor of the real property;
   c. The person having an ownership interest in the manufactured home shall execute and record with the recorder of the county in which the real property is located an

affidavit of affixation as provided in subsection 3 and satisfies the other applicable requirements of this section; and

d. Upon receipt of a recorded copy of the affidavit of affixation under subsection 5, a person designated in the affidavit for filing with the department of transportation shall file the recorded copy of the affidavit of affixation with the department of transportation, except that:
   (1) In a circumstance described in item 1 of subparagraph a of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation and the original manufacturer's certificate of origin, each as recorded in the county in which the real property is located, must be filed with the department of transportation under subsection 1 of section 39-05-35;
   (2) In a circumstance described in item 1 of subparagraph b of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and the original certificate of title must be filed with the department of transportation under subsection 2 of section 39-05-35; and
   (3) In a circumstance described in item 2 of subparagraph a of paragraph 4 of subdivision a of subsection 3, item 2 of subparagraph b of paragraph 4 of subdivision a of subsection 3, or paragraph 6 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and an application for confirmation of conversion must be filed with the department of transportation under subsection 3 of section 39-05-35.

3. a. An affidavit of affixation must contain or be accompanied by:
   (1) The name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, and whether the manufactured home is new or used;
   (2) (a) A statement that the party executing the affidavit is the owner of the real property described in the affidavit; or
   (b) If not the owner of the real property:
   [1] A statement that the party executing the affidavit is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution of the affidavit; and
   [2] The consent of the lessor of the real property endorsed upon or attached to the affidavit and acknowledged or proved in the manner as to entitle a conveyance to be recorded;
   (3) The street address and the legal description of the real property to which the manufactured home is or will be permanently affixed;
   (4) (a) If the manufactured home is not covered by a certificate of title, a statement by the owner to that effect, and either:
   [1] A statement by the owner of the manufactured home that the manufactured home is covered by a manufacturer's certificate of origin, the date the manufacturer's certificate of origin was issued, the manufacturer's serial number, and a statement that annexed to the affidavit of affixation is the original manufacturer's certificate of origin for the manufactured home, duly endorsed to the owner of the manufactured home, and that the owner of the manufactured home will surrender the manufacturer's certificate of origin to the department of transportation; or
   [2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home; or

(b) If the manufactured home is covered by a certificate of title, either:
[1] A statement by the owner of the manufactured home that the manufactured home is covered by a certificate of title, the date the title was issued, the title number, and that the owner of the manufactured home will surrender the title; or
[2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the certificate of title for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;

(5) A statement whether the manufactured home is subject to one or more security interests or liens and:
(a) If the manufactured home is subject to one or more security interests or liens, the name and address of each party holding a security interest in or lien on the manufactured home, including each holder shown on any certificate of title issued by the department of transportation, the original principal amount secured by each security interest or lien, and a statement that the security interest or lien will be released; or
(b) A statement that each security interest in or lien on the manufactured home, if any, has been released, together with due proof of each release;

(6) If the manufactured home is not covered by a manufacturer's certificate of origin or a certificate of title, a statement by the owner of the manufactured home to that effect and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;

(7) A statement that the manufactured home is or will be permanently affixed to the real property;

(8) If the party executing the affidavit acquired the manufactured home before the affixation of the manufactured home to the real property, that party shall complete the statement required by subsection 2 of section 11-18-02.2; and

(9) The name and address of a person designated for filing the recorded copy of the affidavit of affixation with the department of transportation to whom the recorder shall return the recorded copy of the affidavit of affixation after the affidavit has been duly recorded in the real property records as provided in subsection 5.

b. An affidavit of affixation must be duly acknowledged or proved in like manner as to entitle a conveyance to be recorded, and when so acknowledged or proved and upon payment of the lawful recording fees, the recorder shall immediately cause the affidavit of affixation and any attachments to the affidavit to be duly recorded and indexed under chapter 47-19.

c. The affidavit of affixation must be accompanied by an applicable fee for recording and issuing a recorded copy of the affidavit.

4. The act of permanently affixing a manufactured home to real property or the recording of the affidavit of affixation does not impair the rights of a holder of a security interest in or lien on a manufactured home perfected as provided in section 35-01-05.1, unless and until the due filing with and acceptance by the department of transportation of an application to surrender the title as provided in subsection 1 of section 39-05-35 and the release of the security interest or lien as provided in section 39-05-16.1. Upon the filing of a release, the security interest or lien perfected under section 35-01-05.1 is terminated.

5. The affidavit of affixation must be presented for recording pursuant to chapter 47-19, together with the fees provided by law. Upon receipt from the recorder of a copy of the recorded affidavit of affixation by the person presenting the affidavit for recording, that person shall deliver for filing to the department of transportation the copy of the

affidavit of affixation and the other documents as provided in subdivision d of subsection 2.

6. A manufactured home is deemed to be real property when all of the following events have occurred:
   a. The home is permanently affixed to land as provided in subsection 1;
   b. An affidavit of affixation conforming to the requirements of subsection 3 has been recorded in the conveyance records in the office of the recorder in the county where the manufactured home is permanently affixed;
   c. A copy of the recorded affidavit of affixation has been delivered for filing to the department of transportation as provided in subsection 5; and
   d. The requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.
7. Upon the satisfaction of the requirements of subsection 6, the manufactured home is deemed to be real property; any mortgage, deed of trust, lien, or security interest that can attach to land, buildings erected on the land, or fixtures affixed to the land attach as of the date of its recording in the same manner as if the manufactured home were built from ordinary building materials onsite. Title to the manufactured home must be transferred by deed or other form of conveyance that is effective to transfer an interest in real property, together with the land to which the structure has been affixed. The manufactured home is deemed to be real property and is governed by the laws applicable to real property and the department of transportation has no further authority or jurisdiction over the conveyance or encumbrance of the manufactured home.
8. Except as provided in subsections 2, 3, 5, 6, and 7, an affidavit of affixation is not necessary or effective to convey or encumber a manufactured home or to change the character of the manufactured home to real property. An agreement by a party to the transaction by which the requirements of this subsection are waived is void as contrary to public policy.
9. Nothing in this section impairs any rights existing under law before July 1, 2009, of anyone claiming an interest in a manufactured home.

47-19-03.1. Deeds and contracts for deeds to include name and address of drafter of legal description.

The recorder may not record a deed or contract for deed containing a metes and bounds legal description which affects the title to or possession of real property that otherwise may be recorded under this chapter unless the name and address of the individual who drafted the legal description contained in the deed or contract for deed appears on the instrument in a legible manner. A deed or contract for deed complies with this section if it contains a statement substantially in the following form: "The legal description was prepared by _____ (name) _____ (address) or obtained from a previously recorded instrument." This section does not apply to any instrument executed before January 1, 2000, or any instrument executed or acknowledged outside the state. The validity and effect of the record of any instrument in a recorder's office may not be lessened or impaired by the fact the instrument does not contain the statement required by this section.

CHAPTER 47-20.1
SURVEY AND CORNER RECORDATION ACT

47-20.1-01. Purpose. It is the purpose of this chapter to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of ownerships, and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they were established and located, and, to authorize any registered land surveyor to locate, erect, maintain, record and perpetuate landmarks, monuments, section corners, quarter corners, meander lines or boundary lines heretofore or hereafter established.

47-20.1-02. Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

1. "Accessory corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal filled bottles, steel or wooden stakes or other objects.

2. "Corner", unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

3. "Monument" means an accessory that is presumed to occupy the exact position of a corner.

4. "Practice of land surveying" means the assuming of responsibility for the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries, and monuments after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations, and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

5. "Property controlling corner" means a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

6. "Property corner" means a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

7. "Public land survey corner" means any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for land to a private person from the United States government.

8. "Reference monument" means a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

9. "Registered land surveyor" means a surveyor who is registered to practice land surveying under chapter 43-19.1 regulating the registration and practice of professional engineering and land surveyors, or who is authorized under said chapter to practice land surveying as defined herein.

47-20.1-03. Filing of corner record required. A surveyor shall complete, sign, stamp with the surveyor's seal and file with the recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor, and within ninety days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accord with the provisions of this chapter.

47-20.1-04. Filing permitted as to any property corner. A registered land surveyor may file such corner record as to any property corner, property controlling corner, reference monument, or accessory to a corner.

47-20.1-05. Form to be prescribed by board. The state board of registration for professional engineers and land surveyors provided for in chapter 43-19.1 shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record. The board shall prescribe the form in which such corner record shall be presented and filed.

47-20.1-06. Recorder to receive, file, and cross-index.

1. The recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

2. The recorder shall number the forms in numerical order as they are filed.

3. The book and page number in which the said corner record is filed shall be placed by the recorder near that same corner on a cross-index plat which the recorder shall provide for such purpose.

4. The recorder shall make these records available for public inspection during all usual office hours.

47-20.1-07. Official corner record. When such a corner described herein has been established and filed, that corner record shall be the official record and shall be made available to all state and federal government agencies without cost; however, the recorder may charge a reasonable fee for furnishing certified copies of the official record to all other persons.

47-20.1-08. Recorder may charge filing fee. The recorder of a county may charge a filing fee as provided by section 11-18-05 for the filing of each corner record as defined in section 47-20.1-02.

47-20.1-09. Surveyor must rehabilitate monuments. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this chapter, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner, so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

47-20.1-10. Minimum corner requirements. The registered land surveyor establishing or rehabilitating corner markers shall place as a minimum acceptable marker, a durable ferromagnetic monument not less than eighteen inches [45.72 centimeters] in length and not less than one-half inch [12.7 millimeters] in sectional dimension driven to a survey elevation depth to which is affixed a cap bearing the center point and the registered land surveyor's certificate number firmly impressed thereon.

47-20.1-11. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered land surveyor and stamped with the surveyor's seal.

47-20.1-12. Disturbance of survey corners - Penalty. No United States government survey corner nor any corner established by any registered land surveyor, monumented as herein prescribed, shall be disturbed, removed, or in any manner changed by any person in the prosecution of any public or private work. Whoever shall violate any of the provisions of this section shall be guilty of an infraction.

47-20.1-13. Short title. This chapter may be cited as the Survey and Corner Recordation Act of North Dakota.

CHAPTER 47-20.2
PLANE COORDINATES

47-20.2-01. North Dakota coordinate system zones defined. The systems of plane coordinates which have been established by the national oceanic and atmospheric administration national ocean survey/national geodetic survey or its successors for defining and stating the geographic positions or locations of points on the surface of the earth within this state are, as of July 1, 1989, to be known and designated as the North Dakota coordinate system of 1927 and the North Dakota coordinate system of 1983. For the purpose of the use of these systems, the state is divided into a north zone and a south zone:

1. The area now included in the following counties constitutes the north zone: Divide, Williams, McKenzie, Mountrail, Burke, Renville, Ward, McLean, Bottineau, McHenry, Sheridan, Pierce, Rolette, Towner, Benson, Wells, Foster, Eddy, Ramsey, Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill.

2. The area now included in the following counties constitutes the south zone: Dunn, Golden Valley, Slope, Bowman, Adams, Hettinger, Stark, Mercer, Oliver, Morton, Grant, Sioux, Emmons, Burleigh, Kidder, Logan, McIntosh, Stutsman, Barnes, LaMoure, Dickey, Cass, Ransom, Sargent, Richland.

47-20.2-02. North Dakota coordinate system names defined. As established for use in the north zone, the North Dakota coordinate system of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it must be designated the North Dakota coordinate system of 1927, north zone, or the North Dakota coordinate system of 1983, north zone. As established for use in the south zone, the North Dakota coordinate system of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it must be designated the North Dakota coordinate system of 1927, south zone, or the North Dakota coordinate system of 1983, south zone.

47-20.2-03. North Dakota coordinate system defined. The plane coordinate values for a point on the earth's surface, used in expressing the geographic position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in United States survey feet [meters] and decimals of a foot [meter] when using the North Dakota coordinate system of 1927. One of these distances, to be known as the X-coordinate, shall give the position in an east-west direction; the other, to be known as the Y-coordinate, shall give the position in a north-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey, or its successors, and the plane coordinates which have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either North Dakota coordinate system. For the purposes of converting coordinates of the North Dakota coordinate system of 1983 from meters to feet, the international survey foot must be used. The conversion factor is: one foot equals 0.3048 meter exactly.

47-20.2-04. Federal and state coordinate description same tract - Federal precedence. Whenever coordinates based on the North Dakota coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates must be construed as supplemental to the basic description of each subdivision, line, or corner contained in the official plats and field notes filed of record, and, in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates, unless the coordinates are upheld by adjudication, at which time the coordinate description will prevail. This chapter does not require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the North Dakota coordinate system, unless the description has been adjudicated as provided in this section.

47-20.2-05. North Dakota coordinate system origins defined.

1. For the purposes of more precisely defining the North Dakota coordinate system of 1927, the following definitions by the United States coast and geodetic survey are adopted:

   a. The North Dakota coordinate system of 1927, north zone, is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes, forty-seven degrees twenty-six minutes and forty-eight degrees forty-four minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-seven degrees zero minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet [609.6 kilometers], and y = 0 feet [0 kilometers].

   b. The North Dakota coordinate system of 1927, south zone, is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes forty-six degrees eleven minutes and forty-seven degrees twenty-nine minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-five degrees forty minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet [609.6 kilometers], and y = 0 feet [0 kilometers].

2. For the purposes of more precisely defining the North Dakota coordinate system of 1983, the following definition by the national ocean survey/national geodetic survey is adopted:

   a. The North Dakota coordinate system of 1983, north zone, is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of forty-seven degrees twenty-six minutes and forty-eight degrees forty-four minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-seven degrees zero minutes north latitude. This origin is given the coordinates: x = 600,000.0000 meters, and y = 00.0000 meters.

   b. The North Dakota coordinate system of 1983, south zone, is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of forty-six degrees eleven minutes and forty-seven degrees twenty-nine minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-five degrees forty minutes north latitude. This origin is given the coordinates: x = 600,000.0000 meters, and y = 00.0000 meters.

47-20.2-06. North Dakota coordinate system - Use of term. The use of the North Dakota coordinate system of 1927 north zone or south zone or the North Dakota coordinate system of 1983 north zone or south zone on any map, report of survey, or other document must be limited to coordinates based on the North Dakota coordinate systems as defined in this chapter. The map, report, or document must include a statement describing the standard of accuracy, as defined by the national ocean survey/national geodetic survey, maintained in developing the coordinates shown therein. The coordinates must be established in conformity with these standards:

1. No coordinates based on the North Dakota coordinate system, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public records or deed records unless the point is connected to a triangulation or

traverse station established in conformity with the standards prescribed in this chapter.

2. Coordinate values used in land descriptions under this section must be certified by a duly registered land surveyor under the laws of this state.

47-20.2-07. Use of the term North Dakota coordinate system - Limitation. Repealed by S.L. 1989, ch. 555, § 7.

47-20.2-08. Federal and state coordinates describing same tracts - Federal precedence. Repealed by S.L. 1989, ch. 555, § 7.

47-20.2-09. Reliance on description of North Dakota coordinate system. Repealed by S.L. 1989, ch. 555, § 7.

CHAPTER 48-01.2
PUBLIC IMPROVEMENT BIDS AND CONTRACTS

48-01.2-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agency construction management" means a public improvement delivery method through which a person provides to a governing body experienced construction management services, including ideas on constructability, documentation of design and construction, and coordination of project schedules.
2. "Architect" means an individual registered as an architect under chapter 43-03.
3. "Common ownership" means a shared management or ownership interest in two or more entities.
4. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than the threshold established under section 48-01.2-02.1.
5. "Construction administration" means administrative services provided by a governing body or an architect, a landscape architect, or an engineer, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the architect, landscape architect, or engineer. The term does not include supervision of the construction activities for the construction contracts.
6. "Construction management at-risk" means a public improvement delivery method through which a construction manager provides advice to the governing body during the planning and design phase of a public improvement, negotiates a contract with the governing body for the general construction bid package of the public improvement, and contracts with subcontractors and suppliers for the actual construction of the public improvement.
7. "Construction manager" means a contractor licensed under chapter 43-07 or an individual employed by a licensed contractor which has the expertise and resources to assist a governing body with the management of the design, contracting, and construction aspects of a public improvement.
8. "Construction observation" means observation of construction work and site visits by an architect, a landscape architect, or an engineer to assist the governing body in determining that the work conforms in general to the requirements of the construction contract and that the contractor has implemented and maintained the integrity of the design concept of a project as a functioning whole as indicated in the construction contract.
9. "Contract" means a type of agency agreement for the procurement of services under this chapter.
10. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement, including multiple prime contracts.
11. "Design services" means architect services, engineer services, landscape architect services, or surveyor services.
12. "Design-bid-build" means a project delivery method in which design and construction of the project are in sequential phases, and in which the first project phase involves design services, the second project phase involves securing a contractor through a bidding process, and the third project phase provides for construction of the project by a contractor awarded the project.
13. "Emergency situation" means a sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect, or contractor.

14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
15. "General conditions" means the written portion of a contract setting forth the governing body's minimum acceptable performance requirements, including the rights, responsibilities, and relationships of the parties involved in the performance of the contract.
16. "Governing body" means the governing officer or board of a state entity or a political subdivision.
17. "Guaranteed maximum price" means the maximum amount a construction manager at-risk may be paid under a contract to construct a public improvement.
18. "Landscape architect services" means landscape architecture services governed under chapter 43-03.
19. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.
20. "Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.
21. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.
22. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

48-01.2-02. Plans and specifications for a public improvement contract.

Except as otherwise provided in this chapter, if the estimated cost for the construction of a public improvement is in excess of the threshold established under section 48-01.2-02.1, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation. Plans, drawings, and specifications of an architect or engineer must be stamped and sealed by the date of the initial bid advertisement.

48-01.2-02.1. Public improvement construction threshold.

The threshold for bidding construction of a public improvement is one hundred fifty thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred fifty thousand dollars.

48-01.2-03. Specified brands, marks, names, or patented articles may not be specified.

A governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit or unless as provided in section 44-08-01.

48-01.2-04. Publication of advertisement for bids - Emergency exception.

1. Except as otherwise provided in this chapter, if the estimated cost for the construction of a public improvement is in excess of the threshold established under section 48-01.2-02.1, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, in a daily newspaper having a general circulation in the area where the project is located, and in a trade publication, electronic plan service, builders exchange, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.
2. If a governing body declares an emergency situation, the governing body may contract for the construction of a public improvement without seeking bids.

48-01.2-05. Contents of advertisement.

The advertisement for bids required by section 48-01.2-04 must state:

1. The nature of the work and the type and location of the proposed public improvement.
2. When and where the plans, drawings, and specifications may be seen and examined.
3. The place, date, and time the bids will be opened.
4. That each bid must be accompanied by a separate envelope containing the contractor's license and bid security. The bid security must be in a sum equal to five percent of the full amount of the bid and must be in the form of a bidder's bond. A bidder's bond must be executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, shall execute a contract in accordance with the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond is not required under this section. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond must be forfeited to the governing body and the project awarded to the next lowest responsible bidder.
5. That a bidder, except a bidder on a municipal, rural, and industrial water supply project using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid as required by section 43-07-12. For projects using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest responsible bidder, the bid must be rejected and the contract awarded to the next lowest responsible bidder.
6. That no bid may be read or considered if the bid does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
7. That the governing body reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received.

48-01.2-06. Bid requirements for public improvements.

Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of the threshold established under section 48-01.2-02.1. If a general, mechanical, or electrical contract is estimated to be less than twenty-five percent of the threshold, the contract may be included in one of the other prime contracts. A governing body may allow submission of a single prime bid for the complete project or bids for other specialized portions of the project. A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project. If a bid for

the general, electrical, or mechanical portions of a project is not received, a governing body may negotiate a contract amendment, up to an additional one hundred fifty thousand dollars, with the general, electrical, or mechanical contractor whose contract would represent the largest portion of the project cost for providing the portion of the project for which a bid was not received without rebidding all or part of the project.

48-01.2-07. Opening of bids - Award of contract.

At the time and place specified in the notice, a governing body or its designated agent shall open publicly and read aloud each responsible bid received. The governing body shall award the contract to the lowest responsible bidder. A governing body may reject any and all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any agreement has been entered by the bidders or others to prevent competition. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received.

48-01.2-08. Officers must not be interested in contract.

A governing body, or any member, employee, or appointee of a governing body, may not be pecuniarily interested or concerned in a contract for a public improvement entered by the governing body.

48-01.2-09. Contract with successful bidder.

A governing body shall enter a contract with the lowest responsible bidder as determined under section 48-01.2-07. The contract must contain the following:

1. The written terms of the agreement and any associated document signed by the governing body and the contractor;
2. The required surety bond; and
3. Any other document deemed appropriate by the governing body and identified in the advertisement for bids.

48-01.2-10. Bonds from contractors for public improvements.

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of one hundred fifty thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

48-01.2-11. Claim for public improvement - Suit on contractor's bond.

A person that has furnished labor or material for any public improvement for which a bond is furnished and has not been paid in full within ninety days after completion of the contribution of labor or materials may sue on the bond for the amount unpaid at the time of institution of suit. However, a person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless that person has given written notice to the contractor, within ninety days from the date on which the person completed the contribution, stating with substantial accuracy

the amount claimed and the name of the person for which the contribution was performed. The notice must be served by registered mail in an envelope addressed to the contractor at any place the contractor maintains an office, conducts business, or has a residence.

A governing body shall provide a certified copy of the bond and the contract for which the bond was given to any individual who submits an affidavit that either the individual has supplied labor or materials for the improvement and that payment has not been made or that the individual is being sued on the bond. The individual requesting the copy shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

48-01.2-12. Claims - When barred as liens against contractor and surety.

Any claim for any labor, material, or supply furnished for an improvement, upon which a suit is not commenced within one year after completion and acceptance of the project, is barred as a lien or claim against the contractor and the contractor's surety and any right of setoff or counterclaim may be enforced in any court in this state against the governing body, the contractor, or the contractor's surety. This chapter does not bar the right of any person who has furnished any labor, supply, or material to any subcontractor to enforce the claim against the subcontractor.

48-01.2-13. Payments.

At least once in each calendar month during the continuance of work upon any public improvement, the governing body shall receive and consider any partial payment estimate prepared by the architect or engineer. Upon review and approval, the governing body shall pay an estimate in an amount equal to the estimated value of the labor and material furnished plus the material adequately stored. A partial payment estimate must include retentions or retainage as follows: ten percent of each estimate until the project is fifty percent completed with no further retainage on estimates during the continuance of the contract unless unsatisfactory progress or performance is documented. The governing body may, upon completion of ninety-five percent of the contract, pay to the contractor up to ninety-five percent of the amount retained from previous estimates. The remaining amount retained must be paid to the contractor in the amounts and at the times approved by the architect or engineer. The governing body shall make final payment of all moneys due to the contractor following completion of all work, acceptance of the project by the governing body, and the provision of necessary releases. If an architect or engineer is not employed by the governing body for administration of the contract, the contractor, at the end of each calendar month during the continuance of work, may furnish a payment estimate to the governing body. After considering and approving an estimate, the governing body shall draw a warrant upon the proper fund and promptly transmit the warrant to the contractor. The governing body may invest or deposit any retained amount in a financial association or institution so that the contractor's money retained is earning interest or dividends for the benefit of the contractor. Any amount invested or deposited must remain in the name of the governing body until final payment of all money due to the contractor is to be made.

48-01.2-14. Late payment - Rate of interest.

If a governing body fails or neglects to consider any estimate properly submitted, pay any estimate approved, or make final payment upon completion and acceptance of a public improvement, for a period of more than thirty days from the date of approval of the estimate or the completion and acceptance date, the governing body shall pay interest on the estimate or final payment from the date of approval. The interest rate must be the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the issuance of a proper warrant for the payment. The governing body shall compute and add the interest to the face of the estimate or final payment and the interest must be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under this chapter may be made except upon estimate of the architect, engineer, or contractor as provided in section 48-01.2-13.

48-01.2-15. Appropriations may not be diverted.

No portion of any special appropriation for the erection of any public improvement, or for the doing of any work, may be drawn from the state treasury in advance of the work being completed or of the materials furnished. The funds may be drawn only upon proper estimates approved by the governing body of the institution for which the improvement is being constructed. No portion of any appropriation for any purpose may be drawn from the treasury before the appropriation is required for the purpose for which it is made, and no appropriation that is or may be made for any purpose with respect to the construction or improvement may be drawn or used for any other purpose until the construction or improvement for which the appropriation was made is fully completed and paid for.

48-01.2-16. Architects, landscape architects, and engineers - Duties.

The governing body shall employ the architect, landscape architect, or engineer furnishing the plans as provided in this chapter or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared as provided by section 48-01.2-02. The architect, landscape architect, or engineer shall assist the governing body in determining that the contractor performs the work in accordance with the intent of the plans and specifications. As part of a site visit or construction observation, the architect, landscape architect, or engineer may not supervise, direct, or have control over the contractor's work. The architect, landscape architect, or engineer may not exercise control over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, the quality control of the work, the security or safety on the site, any safety precaution or program incident to the contractor's work, the failure of the contractor to comply with any law or rule applicable to the contractor's furnishing of or performance of the work, or the failure of the contractor to furnish or perform the work in accordance with the construction contract. The architect, landscape architect, or engineer is entitled to receive a reasonable compensation to be fixed by the governing body. Any duty imposed or power conferred upon the governing body by this chapter applies to a successor to the governing body.

48-01.2-17. Coordination of work under multiple prime bids.

If a public improvement is awarded as multiple prime contracts for the general, electrical, mechanical work, and other prime contracts as contained in the bid for the project, the governing body may assign the coordination of the electrical and mechanical contracts and any other contracts to the general contractor for the project to facilitate the coordination of the work.

48-01.2-18. Construction management - Governing body determinations.

1. Notwithstanding any other provision of law, a governing body may use the agency construction management or construction management at-risk delivery methods for construction of a public improvement if:
   a. The agency construction manager has no common ownership or conflict of interest with the architect, landscape architect, or engineer involved in the planning and design of the public improvement or with any person engaged in the construction of the public improvement.
   b. The construction manager at-risk has no common ownership or conflict of interest with the architect, landscape architect, or engineer involved in the planning and design of the public improvement.
2. Before utilizing the agency construction management or construction management at-risk delivery method, a governing body shall make the following determinations:
   a. That it is in the best interest of the public to utilize the agency construction manager or construction manager at-risk public improvement delivery method.
   b. That the agency construction manager or construction manager at-risk planning and design phase services will not duplicate services normally provided by an architect or engineer.

c. That the agency construction manager or construction manager at-risk construction services will be in addition to and not duplicate the services provided for in the architect and engineer contracts.

3. The governing body shall provide written documentation of the determinations provided for under subsection 2 upon written request from any individual.

48-01.2-19. Agency construction management procurement procedures - Contract.

1. A governing body electing to utilize the agency construction management delivery method shall establish a construction management services selection committee composed of individuals the governing body determines to be qualified to make an informed decision as to the most competent and qualified person for the proposed public improvement.
2. The agency selection committee shall:
   a. Develop a description of the proposed public improvement;
   b. Enumerate each required agency construction management service for the proposed public improvement; and
   c. Prepare the formal invitation request for qualifications, which must include the project title, the general scope of work, a description of each service required for the public improvement, the final selection criteria, the address to which responses to the request must be submitted, and the deadline for submission of responses.
3. The governing body shall publish a notice of the request for qualifications in a newspaper of general circulation in the county in which the public improvement is located and in a construction trade publication, electronic service, builders exchange, or other industry-recognized method in general circulation among the contractors, building manufacturers, and dealers in this state and shall be published for three consecutive weeks, with the first publication being at least twenty-one days before the date of opening of the request for qualifications. Upon written request, the governing body shall mail a copy of the invitation to any interested party.
4. After the submission deadline, the selection committee shall hold interviews with at least three persons that have responded to the advertisement and which are deemed most qualified on the basis of information available before the interviews. If less than three persons have responded to the advertisement, the committee may readvertise or hold interviews with any person that submitted a response. The selection committee's determination as to which person will be interviewed must be in writing and must be based upon the committee's review and evaluation of all materials submitted. The written report of the committee must list the name of each person that responded to the advertisement and enumerate any reason for selecting any person to be interviewed. The written report must be available to the public upon written request. The purpose of the interviews must be to provide any information required by the selection committee to fully acquaint the committee members with the relative qualifications of each person that responded to the advertisement.
5. The selection committee shall evaluate each person interviewed on the basis of the following criteria:
   a. The past performance of the person with respect to prior public improvements.
   b. The qualifications of proposed personnel.
   c. The willingness to meet time and budget requirements of the governing body.
   d. The business location of the person.
   e. The recent, current, and projected workloads of the person.
   f. Any related experience performing agency construction management services on projects of similar size and scope.
   g. Any recent or current work by the person for the agency.
   h. The ability of the person to provide the bond for the person's portion of the work on the public improvement.
   i. The possession by the person of a class A contractor's license.

6. Based upon the evaluation under subsection 5, the selection committee shall rank the three persons which, in its judgment, are most qualified. If fewer than three persons responded to the advertisement, the selection committee shall rank each person that responded. The selection committee's report ranking the interviewed persons must be in writing and must include data substantiating the committee's determinations. The data must be available to the public upon written request.
7. The selection committee shall submit its written report ranking the interviewed persons to the governing body for evaluation and approval by the governing body. The governing body shall determine the final ranking of each person and provide written notification of the order of preference to each person that responded to the request for qualifications.
8. After providing the notice under subsection 7, the governing body shall negotiate a contract for services with the most qualified person at a compensation which is fair and reasonable to the governing body. If the governing body is unable to negotiate a satisfactory contract with that person, the governing body shall terminate negotiations with that person and commence negotiations in the same manner with the second and then the third most qualified person until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons in order of the original ranking must be selected after consultation with the selection committee, and negotiations must be continued in the same manner until agreement is reached.
9. The governing body, at any time, may reject all proposals and readvertise or select another allowed project delivery method.

48-01.2-20. Selection process for construction management at-risk planning and design phase services.

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
   a. An administrative individual from the governing body.
   b. A registered architect.
   c. A registered engineer.
   d. A licensed contractor.
2. The governing body may compensate members of the selection committee. A member of the selection committee is not eligible to submit a proposal for the construction management at-risk contract under consideration.
3. Before issuing a notice of request for qualifications to enter a construction management at-risk services contract, the selection committee shall establish the content of the request for qualifications, which must include the following:
   a. The identity of the governing body and a list of the members of the selection committee;
   b. A description of the proposed public improvement;
   c. The proposed budget limits of the public improvement;
   d. The commencement and completion date of the public improvement;
   e. The procedures to be used in submitting proposals;
   f. The qualifications evaluation criteria and the relative weighting of items;
   g. The subcontractor selection process to be used for construction services;
   h. The number of persons to be included in the final list;
   i. A statement indicating whether formal interviews will be held;
   j. A statement indicating whether fees and prices must be included in any proposal;
   k. A description of contract terms and conditions for the construction management at-risk services contract, including a description of the scope of services to be provided;
   l. A description of the procedures to be used for making the contract award;
   m. The insurance and bonding requirements and a statement requiring any person submitting a proposal to include with the proposal a certificate of insurance, indicating liability coverage; and

n. The identification and location of other pertinent information the governing body may possess, including surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.

4. The request for qualifications submittal procedures must include the specific format that must be used by a construction manager at-risk when submitting a request for qualifications and the submission deadline location for submission of the request for qualifications.
5. The selection committee shall determine the appropriate evaluation criteria for each request for qualifications, including:
   a. The person's experience on any similar project;
   b. The person's existing workload and available capacity;
   c. The person's key personnel experience on any similar project;
   d. The person's safety record;
   e. The person's familiarity with the location of the public improvement;
   f. The person's fees and expenses;
   g. The person's compliance with state and federal law; and
   h. Any reasonable information the selection committee deems necessary.
6. The selection committee shall evaluate each submission based on the qualification criteria under subsection 5 and shall include the numeric scoring of each criteria item on a weighted basis, with no item being weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be done in a manner to ensure no subjective bias and encourage the maximum participation of qualified construction managers at-risk.
7. a. The selection committee shall review each proposal submitted and include the three highest ranked construction managers at-risk on a list of finalists. If fewer than three proposals were submitted, the governing body may resolicit for qualifications, interview any person that applied, or consider using another allowed delivery method. The selection committee shall recommend to the governing body the construction manager at-risk receiving the highest score on the evaluation criteria.
   b. If a construction manager at-risk selected for a public improvement declines the appointment or is unable to reach agreement with the governing body concerning fees or terms of the contract, the governing body shall terminate negotiations with the construction manager at-risk and begin negotiations with the construction manager at-risk with the next highest score and continue that process until agreement is reached or the list of finalists is exhausted.
   c. If the list of finalists is exhausted, the governing body shall request the selection committee to revise the request for qualifications and solicit new submissions. If the selection committee is unable to provide any constructive revision to the request for qualifications, the governing body shall select another allowed public improvement delivery method.
   d. The governing body, upon reaching an agreement with a construction manager at-risk on compensation and contract terms for construction management planning and design services, shall enter a written contract with the construction manager at-risk for the services.

48-01.2-21. Selection process for construction management at-risk services - Construction services.

After the governing body and the construction manager at-risk have finalized the contract for planning and design phase services and the process has progressed sufficiently to provide the construction manager at-risk the necessary project details, the governing body and the construction manager at-risk shall enter negotiations for a guaranteed maximum price and contract terms for the general construction of the public improvement. If the governing body is unable to negotiate a satisfactory contract with the highest qualified person on the list of finalists, the governing body shall terminate negotiations with that person. The governing body shall commence negotiations with the next most qualified person on the list in sequence until an

agreement is reached or a determination is made to reject all persons on the list. If the governing body reaches an agreement with a construction manager at-risk on a guaranteed maximum price and on contract terms, the governing body and construction manager at-risk shall enter a written contract for the general construction management at-risk construction services.

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise and publicly open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise and publicly open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The construction manager at-risk then shall evaluate the bids and determine which is the most responsible. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

48-01.2-23. Bond required.

1. An agency construction manager, before starting any work, shall provide the governing body with a bond that is equal to the cost of the agency construction manager's services with the governing body. Under an agency construction manager delivery method, each contractor performing services on the public improvement shall provide the governing body with a separate bond for the contractor's portion of the public improvement.
2. A construction manager at-risk, before starting any construction, shall provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the construction services contract and pay all bills or claims on account of labor and materials, including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01.1-02 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond. Under a construction manager at-risk delivery method, the governing body may not require each contractor performing services on the public improvement to provide a separate bond for the contractor's portion of the public improvement.

48-01.2-24. Public buildings and facilities - Statement of compliance with accessibility guidelines.

Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section.

Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been approved by the legislative assembly unless the legislative assembly approves the change or expansion of the project or any additional expenditure for the project. During the time the legislative assembly is not in session, and unless otherwise restricted by previous legislative action or other law, the budget section of the legislative management may approve a change or expansion or any additional expenditure for the project. However, the budget section of the legislative management may not approve a change, expansion, or additional expenditure for the project during the six months preceding the convening of a regular session or during the three months following the close of a regular session except for changes in project scope and related additional expenditures resulting from an unforeseen emergency event. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

TITLE 54
STATE GOVERNMENT

CHAPTER 54-01
SOVEREIGNTY AND JURISDICTION OF STATE

54-01-01. Original and ultimate title to all property in state.

The original and ultimate right to all property, real or personal, within the limits of this state is in the state.

54-01-02. When property escheats.

All property, real and personal, within the limits of this state, which does not belong to any person or to the United States, belongs to the state. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state.

54-01-02.1. Unclaimed funds defined.

Repealed by S.L. 1975, ch. 425, § 29.

54-01-02.2. Notice of unclaimed funds.

Repealed by S.L. 1975, ch. 425, § 29.

54-01-02.3. Disposal of unclaimed funds.

Repealed by S.L. 1975, ch. 425, § 29.

54-01-03. State may acquire property by taxation.

The state may acquire property by taxation in the modes authorized by law.

54-01-04. State may acquire property by right of eminent domain.

The state may acquire or authorize others to acquire title to property, real or personal, for public use in the cases and in the modes provided by law.

54-01-05. State may acquire property by eminent domain for state institution.

The state, by the exercise of the right of eminent domain, may acquire, for the use of any state institution or state industry, any property necessary:

1. To the maintenance or expansion of such institution;
2. To the acquirement of any of the essentials of the existence of such institution or industry;
3. To the operation of such institution or industry;
4. To the health, safety, or support of any inmates of such institution; or
5. To the protection or care of the property of such institution or industry.

The proceedings for the acquirement of any such property must be prosecuted by the attorney general in the name of the state as plaintiff and must be governed by the provisions of chapter 32-15 applicable to condemnation proceedings.

54-01-05.1. State-owned land - How transferred.

Real property held in the name of the state of North Dakota for the use and benefit of any department or agency thereof may be transferred and conveyed by quitclaim deed executed in the name of the state of North Dakota by the governor and attested by the secretary of state.

54-01-05.2. Sale of state-owned land - Notice.

Except as provided by section 54-01-05.5, whenever any department or agency of the state other than the board of university and school lands, the housing finance agency, and the Bank of North Dakota is authorized to sell such real property, the property must be sold for cash by the county auditor or other person designated by the department or agency concerned at public

auction at the front door of the courthouse in the county in which the property lies. A notice of sale must have been published in the official newspaper of the county in which the property lies for three successive weeks, with the last publication not less than ten days before the day of sale. The notice must be given in the name of the administrative head of the department or agency concerned and must state the place, day, and hour of the sale, the description of the real property to be sold, the appraised value, and that the state reserves the right to reject any and all bids. No land may be sold at auction for less than the appraised value. In addition to the purchase price at auction, the buyer must pay the cost of preparing the land for sale. For a land sale or exchange when the value of the land is not more than one hundred thousand dollars, one appraisal must be obtained, and when the value of the land is in excess of one hundred thousand dollars, two appraisals must be obtained. If more than one appraisal is obtained, the appraised value of the land is the average of the two appraisals. If no bid is received on the land at public auction, the land may be sold for not less than ninety percent of the appraised value.

54-01-05.3. Attorney general to review bills providing for sale of land - Commissioner of university and school lands to render opinion on land use.

Repealed by S.L. 1981, ch. 516, § 4.

54-01-05.4. Impact analysis - Governor to require.

Repealed by S.L. 1981, ch. 515, § 1.

54-01-05.5. Bills authorizing sale or exchange of state-owned land - Written report - Assessment.

1. The supervising agency, board, commission, department, or institution owning or controlling land proposed by a bill introduced in the legislative assembly to be sold or exchanged shall prepare a written report that includes:
   a. An analysis of the type of land involved.
   b. A determination whether the land is needed for present or future uses of the agency, board, commission, department, or institution.
   c. A description of the party or parties, if known, who are interested in the land and the purposes for which the land is desired.
   d. A map showing the boundaries of the land proposed to be sold or exchanged and the purposes for which the adjacent lands are used.
2. The commissioner of university and school lands shall review each legislative bill proposing the sale or exchange of state-owned land and the written report from the supervising agency, board, commission, department, or institution. The commissioner may provide a written assessment to the standing committee of the legislative assembly to which the bill is initially referred concerning the proposed land sale or exchange and, in doing so, shall consider the "highest and best use" of the land as defined by section 15-02-05.1.
3. The commissioner may adopt rules to provide for administration of this section.

54-01-06. Jurisdiction over property in state - Limitations.

The sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, or purchased or condemned by, the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

54-01-07. Legislative consent to purchase of lands by United States - Jurisdiction.

Repealed by S.L. 1981, ch. 518, § 2.

54-01-08. Jurisdiction ceded to lands acquired by United States for military post.

Jurisdiction is ceded to the United States over any tract of land that may be acquired by the United States on which to establish a military post. Legal process, civil and criminal, of this

state, extends over all land acquired by the United States to establish a military post in any case in which exclusive jurisdiction is not vested in the United States, and in any case where the crime is not committed within the limits of such reservation.

54-01-09. Ceding to the United States exclusive jurisdiction over certain lands which are part of the Fort Lincoln military reservation.

Exclusive jurisdiction is ceded to the United States over the following tracts of land which were reserved from the public domain and set apart for military purposes as additions to the Fort Lincoln military reservation by executive orders of the President of the United States dated May 17, 1899, June 8, 1901, and January 17, 1907:

Lots two, three, and four, section ten, township one hundred thirty-seven north, range eighty west, and lots eleven and thirteen, section thirty-four, township one hundred thirty-eight north, range eighty west of the fifth principal meridian, situated in Burleigh County, and all accretions thereto.

Jurisdiction over the above-described lands is ceded upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime committed within the jurisdiction of this state, may be served and executed thereon in the same manner and by the same officers as if this section had not been enacted.

54-01-09.1. State offenses - Concurrent jurisdiction ceded to the United States. (Contingent effective date - See note)

Concurrent jurisdiction is hereby ceded to the United States over offenses, as defined in section 12.1-01-04, when committed within boundaries of the tracts of land designated as:

1. Theodore Roosevelt national park.
2. Fort Union trading post national historic site.
3. Knife River Indian villages national historic site.

State offenses - Concurrent jurisdiction ceded to the United States. (Contingent effective date - See note) Concurrent jurisdiction is ceded to the United States over offenses, as defined in section 12.1-01-04, when committed within the boundaries of the tracts of land designated as:

1. Theodore Roosevelt national park.
2. Fort Union trading post national historic site.
3. Knife River Indian villages national historic site.
4. Fort Totten national historic site.

54-01-09.2. Concurrent jurisdiction - Vested upon acceptance.

The concurrent jurisdiction ceded by section 54-01-09.1 is vested upon acceptance by the United States by and through its appropriate officials and continues so long as the lands within the designated areas are dedicated to park or historic site purposes.

54-01-09.3. Retrocession of jurisdiction - Acceptance - Filing.

1. The consent of North Dakota is hereby given to the retrocession by the United States of the jurisdiction granted by section 54-01-09.1, either partially or wholly. A partial retrocession may be with respect to particular territory or particular offenses, or both. The governor is authorized to accept any such retrocession of jurisdiction on behalf of North Dakota.
2. When the governor receives written notification from the authorized official or agent of the United States that the United States desires or is willing to retrocede jurisdiction to North Dakota as provided in subsection 1, the governor may accept, and after filing the original acceptance with the secretary of state, the retrocession of jurisdiction will become effective.

54-01-10. State may accept military and Indian reservations.

The state of North Dakota may accept from the United States any military reservation or Indian school reservation, and all property connected with either, that the United States may cede or transfer to the state, subject to any conditions and requirements which Congress may impose.

54-01-10.1. Acceptance of Fraine Barracks.

The state of North Dakota hereby accepts from the United States of America the lands and improvements comprising the Bismarck Indian school plant, as authorized by Public Law 78-502, which must hereafter be known as "Fraine Barracks" in honor of the late Brigadier General John A. Fraine.

54-01-11. Who has charge of property ceded by United States to state.

When any military reservation or Indian school reservation is ceded to the state of North Dakota by the United States, the director of the office of management and budget shall take charge of and care for the property until otherwise provided by law. The governor shall receipt to the United States for any personal property transferred to the state.

54-01-12. Exchange of lands on Indian reservation between state and federal government.

The state of North Dakota, through its several departments and agencies, may exchange tracts and sections of land on Indian reservations within the state, belonging to the state of North Dakota, and not a part of the original grant of land to the state provided in the Enabling Act, for lands of like character and value belonging to the United States government on Indian reservations within this state. Such exchange is subject to the approval of the appropriate department of the federal government and the lands must be appraised in the manner provided by law. The state also may execute and deliver proper conveyances of such land in the manner and form provided by law, without the necessity of complying with any statute requiring notice of exchange or competitive bidding, and it may accept in return therefor a proper instrument of conveyance to the state of the lands for which such state lands are exchanged.

54-01-13. Exchange of lands on Fort Berthold reservation.

The state of North Dakota, through its several departments and agencies, is hereby authorized and empowered to exchange tracts, sections, and parcels of land located within the diminished borders of Fort Berthold reservation belonging to the state of North Dakota and not a part of the original grant of lands to the state provided for in the Enabling Act, for lands of like character and value belonging to the United States government located outside of the diminished borders of said Fort Berthold reservation. Such exchange is subject to the approval of the proper department of the federal government, and such lands must be appraised as provided by law in the case of sale of real property owned by the state. The state also may execute and deliver proper conveyances of such land in the manner and form provided by law, without the necessity of complying with any statute requiring the giving of notice of exchange or competitive bidding, and may accept in return therefor a proper instrument of conveyance to the state of North Dakota of the land for which such lands are exchanged.

54-01-13.1. Exchange of lands within Theodore Roosevelt National Park.

The state of North Dakota is hereby authorized to transfer and convey to the United States of America any lands situated within the Theodore Roosevelt National Park in the county of Billings, state of North Dakota, including state school lands and lands held by the state historical society or for the use and benefit of the state game and fish department, such transfer and conveyance to be made in exchange for federal lands of not less than equal value situated outside of the Theodore Roosevelt National Park.

54-01-13.2. Appraisal.

The lands to be conveyed to the United States of America and also the lands to be taken in exchange therefor, under the provisions of section 54-01-13.1, must be appraised by the county superintendent of schools, the county auditor, and the chairman of the board of county commissioners in the county where the land is situated, at its fair market value, but no state school lands may be appraised and valued at less than ten dollars per acre [.40 hectare]. The county director of tax equalization shall serve as an assistant in making the appraisals.

54-01-13.3. Conveyance.

Conveyances made under section 54-01-13.1 to the United States of America of state school lands must be executed in the same form and manner as now provided by law for the sale and conveyance of state school lands and conveyance by the state of other lands under the provisions of section 54-01-13.1 must be executed on behalf of the state of North Dakota by the governor and attested by the secretary of state.

54-01-14. Lease of land to northern great plains dairy station - When to terminate.

The lease of all of section nine in township one hundred thirty-eight north, range eighty-one west of the fifth principal meridian in Morton County, North Dakota to the United States northern great plains dairy station for a term of ninety-nine years as provided by chapter 28 of the 1929 Session Laws, terminates if the land ceases to be used for experimental dairy uses and purposes and if the lessee ceases to maintain its experimental dairy station as now located in Morton County, North Dakota.

54-01-15. Acquisition of national forest lands by United States - Jurisdiction of state over such lands.

The United States may, with the specific consent of the legislative assembly as to each tract acquired, acquire, by purchase, gift, or condemnation with adequate compensation, such lands in North Dakota as in the opinion of the federal government may be needed for the establishment of national forests. The state shall retain a concurrent jurisdiction with the United States in and over lands so acquired to the extent that civil process in all cases, and such criminal process as may issue under the authority of the state against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this section had not been enacted. The legislative consent required by this section must be in the form of a duly enacted bill.

54-01-16. Power of Congress to make rules governing land acquired for national forests.

Power is conferred upon the Congress to pass such laws and to make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor, as in its judgment may be necessary for the administration, control, and protection of such lands as from time to time may be acquired by the United States under the provisions of section 54-01-15.

54-01-17. Right of way over state lands.

Repealed by S.L. 1995, ch. 435, § 2.

54-01-17.1. Granting easements to state-owned land - Procedure.

A state agency may, when it deems such action to be in the best interest of the state, grant easements upon or across any real property which it administers and which is owned by the state for the use or benefit of a state institution under its jurisdiction.

Any property rights transferred under the authority of this section must be transferred and conveyed by quitclaim instrument or easement executed in the name of the state of North Dakota by the governor and attested by the secretary of state. Such quitclaim instrument or easement must contain specific legal descriptions of the property right transferred and the location thereof.

Upon the granting of an easement under the authority of this section any proceeds must be used in the following manner:

1. If the property is the subject of a devise, legacy, bequest, or gift to the institution the proceeds of the easement are subject to the provisions of sections 1-08-02 and 1-08-04.
2. If the property is not subject to sections 1-08-02 and 1-08-04, the proceeds of the easement must be deposited in the special operating fund of the institution or, if no such operating fund then exists, such proceeds must be deposited in the general fund in the state treasury.

54-01-17.2. North Dakota-Saskatchewan-Manitoba boundary advisory committee.

Repealed by S.L. 1995, ch. 489, § 1.

54-01-18. All persons within the state subject to its jurisdiction and entitled to protection.

Every person while within this state is subject to its jurisdiction and entitled to its protection.

54-01-19. Rights of state over persons enumerated.

The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime.
2. To imprison or confine for the protection of the public peace or health or of individual life or safety.
3. To imprison or confine for the purpose of enforcing civil remedies.
4. To establish custody and restraint for the persons of unsound mind dangerous to themselves or society.
5. To establish custody and restraint of paupers for the purpose of their maintenance.
6. To establish custody and restraint of minors unprovided for by natural guardians for the purpose of their education, reformation, and maintenance.
7. To require services of persons, with or without compensation, as follows:
   a. In military duty;
   b. In jury duty;
   c. As witnesses;
   d. As township officers;
   e. In highway labor;
   f. In maintaining the public peace;
   g. In enforcing the service of process;
   h. In protecting life and property from fire, pestilence, wreck, or flood; and
   i. In such other cases as are provided by law.

54-01-20. The people defined.

The people, as a political body, consist of:

1. Citizens who are electors; and
2. Citizens not electors.

54-01-21. Citizens defined.

The citizens of the state are all persons who are citizens of the United States of America and who are bona fide residents of the state of North Dakota.

54-01-22. Persons not citizens.

Persons in this state who are not its citizens are either:

1. Citizens of other states; or
2. Aliens.

54-01-23. Duty of citizens - Allegiance defined - How renounced.

Allegiance is the obligation of fidelity and obedience which every citizen owes to the state. Allegiance may be renounced by a change of residence.

54-01-24. Rights and duties of citizens not electors.

An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

54-01-25. Rights and duties of citizens of other states.

A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state who is not an elector.

54-01-26. Residence - Rules for determining.

Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during the supporting parent's life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either that minor's own act or that of that minor's guardian.
7. The residence can be changed only by the union of act and intent.

54-01-27. Lease of state-owned property.

Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any

agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The public finance authority, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

54-01-28. Northern plains national heritage area - Use of state funds and property prohibited unless approved by legislative assembly.

State funds may not be expended or transferred from state agencies to match federal moneys for the northern plains national heritage area or any similar or successor designated areas without the approval of the legislative assembly. State lands, water, property, or facilities may not be included in the designated northern plains national heritage area or any similar or successor designated areas without the approval of the legislative assembly. No further lands, water, property, or facilities may be designated as heritage areas within this state without the approval of the legislative assembly.

54-01-29. Prohibition on the purchase of certain real property and easements with public funds.

A governmental entity may not provide funds through grant, contract, or other agreement to a nongovernmental entity that is a nonprofit organization for the purpose of holding any interest in real property or an easement for wildlife or conservation purposes. This section does not apply to a governmental entity in a partnership with a nongovernmental entity, if the governmental entity derives a benefit from the partnership. In addition, the recipient of these funds is subject to civil action by any person for the return of any public funds used by the recipient for any of the same purposes.

54-01-29.1. Federal legislation encouraged to return lands and mineral rights to the state of North Dakota.

Uplands of the Oahe Reservoir in Emmons and Morton Counties in North Dakota above the elevation of 1,620 feet [493.78 meters] are defined as excess lands to the operation of the Oahe Dam. The North Dakota legislative assembly encourages Congress to pass federal legislation to return those lands and mineral rights to the state of North Dakota and the North Dakota legislative assembly encourages the governor of North Dakota to work with the North Dakota congressional delegation and Congress to secure enactment of necessary federal legislation.

CHAPTER 54-44.7
ARCHITECT, ENGINEER, AND LAND SURVEYING SERVICES

54-44.7-01. Definition.

"Architect, engineer, construction management, and land surveying services" are those professional services associated with the practice of architecture, professional engineering, professional land surveying, landscape architecture, interior design pertaining to construction, and construction management, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, construction management, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services, except for professional services related to prefabricated steel for bridge purposes.

54-44.7-02. Applicability - Policy.

Architect, engineer, construction management, and land surveying services must be procured as provided in this chapter. It is the policy of this state that all North Dakota state agencies shall negotiate contracts for services on the basis of demonstrated competence and qualification for the particular type of services required.

54-44.7-03. Procurement procedures.

1. Each using agency shall establish its own architect, engineer, construction management, and land surveying services selection committee hereinafter referred to as the agency selection committee, which must be composed of those individuals whom the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or that person's qualified, responsible designee shall sit as a member of the agency selection committee for the purpose of coordinating and accounting for the committee's work.
2. The agency selection committee is responsible for all of the following:
   a. Developing a description of the proposed project.
   b. Enumerating all required professional services for that project.
   c. Preparing a formal invitation to firms for submission of information. The invitation must include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, and the submission deadline. The invitation or notice thereof must be published. Upon written request, the agency shall also mail copies of the invitation to any interested party. The manner in which this must be published, the content of the publication, and the frequency of the publication, must be established by regulation of the agency selection committee.
3. The date for submission of information from interested persons or firms in response to an invitation must be not less than twenty-one days after publication of the invitation. Interested architect, engineer, and land surveying persons or firms must be required to respond to the invitation with the submission of the information required in general services administration form SF 330, architect-engineer qualifications for specific project, or similar information as the agency selection committee may prescribe by rule.
4. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. If less than three persons or firms have responded to the advertisement, the committee shall readvertise or hold interviews with those who did respond. The agency selection committee's determination as to which will be interviewed must be in writing and must be based

upon its review and evaluation of all submitted materials. The written report of the committee must specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. This written report must be available to the public upon written request. The purpose of the interviews must be to provide such further information as may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested persons or firms.

5. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:
   a. Past performance.
   b. The ability of professional personnel.
   c. Willingness to meet time and budget requirements.
   d. Location, with higher priority given to firms headquartered in North Dakota.
   e. Recent, current, and projected workloads of the persons or firms.
   f. Related experience on similar projects.
   g. Recent and current work for the agency.

   Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.
6. The agency selection committee shall submit its written report ranking the interviewed persons or firms to the governing body of the using agency for its evaluation and approval. When it is determined that the ranking report is final by the agency, written notification of the selection and order of preference must be immediately sent to all of those that responded to the agency selection committee's invitation to submit information.
7. The governing body of the using agency or its designee shall negotiate a contract for services with the most qualified person or firm, at a compensation which is fair and reasonable to the state, after notice of selection and ranking. Should the governing body of the using agency or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations must be formally terminated. Negotiations must commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons or firms in order of their competence and qualifications must be selected after consultation with the agency selection committee, and negotiations must be continued in the same manner until agreement is reached.

54-44.7-04. Exception.

1. All state agencies securing architect, engineer, construction management, or land surveying services for projects for which the fees are estimated not to exceed thirty-five thousand dollars may employ the architects, engineers, construction managers, and land surveyors by direct negotiation and selection, taking into account all of the following:
   a. The nature of the project.
   b. The proximity of the architect, engineer, construction management, or land surveying services to the project.
   c. The capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time.
   d. Past performance.
   e. Ability to meet project budget requirements.

   This procedure shall still follow state policy set forth above.
2. Fees paid pursuant to this section during the twelve-month period immediately preceding negotiation of the contract by any single state agency for professional services performed by any one architectural, engineering, or land surveying person or firm may not exceed seventy thousand dollars. All persons or firms seeking to render

professional services pursuant to this section shall furnish the state agency with which the firm is negotiating a list of professional services, including the fees paid, performed for the state agency during the twelve months immediately preceding the contract being negotiated.

54-44.7-05. Splitting projects or services contracts prohibited.

No using agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of this chapter.

57-02-02. Abbreviations used in land descriptions. Abbreviations used in describing real estate may be as follows:

1. In all proceedings, lists, advertisements, records, notices, and documents relative to assessing, advertising, or selling real estate for taxes or special assessments, it is sufficient to describe such real estate by the use of initial letters, abbreviations, and figures to designate the township, range, section, or part of section, and the number of a lot or block.

2. Whenever the letters N., E., S., or W. are used, they must be construed to mean north, east, south, and west, respectively.

3. Whenever there are used the initial letters N.W., S.W., N.E., or S.E., whether in capital letters or small letters, and whether each letter is followed by a period or the two are written connectedly without a period to signify the same to be an abbreviation of two words, and whenever said letters are used in connection with section numbers to designate land descriptions, and in the absence of proof to the contrary, it must be presumed that the same are abbreviations for and mean "northwest", "southwest", "northeast", and "southeast", respectively.

4. When two or more sets of such abbreviations are used connectedly, as for example N.E. S.E., the same must be presumed to mean the "northeast quarter of the southeast quarter".

5. When any such initial letters are followed with a numeral placed in the position of an algebraic exponent, as $N.W._{4}$, $S.W._{4}$, $N.E._{4}$, or $S.E._{4}$, with the figure placed on or above the line, the description must be taken to mean the "northwest quarter", "southwest quarter", "northeast quarter", or "southeast quarter", respectively. The abbreviation $N._{2}$, $S._{2}$, $E._{2}$, or $W._{2}$ must be presumed to mean the "north half", "south half", "east half", or "west half", respectively, of the section or quarter or other portion of land designated immediately following it.

6. Combinations of such letters and figures must be read accordingly, as $S._{2}$ $N.E._{4}$ must be taken as intended to mean and describe the "south half of the northeast quarter", and similar combinations of such letters and exponents must be construed accordingly.

7. In the absence of such figure placed in the position of an exponent, whenever abbreviations N.W., S.W., N.E., or S.E. are used alone or with similar abbreviations, they must be presumed to mean and be read as "northwest quarter", "southwest quarter", "northeast quarter", or "southeast quarter", respectively, unless it appears clearly from the context that another meaning is intended.

8. The abbreviation sec. must be taken as meaning "section", the letters "t" or "twp" or "tp" must be taken to mean "township", the letters "r" or "rg" or "rge" must be taken to mean "range", the abbreviations "b" or "blk" or "bk" must be taken to mean "block", the abbreviations "add" or "ad" must be taken to mean "addition", and the abbreviations "sub" or "subd" must be taken to mean "subdivision".

9. The abbreviation "do" or the characters "„" or other similar abbreviation or character, must be construed to mean the same name, word, initial, letter, abbreviation, or figure as the last preceding one written or the one written immediately above.

10. No description in which the foregoing abbreviations, symbols, initial letters, figures, or characters definitely can be understood by the application of the definitions and rules in this section may be held defective because such abbreviations are used instead of words or figures symbolized thereby.

57-02-38. Units of real property for assessment. In all assessment books and tax lists and in all proceedings for the collection of taxes and proceedings founded thereon, unplatted land and undeveloped land platted before March 30, 1981, not situated within the limits of an incorporated city must be described in subdivisions not exceeding quarter sections. Real property in the platted portion of a city or real property platted on or after March 30, 1981, that is located outside any city and is not agricultural property under the conditions set out in subsection 1 of section 57-02-01, must be assessed separately as to each lot. When a building or structure covers two or more contiguous lots or parts of lots owned by the same person the assessment may not be entered separately as to each lot or part of lot, but the tract upon which the building is located must be described and assessed as one parcel. A block which has not been subdivided may be described, assessed, and taxed in a unit of one block. A failure to comply with the provisions of this section does not impair the validity of taxes.

57-02-39. Irregularities of land to be platted into lots if required. If any tract or lot of land is divided into irregular shapes which can be described only by metes and bounds, or if any addition or subdivision which already has been platted into blocks and lots and subsequently sold into parts of blocks or lots which can be described only by metes and bounds, or if the courses, distances, and sizes of each lot or fractional lot are not given or marked upon the plat so that the precise location of each lot and fractional lot can be ascertained accurately, surveyed, or laid out, the owner of such tract or tracts, upon the request of the county auditor, shall have such land platted or replatted, as the case may be, into lots or blocks according to deeds on record. If such plat cannot be made without an actual survey of the land, the same must be surveyed and platted and the plat thereof recorded. If the owners of any such tract refuse or neglect to cause such plat and survey, when necessary, to be made and recorded within thirty days after such request, the county surveyor, or some other competent surveyor, upon the request of the county auditor, shall make out such plat from the records of the recorder if practicable, but if it cannot be made from such records, then the surveyor shall make the necessary survey and plat thereof, and the county auditor shall have the same recorded, but no such plat may be recorded until approved by the city engineer of the city affected thereby, and if there is no city engineer, then by the county surveyor. A certificate of the approval of such plat must be made by the officer making the same endorsed on the plat or map. Such certificate also must be recorded and forms a part of the record. When such plat has been duly certified and recorded, any description of the property in accordance with the number and description set forth in such plat must be deemed a good and valid description of the lots or parcels of land so described. No such plat or description may bear the name or number which already has been applied to any plat or description previously made and recorded as a part of any such city. When the owner of such land fails to comply with the provisions of this section, the cost of surveying, platting, and recording must be paid by the county, upon allowance by the board of county commissioners, and the amount thereof must be added to the taxes upon such tracts or lots the ensuing year. Such taxes, when collected, must be credited to the county general fund. The surveyor making such survey or plat is entitled to receive for services in making the same the compensation allowed by law for doing other county surveying or platting, and such fees become a legal charge upon such tracts of land.

57-05-02. Right of way not used for railroad purposes to be surveyed. Where any railroad allows any portion of its roadway to be used for any purpose other than the operation of a railroad thereon, and the part so used is located on lands which can be described only by metes and bounds, the county auditor of the county in which such lands are located, or the state tax commissioner, may request such railroad company, in writing, to survey and plat such lands and file such plat with the county auditor. If the railroad company fails to cause such plat and survey to be made and filed within thirty days after such request, the county auditor or tax commissioner shall cause the said survey to be made and such land platted, and the expense thereof must be paid by such railroad company, and if not paid the same must be added to the tax against such lands and collected as other real estate taxes are collected.

57-05-05. Maps of railroad right of way - Filing - Penalty. Each railroad corporation doing business in this state shall file a map, within six months after location of its right of way, with the county auditor of each county in which such railroad or any part thereof may be located, showing:

1. The exact location of all rights of way and sidetracks, showing on which side of section and other lines its property is located in each assessment district in each county, owned or occupied by such railroad corporation;

2. The number of acres [hectares] in each parcel of land included by such railroad corporation in such county as a right of way; and

3. A description of any other property owned by said corporation in each assessment district in such county.

In subsequent years, said corporation need only file maps showing any changes that have been made since the report of the previous year. Any railroad corporation which violates any of the provisions of this section is guilty of an infraction and also is liable for the expense incurred as provided in section 57-05-10 in procuring the information in any manner other than that provided in this chapter, to be collected in a civil action in the name of the state.

61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report. For the purpose of ascertaining the cost of any irrigation construction work in a district, the board shall cause such surveys, examinations, and plans to be made as may demonstrate the practicability of the plan and furnish the proper basis for an estimate of the cost of carrying out the plan. All surveys, examinations, maps, plans, and estimates must be made under the direction of a registered professional engineer, who may be the state engineer, and must be certified by the registered professional engineer. The board shall submit a copy to the state engineer who shall prepare a summary report and file the report with the board. The report must contain such matters as in the judgment of the state engineer are desirable. Upon receiving the report, the board of directors shall determine the amount of money required to be raised.

CHAPTER 61-15
WATER CONSERVATION

61-15-01. Definitions.
Repealed by S.L. 2013, ch. 481, § 2.

61-15-02. Control of water and wildlife conservation projects vested in state.
Repealed by S.L. 2013, ch. 481, § 2.

61-15-03. Water and wildlife conservation projects - Supervision.
The authority, control, and supervision of all water and wildlife conservation projects and wildlife reservations shall be vested in the state engineer. The state engineer may accept cooperation, aid, and assistance from the United States of America, its instrumentalities or agencies, in the construction, maintenance, and operation of any structure for the purposes set forth in this chapter and may do any act necessary to make such aid, assistance, and cooperation from the federal government available, and shall have the right to grant such easements to the United States of America, its instrumentalities or agencies, as may be required.

61-15-04. Easements to United States of America for water and wildlife conservation.
An easement may be granted to the United States, its instrumentalities or agencies, over all lands now owned or hereafter acquired by the state of North Dakota for rights of way for ditches, dams, dikes, fills, spillways, or other structures now constructed or to be constructed for the purpose of water or wildlife conservation.

61-15-05. Recording or filing fees for documents required by United States or state for water or wildlife conservation project.
Repealed by S.L. 1947, ch. 189, § 1.

61-15-06. Board of university and school lands empowered to grant easements for water and wildlife conservation.
The board of university and school lands may grant to the United States of America, its instrumentalities or agencies, such easement rights as may be required for the construction, maintenance, and operation of any dam, dike, ditch, fill, spillway, or other structure erected or to be erected for water or wildlife conservation purposes on the public lands of this state.

61-15-07. Water and wildlife conservation projects not to diminish value of land.
Repealed by S.L. 1963, ch. 417, § 26.

61-15-08. Drainage of meandered lake - Penalty.
Repealed by S.L. 2013, ch. 481, § 2.

61-15-09. Conservation of lakes and streams of Turtle Mountain region.
The state engineer of this state shall take such action as may be necessary to conserve the water levels and rehabilitate the streams and brooks in the Turtle Mountain region of North Dakota lying in Bottineau and Rolette Counties, and shall do any act necessary to bring about such rehabilitation of streams, lakes, and brooks.

61-15-10. Permitting municipal corporations to dam Red River of the North.
Any municipality owning or permanently controlling land upon which a proposed dam is to be constructed may construct a dam thereon and across that portion of the Red River of the North which forms a part of the boundary common to the state of North Dakota and the state of Minnesota, for the purpose of conserving water for municipal, commercial, and domestic use, constructing in connection therewith such appliances, fishways, raceways, sluiceways, and wasteways as may be necessary or convenient for the proper construction and utility of such

dam and as may be required by law. If required by law or treaty, the consent of the United States and of the state of Minnesota shall be obtained first.

CHAPTER 61-21
DRAINAGE ASSESSMENT PROJECTS

61-21-01. Definitions.

In this chapter, unless the subject matter otherwise requires:

1. "Affected landowners" means landowners whose land is subject to assessment or condemnation.
2. "Board" means the board of managers of a water resource district.
3. "Cleaning out and repairing of drain" means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
4. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for drainage and any artificial drains of any nature or description constructed for that purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.
5. "Lateral drain" means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain; provided, that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.

61-21-02. Watercourses, ditches, and drains may be constructed, maintained, repaired, improved, or extended.

Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and other lowlands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter wherever the same shall be conducive to the public health, convenience, or welfare. The powers conferred by this chapter and this section shall extend to and include:

1. The deepening and widening or any necessary improvement of drains which have been or hereafter may be constructed.
2. The straightening, clearing, or cleaning out and deepening of channels of creeks, streams, and rivers, and the construction, maintenance, remodeling, repairing, and extension of levees, dikes, and barriers for the purpose of drainage.
3. The location or extension of any drain if such location or extension is necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area of such drains.
4. The establishment, in whole or in part, of a drain and the completion of the same on the line of an abandoned or invalid drain.
5. The establishment and construction of lateral drains with outlets in drains already constructed.
6. The installation of artificial subsurface drainage systems.

61-21-02.1. Assessment drain culverts.

As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the state engineer.

61-21-03. Board of drainage commissioners - Appointment - Term - Removal - Compensation.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-04. State and county officers not eligible as drain commissioners - Matters of personal interest to drain commissioners.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-05. Powers of board.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-06. Board's report to board of county commissioners - Contents - Inspection - Liability of drain commissioner on bond.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-07. Oath and bond filed by drain commissioners - Organization of board - Quorum.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-08. Office, records, clerk, and employment of personnel.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-09. Levy for administrative expense - Payment of commissioners' salaries and overhead expense.

Repealed by S.L. 1981, ch. 632, § 12.

61-21-10. Petition for construction of drain - Purposes of drain - Signers to petition.

A written petition for the construction of a drain may be made to the board. Such petition shall designate the starting point, terminus, and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the people of any city, the petition shall be signed by a sufficient number of the property owners of such city to satisfy the board that there is a public demand for such drain. The petition shall be signed by at least six property owners or a majority of the landowners within the proposed district whose property will be drained by the proposed drain.

61-21-11. Bond required from petitioners.

The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the board should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resource board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

61-21-12. Examination of line for drain - Designation of surveyor - Specifications - Cost estimates.

Upon presentation of a petition as provided in section 61-21-10, the board shall examine the line of the proposed drain, and if in its opinion further proceedings are warranted, it shall adopt a resolution to that effect and designate a competent surveyor or engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees may enter upon any land traversed by any proposed drain or any other lands necessary to gain access thereto. The surveyor or engineer shall prepare profiles, plans, and specifications of the proposed drain, estimates of the total cost thereof, and a map or plan of the lands to be drained showing the regular subdivisions thereof, which map or plan shall be filed in the office of the county auditor for inspection by the public. In determining the best location for the proposed drain, the board may in its discretion set the location on lines differing from the lines described in the petition. When the length of line described in the petition does not give sufficient fall to drain the land

sought to be drained, the board may extend the drain below the outlet named in the petition. The estimate of costs prepared by the surveyor or engineer shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed drainage district.

61-21-13. Hearing on petition to establish drain and surveyor's report - Notice - Contents.

Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12, the board shall fix a date and place for public hearing on the petition. Such place of hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners subject to assessment for such drain or whose property shall be subject to condemnation for the proposed drain. At least ten days before such hearing, the board shall file with the county auditor a list showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing on the petition. At least ten days' notice of such hearing shall be given by publishing a notice at least once in the official newspaper of the county in which the proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain and each landowner whose property shall be subject to condemnation for the proposed drain as shown by the record in the office of the recorder shall be mailed a notice of such hearing at the owner's post-office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition. The notice of hearing shall specify the point or place of beginning of the proposed drain and where it terminates, and shall describe the general course of the drain as finally determined by the engineer and the board. The notice of hearing shall also specify when and where votes for and against such proposed drain shall be filed. The final date when votes must be filed shall not be less than ten days after the date of the hearing on the petition. A form of ballot shall be mailed with the notice of hearing for use by the affected landowners in voting for or against the proposed drain. An affidavit of mailing signed by the attorney or clerk of the board or other person mailing such notices shall be filed with the county auditor who shall file such affidavit with the records of the proceedings pertaining to that drain. All persons whose land may be subject to assessment for such drain or whose property shall be subject to condemnation for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

61-21-14. Conduct of hearing on petition to establish drain.

Prior to the hearing provided for in section 61-21-13, the board shall first prepare a roster or roll of affected landowners subject to assessment for such drain or whose property shall be subject to condemnation for such drain, and shall limit voting rights to such landowners. A record shall be made by the board of affected landowners present in person or by agent and such records shall be preserved in the minutes of the meeting. Affected landowners shall then be informed of the probable total cost of the project and their individual share of such cost and the amount of their property to be condemned for such project. The board shall fix a time, which shall not be less than ten days after the hearing on the petition, within which the votes for and against the establishment of the proposed drain shall be filed with the board. Objections to or approvals of the drain in writing may be filed with the board and shall be considered as votes for or against the proposed drain, as the case may be. A telegram shall be deemed writing, and any form of written approval or objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing votes for or against the proposed drain has been reached, no more votes for or against such drain shall be filed and no person shall withdraw that person's name from the list of those voting for or against the proposed drain after the deadline for filing votes has been reached. Any withdrawals of objections to or approvals of the proposed drain before that time shall be in writing only. When the votes of affected landowners have been filed and the deadline for filing votes for and against such drain has been reached, the board shall immediately proceed to determine whether or not more than fifty percent of the votes filed, as determined by section 61-21-16, are in favor of the construction of the drain. Until such determination is made, the board is without jurisdiction to take any further steps in the matter

except to determine whether more than fifty percent of the votes filed are in favor of the drain and to adopt a resolution for discontinuance, if not more than fifty percent of the votes filed favor construction of the drain.

61-21-15. Denying or making order establishing drain - Costs when petition denied.

If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition or upon the trial in the district court, it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of the benefits to be derived therefrom or that fifty percent or more of the votes of affected landowners as determined by section 61-21-16, which were filed with the board, are opposed to such drain, the board shall deny the petition. An objection in writing filed with the board shall, as provided in section 61-21-13, be considered the same as a vote by ballot. The board may bring an action against the petitioners or upon their bond for all costs and expenses incurred in the proceedings, in which case the petitioners shall be jointly and severally liable, or the board may pay the costs and expenses out of any moneys available. If it shall appear, after due hearing as provided in sections 61-21-13 and 61-21-14, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is approved by more than fifty percent of the votes of the affected landowners filed with the board as determined by section 61-21-16, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

61-21-16. Voting right or power of landowners.

In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed drain, the voice or vote of affected landowners on the question of establishing the drain shall be arrived at in the following manner:

The landowner or landowners of tracts of land affected by the drain shall have one vote for each dollar of assessment that the owner's land is subject to or one vote for each dollar of the assessed valuation of land condemned for the drain, as estimated by the board under the provisions of section 61-21-12. It is the intent of this section to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's interest.

A written power of attorney shall authorize an agent to cast the votes of any affected landowners.

61-21-17. Notice of order establishing drain and period for appeal.

Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in the county. The notice must include a copy of the order and must advise the affected landowners of their right to appeal under section 61-21-18.

61-21-18. Appeal to district court - Time - Undertaking - Hearing.

Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. The appeal must be taken in accordance with the procedure provided in section 28-34-01. The appellant must give an undertaking to be approved by the clerk of district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. The undertaking must run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear the appeal not less than ten days nor more than thirty days after the filing of the appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case must be tried in all respects as a court case without a jury. Where the

appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

61-21-19. Right of way - How acquired - Assessment of damages - Issuance of warrants.

Subject to chapter 32-15, the right of way for the construction, operation, and maintenance of a proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain. If lands assessed for drainage benefits are not contiguous to the drain, access right of way thereto over the land of others may be acquired in the same manner. The right of way, when acquired, is the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer that have been collected for the construction of the drain for which the right of way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer or water resource district treasurer, who shall place the same to the credit of the proper drain fund.

61-21-20. Assessing cost of constructing and maintaining drain.

After the making of the order establishing the drain, the board shall assess the percentage of the cost of acquiring right of way and constructing and maintaining such drain in accordance with benefits received, against:

1. Any county, township, or city which is benefited thereby; and
2. Any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by such drain or by such drain in connection with other existing or proposed drains.

No land already included in and being assessed by an existing drainage district shall be included and assessed in any newly formed drainage district unless it can be shown that such land will be benefited by the construction of the new drain. The board in considering the benefit and assessing the percentage of costs to each affected tract, parcel, or piece of land may, among other things, take into consideration the present drainage facilities under any existing drainage district, potential use of the proposed drain by such land, whether any such lands will be benefited or harmed by any change in the existing flow and course of drainage water by reason of the construction of the drain, and such other matters as may be pertinent to the question of benefits.

61-21-21. Assessment subject to review - Notice of time and place.

The percentage assessments provided for in section 61-21-20 shall be subject to review, and ten days' notice of the time and place where such percentage assessments will be reviewed by the board shall be given by publication in a newspaper having general circulation in the county. In addition, each owner of land affected by the proposed drain as shown by the record in the office of the recorder or county treasurer shall be mailed a notice of such hearing at the owner's post-office address as shown by such records, and an affidavit of mailing shall be filed with the proceedings of such drain.

61-21-22. Hearing on assessment - Appeal to state engineer - Correction of assessments - Relocating drain - Fees of state engineer.

At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by

section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition within ten days after the hearing on assessments, to make a review of such percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition, the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to the state engineer that such assessments have not been made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessments shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed drain. For the state engineer's services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time the state engineer is engaged upon such work. All moneys received by the state engineer shall be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any landowner who may claim that the landowner will receive no benefit at all from the construction of a new drain may appeal the question of whether there is any benefit to the state engineer upon the filing of a bond in the sum of two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter. The state engineer shall not determine the specific amount of benefits upon an appeal by an individual landowner, but shall only determine if there is any benefit to the landowner, and the determination of the state engineer upon such question shall be final.

61-21-23. Recording assessment.

After the percentage assessment of benefits has been made, as provided in section 61-21-20 and confirmed upon hearing as provided in section 61-21-22, the board shall record such percentage assessments in the permanent records of the drain and such percentage assessment shall further be permanently recorded by the county auditor in a book of drainage assessments.

61-21-24. Notice of letting of contracts.

After the recording of percentage assessments as provided in section 61-21-23, the board shall then give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. Such notice shall be published at least once in a newspaper having general circulation in the county.

61-21-25. Letting of contracts for drains.

The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof, in accordance with chapter 48-01.2.

61-21-26. Extension of time to contractors - Reletting unfinished part of contract.

The board may grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board in its discretion at any time thereafter may relet such unfinished portion or any part thereof to the lowest responsible bidder, and shall take security as before. The cost of completing such unfinished portions over and above the contract price, and the expense of notices and reletting shall be collected by the board from the parties first contracting. In no case shall the board forfeit and annul a contract without giving five days' notice to the contractor, if the contractor can be found or has a known place of residence in the county. Such notice may be given to such contractor personally or may be left at the contractor's place of residence.

61-21-27. Apportionment and taxation of costs.

After the letting of contracts or a portion thereof, the board shall compute the cost of the drain, including estimated costs of any unfinished portions. The board shall determine the sum to be levied to pay such cost, which sum shall be prorated and assessed against lands in accordance with the percentage determined under section 61-21-20. A copy of the list of assessments shall be served on the clerk or auditor of each municipality against which taxes are to be assessed and shall also be filed in the office of the county auditor of the county or counties in which municipalities and lands benefited by the drain are situated. The provisions of section 61-21-52 shall apply to the levies and assessments provided for in this section.

61-21-28. Collection of drain taxes.

The county treasurer shall collect the drain taxes and shall credit all moneys so collected to the drain fund to which they belong. The county treasurer shall act as the custodian of the drain funds unless the board of the water resource district having jurisdiction over the drain requests otherwise in writing. Upon receiving a written request from the water resource district board, the county treasurer shall pay all moneys collected, and the earnings thereon, to the treasurer of the water resource district, who shall then act as the custodian of the drain funds. A direction by a board is effective for all moneys then in the custody of the county treasurer and all moneys subsequently collected thereafter unless and until the board directs in writing that the county treasurer act as the custodian of the moneys.

61-21-29. Payment of costs and expenses of locating, constructing, maintaining, and improving drain - Warrants issued.

Payment of all expenses and costs of locating and constructing a drain must be made upon order of the board and warrants therefor must be signed by the chairman and one other member of the board. All warrants drawn by the board in payment of items of expense of a drain are payable from the proper drain fund and must be accepted by the treasurer in payment of taxes levied in regard to the drain. All warrants, after presentation to the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer for payment, if not paid for want of funds, must be registered by the county treasurer or water resource district treasurer and thereafter bear interest at a rate not to exceed eight percent per annum. The county commissioners, by proper resolution, are authorized to purchase drainage warrants from general county funds in instances when the warrants will be funded by a bond issue within six months from the date of purchase.

61-21-30. Additional assessment to meet deficit or additional expense.

In case the amount realized from the assessment made for the acquisition of right of way or for the construction, improvement, repair, and maintenance of any drain is not sufficient to pay all necessary expenses in regard thereto, or to pay and retire any bonds issued in connection with such operations, a further assessment shall be made to meet such deficit and such additional amount shall be levied and collected in the manner provided in sections 61-21-27, 61-21-28, and 61-21-52.

61-21-31. Drains along and across public roads and railroads.

Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. Where it is necessary to run a drain across such highway, the department of transportation, board of county commissioners, or the board of township supervisors, as the case may be, when notified by the board to do so, shall make necessary openings through such road or highway and shall build and keep in repair all suitable culverts or bridges at its own expense, as provided under the applicable provisions of section 61-21-32. Where drains are laid along or within the limits of roads or highways, such drains shall be maintained and kept open by the board at the expense of the drainage district concerned. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad, the railroad company, when notified

by the board to do so, shall make the necessary opening through said road and shall build suitable bridges and culverts and keep them in repair.

61-21-32. Construction of bridges and culverts - Cost.

The board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of the construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner: The state water commission may, if funds are available therefor, participate in the portion of the cost thereof that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe. The remaining cost thereof shall be borne on the basis of forty percent by the county and sixty percent by the water resource district or the drainage district which has created the need for such construction. If, however, moneys have not been made available to the commission for such participation, then and in that case, forty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and sixty percent shall be charged as cost of the drain to the drainage district. Whenever any bridge or culvert costing one hundred dollars or less is needed on any such road, the cost of such bridge or culvert shall be charged on the basis of sixty percent to the water resource district or the drainage district and forty percent shall be borne by the township in which such bridge or culvert is located.

In the case of such bridge or culvert construction when there is federal financial participation, if there are costs exceeding the amount of such federal participation then the excess balance shall be borne by the water resource district, drainage district, county, or township, according to the foregoing provisions of this section, as the case may be.

61-21-32.1. Culvert and pipe arch bids and acceptance.

A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

61-21-33. Boards of two or more counties may construct drains through counties.

Whenever it shall be deemed necessary by the boards of two or more counties in this state to construct or extend a drain through or into two or more counties in this state, the several boards in the counties into or through which such proposed drain may extend when completed may establish, construct, and maintain such drain through or into two or more counties in the manner provided in section 61-21-34.

61-21-34. Procedure to construct or extend a drain through or into two or more counties.

In order to construct or extend a drain through or into two or more counties in this state, a petition shall be presented to the several boards for the establishment of such drain in their several counties as provided in this chapter. The boards of such several counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of such drain. The several boards of all counties through or into which such proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose they shall consider the entire course of said drain through all said counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county, they shall submit the points in controversy to the state engineer of the state water commission, and the state engineer's decision thereon shall be final. They may apportion the

cost of establishing and constructing such entire drain ratably and equitably upon the lands in each such county in proportion to the benefits to accrue to such lands. When they have so apportioned the same, they shall make written reports of such apportionment to the auditors of the several counties affected, which reports shall show the portion of cost of such entire drain to be paid by taxes upon the lands in each of such counties and such reports shall be signed by the boards of all counties affected. Upon the filing of such reports, the several boards shall meet and assess against the lands in each of such counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of such drain in each of such counties so fixed by all said boards. The provisions of this chapter relating to drains within a single county shall govern the establishment, construction, maintenance, repair, and cleanout of such drains.

61-21-35. Settlement of unpaid warrants.

In the event that drain warrants which have been issued pursuant to the establishment of a drain in two or more counties remain unpaid and the amounts realized from the original assessments made are not sufficient to pay said warrants and an additional assessment would be necessary to meet such deficit, the board of county commissioners of any county affected, if such board finds that such county has received benefits from such drain by reasons of public health, convenience, or welfare, as provided by law, and might therefore be liable for assessment or reassessment and that the credit of the county is or might be affected by the existence of such outstanding and unpaid warrants, may negotiate and execute a settlement with the owners of such warrants and pay the amount of such settlement from the general fund of the county.

61-21-36. Cooperating with drainage boards or officials of other states in drainage matters.

Any board established under the laws of this state, either severally or jointly with other boards, may cooperate with any similar drainage districts or drainage boards in any adjoining state in the establishment of any drainage area or drainage basin for the control of boundary waters between such states.

61-21-37. Drainage boards or commissioners of different states may meet in joint conference to effectuate cooperation.

In order to effectuate the cooperation provided for in section 61-21-36, any board may:

1. Meet in joint conference to agree upon joint plans of procedure.
2. Employ jointly with other similar boards a competent engineer.
3. Carry into effect the plans and suggestions adopted at any such joint conference in accordance with the laws of this state with reference to the construction of drains and drain improvements.
4. Assess the costs thereof upon the drainage district or area affected in accordance with the benefits received.

61-21-38. Proceedings in drainage matters other than establishment and construction of drains - Establishment of lateral drains.

Unless otherwise specified, all proceedings under the provisions of this chapter affecting the rights of persons and property shall be taken in accordance with the procedure governing the establishment and construction of drains in the first instance, except that a petition for the establishment and construction of a lateral drain shall be sufficient if signed by one or more freeholders whose property will be affected by the lateral drain.

61-21-39. Petition for a lateral drain - Bond of petitioners - Penalty.

1. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. Whenever improvements

of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event that the board shall determine that such improvements to the original drain are also beneficial to property served by the original drain, the board may assess such portion of the cost of the improvements as it shall determine to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board within ten days shall commence proceedings for the construction of such lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except the petitioners as provided in this section. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by such petitioners. The petitioners shall pay into the county treasury the amount so determined, and they shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

2. When one or more of the property owners to be benefited by the construction of a lateral drain or ditch petition the board for the construction of a lateral drain or ditch, the board shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.
3. Repealed by S.L. 1975, ch. 569, § 4.
4. Any person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

61-21-40. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions.

The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established; or
3. Of a lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding may be brought to reverse or to declare void the proceedings by which any drain has been located or established, or to enjoin the tax levied to pay therefor, on application of either party, shall appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary. The court, on a final hearing, shall make such order in the premises as shall be just and equitable, and may order such tax or any part thereof to remain on the tax lists for collection, or if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

61-21-41. Establishing new drains in location of invalid or abandoned drain.

If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended, and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board

shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

61-21-42. Drain kept open and in repair by board.

All drains that have been constructed in this state except township drains shall be under the charge of the board and it shall be the duty of the board to keep such drains open and in good repair. When a drain is situated in more than one county, the drainage board of each county shall have charge of the maintenance of that portion of the drain located in its county. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any drain when requested to do so by petition of fifty-one percent of the affected landowners. The percentage of affected landowners of record in the treasurer's office or recorder's office favoring such cleaning out or repairing shall be determined by the weighted voting method as provided in section 61-21-16.

61-21-43. Assessment of costs of cleaning and repairing drains.

The cost of cleaning out and repairing a drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances in which there has been a reassessment of benefits under the provisions of section 61-21-44. If no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction.

If the board determines that an obstruction to a drain, including if the drain is located within a road ditch, has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting the landowner or landowner's tenant to maintain the obstruction. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must

be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

61-21-44. Reassessment of benefits.

The board may hold at any time and, upon petition of any affected landowner after a drain has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing must be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

61-21-45. Contracts for work of cleaning and repairing drains.

If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, a contract must be let in accordance with chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

61-21-46. Maximum levy - Accumulation of fund.

1. The levy in any year for cleaning out and repairing a drain may not exceed four dollars per acre [.40 hectare] on any agricultural lands in the drainage district.
   a. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full four dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
   b. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.
2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

61-21-47. Expenditures in excess of maximum levy.

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of four dollars per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

61-21-48. Reconveyance of land no longer required for drainage purposes.

Whenever land has been acquired for drainage purposes and is no longer required for such use, the board of county commissioners may reconvey such land to the present owner of the adjacent property if such party in payment thereof surrenders all warrants issued in payment of the land or repays the amount of cash paid therefor.

61-21-49. County may pay share of drainage taxes on tax deed lands.

If lands acquired by the county by tax deed are assessed drainage taxes, the county commissioners shall pay such taxes from general funds if it appears after a due appraisal that the value of the land exceeds the total of the delinquent taxes for which foreclosure proceedings were instituted plus the total drainage tax assessment. If the total of taxes assessed at foreclosure plus drainage taxes exceeds the value of the land, the county shall not pay the drainage assessments but upon sale of such land any excess of the sales price over and above the amount of taxes for which the foreclosure proceedings were instituted shall be paid to the drainage district to the full extent of drainage taxes due. Any income from the property shall be first credited to the general taxes and any surplus income shall be paid to the drainage district to the extent of drainage taxes due.

61-21-50. Drain warrants - Terms and amounts.

Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their faces the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection therewith, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-21-27, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

61-21-51. Payment of drain assessments - Interest.

Drain assessments may be paid in full or in part at any time after the same have been filed in the office of the county auditor, provided that all such assessments shall bear interest at a rate to be set by the board, which rate shall be not less than the rate payable on warrants or

bonds issued for the drain financed by such warrants or bonds. Interest shall be computed from the date of filing the assessment list in the office of the county auditor, or, if bonds are issued for right of way or for construction, extension, or renovation, from the date of first publication of the preliminary bond issue resolution, whichever date is the earlier.

61-21-52. Lien for and enforcement of drain assessments.

Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city shall be served on the auditor thereof promptly following completion. The assessment list shall then be filed in the office of the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor, the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This chapter shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced and in the same manner as is provided in title 57. If no satisfaction of tax lien is made, the affected property shall pass absolutely to the board on foreclosure of tax lien provided the board pays the amount for satisfaction of lien, except the amounts of drain assessments, and may thereafter be sold by the board at public sale. The governing body of each city against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges, and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.

61-21-53. Drain bonds.

The board may issue bonds to finance acquiring drain right of way, locating and constructing drains, and funding unpaid drain warrants heretofore issued, or issued hereafter under this chapter. Drain bonds issued in whole or in part to finance expenditures for which warrants have not been issued shall not be authorized until after firm contracts for projected drain work have been made and proper undertakings therefor have been executed and filed, or until after the drain work has been completed. Proceedings for the issuance of bonds shall be initiated by the adoption of a preliminary resolution of the board which shall include information and findings as follows:

1. The maximum amount of drain bonds proposed to be issued.
2. The maximum interest rate such bonds shall bear.
3. Designation of the calendar years in which such bonds shall mature.
4. The complete name of the drain for which such bonds are to be issued.
5. The purpose or purposes for which the proceeds of the bonds will be used, including the total amount of drain warrants to be bought with such proceeds.

When such preliminary resolution has been duly adopted by the board, the board shall proceed to have the text thereof published in a legal newspaper of general circulation in the locality in which the particular drain is situated, and there shall be published with and as a part of such text a statement that from and after the expiration of thirty days next following the date of the first

printing of such text, no action may be commenced or maintained, and no defense or counterclaim may be recognized in the courts of this state to question or impair the drain warrants resolved to be funded, or the drain assessments supporting such warrants. There shall also be included in such publication the further statement that a complete list identifying the drain warrants proposed to be funded has been filed in the office of the county auditor of the county or counties in which the affected lands are located. Such publication shall be made once each week for three successive weeks and proper proof thereof shall be filed with the board. The validity and enforceability of any drain warrant or of any assessment supporting the same shall not be vulnerable to attack in the courts of this state unless an appropriate action or proceeding is commenced or a defense or counterclaim is served within thirty days next following the date of first printing of such publication. The board shall prepare and file with the auditor of the proper county or counties a complete list identifying the drain warrants proposed to be funded by such bonds, and such list, or true copies thereof, shall be filed prior to the date of the first printing of said preliminary resolution. Within a reasonable time, and more than thirty days after the first printing of such preliminary resolution, the board may proceed to authorize the preparation and sale of drain bonds in accordance with such resolution. The bonds shall bear interest at a rate or rates resulting in an average net interest cost not to exceed twelve percent per annum on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The bonds shall contain a provision that interest thereon shall cease at maturity unless the holder shall present the same for payment and payment is refused, shall designate the fund from which they are payable, and shall be offered for sale and sold as provided in chapter 21-03, for the offering and sale of general obligation bonds of governmental subdivisions of this state. Wherever drain bonds are issued for drain warrants, the bonds in the appropriate amount may be exchanged for the warrants, but the basis of exchange shall be such that the average net rate of interest on the bonds will not exceed the rate on the warrants refunded. Drain warrants purchased with the proceeds of bonds shall not be canceled but shall be retained by the board as assets of the drain fund from which the warrants are payable. The fund shall be continued and payments therefrom shall be made on the warrants drawn thereon without reference to the bond issue, but all such payments shall be placed in the fund from which the bonds are payable and shall be applied to service such bonds and to pay the interest thereon. Bonds issued by drainage districts shall be eligible for purchase by the various trust funds of the state of North Dakota and its instrumentalities.

61-21-54. Sinking funds and bonds.

The board shall establish a sinking fund for each issue of bonds, which fund shall consist of all drain assessments made for the bonds, all warrants funded and all assessments for such warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain, and any other moneys which may be appropriated to the sinking fund. Separate sinking funds shall be provided for each separate drain for which bonds shall have been issued. Until the purpose of the sinking fund has been fulfilled, no moneys in any such sinking fund shall be applied to any purpose other than payment of the bonds for which such fund was created.

61-21-55. Liability for deficiencies - Maintenance of sinking fund.

During the month of June of each year, the board shall prepare a complete statement of the condition of the finances of each drain and shall cause the same to be filed with the county auditor on or before July first next following. At its July meeting next following the filing of each statement of financial condition of any drain, the county board shall examine such statement and determine whether or not any drain has defaulted or will default on its financial obligations. If it appears to the county board that any drain does not have moneys and drain assessments receivable equal to one hundred percent of its obligations coming due within thirteen months next following, the county board shall pay from the county general fund into the sinking fund for drain warrants or bonds or shall proceed to levy a general property tax, the proceeds of which, together with drain moneys on hand and the probable prior yield of drain assessments will

amount to one hundred ten percent of the obligations of the drain becoming due during the thirteen months next following. Such tax or payments shall be appropriated to the sinking fund for the drain warrants or bonds, and certificates of indebtedness may be issued against the same as levied. On redemption of all warrants or bonds against any sinking fund, or upon accumulation of moneys in such fund sufficient to redeem all outstanding warrants or bonds, all surplus moneys in such fund shall be payable to the general fund of the county or counties levying general property taxes or making such payments, up to the amounts of such levies or payments.

61-21-56. Dissolution of drainage district - Return of unexpended assessments.

The owners of property subject to fifty-one percent or more of the liability for maintaining any drain as determined in section 61-21-16 may petition the board for the abandonment and dissolution of such drain. Upon receipt of such petition, the board shall call a public hearing on the petition and if the board finds the number of valid signatures to represent property liable to fifty-one percent or more of the cost of upkeep of such drain, as determined by section 61-21-16, and that such drainage district has no outstanding indebtedness, the board shall then declare such drain to be abandoned and such drainage district to be dissolved, shall record such declaration upon the minutes and publish the same in a newspaper having wide circulation in that county, and shall return all unexpended assessments collected for the maintenance of the drain to the owners of the assessed property on a pro rata basis in proportion with the amount originally assessed. In case the drainage district extends into two or more counties, the board upon receipt of the petition above referred to shall convene in joint session and call the public meeting above provided. When a drain has been abandoned and dissolved, it may then be reestablished in whole or in part only in the same way as a new drain is established.

61-21-57. Penalty for violation of rules and regulations.

If any person shall violate any valid rule or regulation promulgated by the board, that person shall be guilty of an infraction. The board may bring a civil action to recover damages resulting from violations, plus costs of suit, and all sums recovered shall be deposited with the county treasurer to the credit of the proper drain fund.

61-21-58. Existing obligations and regulations.

The passage of this chapter shall not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts and all sinking funds created for the payment of such obligations shall continue in force until the liquidation of such obligations. All valid rules and regulations promulgated by any board of county commissioners or board of drainage commissioners shall remain in full force and effect until altered or repealed by the board in the county concerned.

61-21-59. City application for joint drain.

Repealed by omission from this code.

61-21-60. Hearing on city joint drain.

Repealed by omission from this code.

61-21-61. Payments for city joint drain.

Repealed by omission from this code.

61-21-62. Board may apportion assessments for benefits of an established drain against a county or city or any tract of land benefited by an established drain.

Whenever a board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by an established drain and that the county or such township, municipality, tract, piece, or parcel of land was not included in the drainage area assessed for the cost of construction and maintenance of the drain when established, the board shall commence proceedings for reassessment of lands originally

assessed for the cost of establishing and constructing such drain and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such drain, and the expense of maintenance thereof, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the drain to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of such hearing shall be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the drain was established and by mailing such notice to the governing board of the county, township, and municipality and to the owner of each tract, piece, or parcel of land found to be benefited since the establishment of the drain, as determined by the records in the office of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

61-21-63. Drains having a common outlet may be consolidated.

Whenever one or more drains which have from time to time been constructed empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

61-21-64. Outlets.

Subject to chapter 32-15, a board may, if found necessary, by process of eminent domain acquire land needed for a sufficient outlet for any established drain.

61-21-65. Consolidation of drainage district or districts into water resource districts.

Upon resolution of the board of county commissioners or the water resource board, or upon the filing with the board of county commissioners of a petition containing the signatures of landowners possessing at least fifteen percent of the voting rights in one or more drainage districts, computed in accordance with section 61-21-16, the board of county commissioners shall set a date for hearing upon the establishment or expansion of a water resource district to include the property contained within the drainage district or districts. The board of county commissioners shall publish notice of the time, place, and purpose of the hearing once each week for two consecutive weeks in a newspaper of general circulation in the county, the second publication to be not less than ten nor more than twenty days before the date set for hearing. In the event special assessments remain outstanding upon any property within a drainage district to be affected by a hearing as provided in this section, the board of county commissioners shall notify by ordinary mail at least ten days before the date set for the hearing all landowners of record subject to the special assessments in accordance with the provisions of section 61-21-66. If, at the time and place set for hearing, a majority of affected landowners computed in accordance with section 61-21-16 shall file written objections, further proceedings shall be discontinued. If such majority does not object, the board of county commissioners shall file with the state water commission a petition signed by a majority of the board and all further proceedings shall thereafter be governed by chapters 61-16 and 61-16.1. Upon the establishment or expansion of a water resource district to include one or more drainage districts, the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water resource district.

61-21-66. Dissolution prohibited when liabilities outstanding - Disposition of assets.

Notwithstanding the provisions of section 61-21-65, no drainage district shall be dissolved if such district has any outstanding warrants, bonds, or other obligations unless the order of the board of county commissioners dissolving such district shall provide for a continuance of assessments upon properties within the dissolved district for the payment of outstanding obligations, or an assumption of such obligations by the newly created district and the spreading

of such assessments over properties within the newly created district. All sinking funds created for the payment of such obligations shall be continued in force by the new district until the liquidation of such obligations. Any funds in the treasury of the drainage district shall, upon dissolution under the provisions of section 61-21-65, be transferred to the treasury of the water resource district. Such funds may be expended separately or jointly with other funds on projects or activities of the water resource district which are of specific benefit to property in the dissolved drainage district from whence the funds were transferred or, in the discretion of the board of county commissioners, such funds may be prorated among the properties in the dissolved drainage district and credited to such property in proportion with the amount originally assessed as a credit against subsequent assessments by the water resource district.

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.

If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

CHAPTER 61-33
SOVEREIGN LAND MANAGEMENT

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
4. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

61-33-02. Administration of sovereign lands.

All sovereign lands of the state must be administered by the state engineer and the board of university and school lands subject to the provisions of this chapter. Lands managed pursuant to this chapter are not subject to leasing provisions found elsewhere in this code.

61-33-03. Transfer of possessory interests in real property.

All possessory interests now owned or that may be acquired except oil, gas, and related hydrocarbons, in the sovereign lands of the state owned or controlled by the state or any of its officers, departments, or the Bank of North Dakota, together with any future increments, are transferred to the state of North Dakota, acting by and through the state engineer. All such possessory interests in oil, gas, and related hydrocarbons in the sovereign lands of the state are transferred to the state of North Dakota, acting by and through the board of university and school lands. These transfers are self-executing. No evidence other than the provisions of this chapter is required to establish the fact of transfer of title to the state of North Dakota, acting by and through the state engineer and board of university and school lands. Proper and sufficient delivery of all title documents is conclusively presumed.

61-33-04. Existing contracts and encumbrances recognized.

The transfers made by this chapter are subject to all existing contracts, rights, easements, and encumbrances made or sanctioned by the state or any of its officers or departments.

61-33-05. Duties and powers of the state engineer.

The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter. The state engineer may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter and rules adopted under this chapter.

61-33-06. Duties and powers of the board of university and school lands.

The board of university and school lands shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.

61-33-07. Deposit of income.

All income derived from the lease and management of the lands acquired by the state engineer and board of university and school lands pursuant to this chapter and not belonging to other trust funds must be deposited in the strategic investment and improvements fund.

61-33-08. Advisory board - Responsibilities.

There is created a sovereign lands advisory board. The board's responsibility is to advise the state engineer and the board of university and school lands on general policies as well as specific projects, programs, and uses regarding sovereign lands. The board, being solely advisory, has no authority to require the state engineer or the board of university and school lands to implement or otherwise accept the board's recommendations.

61-33-09. Members of the board - Organization - Meetings.

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the state health officer, or their representatives.
2. The state engineer is the board's secretary.
3. The board shall meet at least once a year or at the call of the state engineer or two or more members of the board. The board shall meet at the office of the state engineer or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

(Contingent effective date - See note) Members of the board - Organization - Meetings.

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the director of the department of environmental quality, or their representatives.
2. The state engineer is the board's secretary.
3. The board shall meet at least once a year or at the call of the state engineer or two or more members of the board. The board shall meet at the office of the state engineer or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

61-33-10. Penalty.

A person who violates this chapter or any rule implementing this chapter is guilty of a class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be imposed by a court in a civil proceeding or by the state engineer through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter. The state engineer may bring a civil action to recover damages resulting from violations and may also recover any costs incurred.

64-02-02. Weights and measures - Supervision by public service commission - Installation of weighing or measuring devices under special variance permit. All weighing or measuring devices in this state must be supervised and controlled by the commission. A variance permit for the installation or relocation of a device deviating from requirements under this chapter may be issued by the commission when the device meets service requirements within accepted tolerances. The commission may request that an application for a variance permit include complete construction plans and a statement of the specific reasons why deviations are necessary or desirable. The commission may impose limitations or conditions on the construction and use of any weighing or measuring device.

64-02-09. Standards of weights and measures. The commission shall maintain the following standards of weights and measures, which must conform to the United States standards:

1. One surveyor's chain, sixty-six United States survey feet in length.
2. One yard [in meters, equal to 36 divided by 39.37] measure.
3. One United States survey foot [in meters, equal to 12 divided by 39.37] measure and one international foot [exactly .3048 meters] measure.
4. One inch [25.40 millimeters] measure.
5. One one hundred pound [45.36 kilograms] weight.
6. One fifty pound [22.68 kilograms] weight.
7. One twenty-five pound [11.34 kilograms] weight.
8. One ten pound [4.54 kilograms] weight.
9. One one pound [.4536 kilogram] weight.
10. One half-pound [.2268 kilogram] weight.
11. One quarter-pound [.1134 kilogram] weight.
12. One one-eighth of a pound [.0567 kilogram] weight.
13. One one-sixteenth of a pound [.0284 kilogram] weight or one ounce [28.35 grams] weight.
14. One set of apothecaries' weights from one pound [.4536 kilogram] to one grain [64.80 milligrams] and one set of troy weights from one pound [.3732 kilogram] to one grain [64.80 milligrams].
15. Other weighing and measuring devices necessary to test and calibrate standards. These standards are the legal standards of weights and measures for this state, and must be used for testing the secondary standards used to test weighing or measuring devices.

ARTICLE 28-01

GENERAL ADMINISTRATION

Chapter
28-01-01 Organization of Board
28-01-02 Board Bylaws and Administration [Superseded]
28-01-02.1 Board Bylaws and Administration

CHAPTER 28-01-01
ORGANIZATION OF BOARD

Section
28-01-01-01 Organization of Board of Registration for Professional Engineers and Land Surveyors

28-01-01-01. Organization of board of registration for professional engineers and land surveyors.

1. **History and function.** The 1943 legislative assembly first provided for registration of professional engineers by a law codified as North Dakota Century Code chapter 43-19. The 1957 legislative assembly first provided for registration of land surveyors by a law codified as North Dakota Century Code chapter 43-24. In 1967 the legislative assembly repealed both of these chapters and replaced them with one chapter regulating professional engineers and land surveyors under the board of registration for professional engineers and land surveyors. The chapter is codified as North Dakota Century Code chapter 43-19.1. The function of the board is to regulate the practice of engineering and land surveying by registering qualified engineers and land surveyors.

2. **Executive director.** The executive director is appointed by the board and is responsible for administration of the board's activities.

3. **Inquiries.** Inquiries regarding the board may be addressed to the executive director:

   North Dakota State Board of Registration for
   Professional Engineers and Land Surveyors
   P.O. Box 1357
   Bismarck, ND 58502

History: Amended effective January 1, 1980; February 1, 1984; November 1, 1985; January 1, 1988; August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

CHAPTER 28-01-02.1
BOARD BYLAWS AND ADMINISTRATION

Section
28-01-02.1-01 Meetings
28-01-02.1-02 Rules of Procedure
28-01-02.1-03 Board Quorum
28-01-02.1-04 Officers and Board Staff
28-01-02.1-05 Forms - Records - Roster - Reports
28-01-02.1-06 Statement of Purpose of Rules - Amendments [Repealed]
28-01-02.1-07 Gender and Definitions

28-01-02.1-01. Meetings. The board shall hold meetings at least twice each year, including at least one in January and one in July. The chairman may call special meetings when the chairman deems such meetings necessary. The executive director shall give notice as required by law. The date, time, and place of each meeting must be mutually agreed upon by a quorum of the board. All meetings of the board, whether regular meetings or special meetings, must be open public meetings.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-07

28-01-02.1-02. Rules of procedure. Robert's Rules of Order must govern procedure of the board except as otherwise provided by this chapter.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-07

28-01-02.1-03. Board quorum. A quorum of the board is required to transact business.

History: Effective January 1, 1988.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-07

28-01-02.1-04. Officers and board staff.

1. The board shall hold an election at the first meeting after July first of each year and elect a chairman, vice chairman, and secretary.

2. Each officer will be elected for one year and may be reelected.

3. The chairman:

a. Shall be the executive head of the board.

b. Shall preside at all meetings when present.

c. Shall call meetings of the board when the chairman deems such meetings necessary.

d. Shall sign all certificates of registration.

4. The vice chairman shall in the absence or incapacity of the chairman exercise the duties and shall possess all the powers of the chairman.

5. The secretary shall sign all official documents prepared by the board and shall sign all certificates of registration.

6. The executive director shall perform all duties as may be prescribed by the board. The associate executive director shall in the absence or incapacity of the executive director exercise the duties and shall possess all the powers of the executive director.

7. The executive director and any other person with signatory authority on the board's accounts shall give a surety bond in an amount determined by the board.

8. The office of the board may be established at a place designated by the board.

9. The board shall establish, appoint, and create ad hoc or standing committees to study, research, and evaluate such matters as assigned. For each committee a chairman must be designated.

10. Board officers and members serve without compensation except for per diem when engaged in state business approved by the board and for subsistence, lodging, and travel expenses at the rates established for state employees. All per diem and expenses must be requested on the travel voucher approved by the state.

11. The board staff members must be reimbursed expenses for approved travel, lodging, and subsistence at rates established for state employees. All per diem and expenses must be requested on the travel voucher approved by the state.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-03

28-01-02.1-05. Forms - Records - Roster - Reports.

1. **Forms.** The board shall prescribe forms for applications and other documents. Copies of the forms and the instructions for completing the forms must be made available by the board office. All applications and documents must be completed in accordance with the board's instructions.

2. **Records.**

   a. The open records law requires that most records, papers, and reports of the board are public in nature and may be obtained through the executive director or designee upon request and payment of costs of reproduction, handling, and mailing.

   b. The board shall keep a record of all its proceedings, including its action on each application coming before the board.

   c. The board shall keep a record of all applications received.

   d. The board shall keep a record of all certificates issued.

   e. The board shall keep a record of all complaints received and of any actions taken on those complaints.

   f. All applications, approved or deferred, unless otherwise specified in this or other sections of this chapter, will be retained in accordance with North Dakota Century Code section 54-46-10.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-09, 43-19.1-10, 43-19.1-11

28-01-02.1-06. Statement of purpose of rules - Amendments. Repealed effective October 1, 2010.

28-01-02.1-07. Gender and definitions.

1. **Gender.** This title is to be read and interpreted in a nongender context without regard to race, creed, or sex.

2. **Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-19.1, except:

   a. "Accreditation board for engineering and technology accredited curriculum" means those academic programs offered by institutions of higher learning that the accreditation board for engineering and technology (ABET) certify to have met the criteria and qualifications

required to receive the designations as accredited programs in the education, training, and preparation of the graduates from such programs; engineering curriculum must have the accreditation of the engineering accreditation commission (EAC) within the accreditation board for engineering and technology and land surveying curriculum must have either engineering accreditation commission or technology accreditation commission (TAC) or applied science accreditation commission (ASAC) of the accreditation board for engineering and technology to be acceptable to the board.

b. "Application" means the act of furnishing data, documents, and such information under oath as may be required by the board and on forms prescribed by the board.

c. "Code of ethics" means that set of rules prescribed by the board and adopted herein that govern the professional conduct of all registrants.

d. "Direct supervision" means the activities of that person who is in responsible charge of technical, engineering, or land surveying work in progress, whose professional skill and judgment are embodied in the plans, specifications, reports, plats, or other documents required to be certified pursuant to section 28-02.1-08-01. A person in direct supervision of work directs the work of other registrants, interns, draftspersons, technicians, or clerical persons assigned to that work.

e. "Engineering intern" and "land surveyor (surveying) intern" are recognized by the board as synonymous with engineer-in-training and land surveyor-in-training provided the intern designations are conferred under the same requirements as the "in-training" designations pursuant to these rules.

f. "Examination" means that series of tests prescribed by the board that are developed to ascertain the level of proficiency in the fundamentals and in the practices of the professions regulated by the board.

g. "Gross negligence" means a substantial deviation in professional practice from the standard of professional care exercised by members of the registrant’s profession, or a substantial deviation from any technical standards issued by a nationally recognized or state-recognized professional organization, or both, comprised of members of the registrant’s profession, or a substantial deviation from requirements contained in state laws, board regulations, local ordinances, or regulations related to the registrant’s professional practice.

h. "Incompetence" means to lack the professional qualifications, experience, education, or combination thereof to undertake a professional engagement or assignment. The following acts or omissions, among others, may be deemed to be "incompetence" and to be cause for denial, suspension, or revocation of a certificate of registration to practice engineering or land surveying and the imposition of any other lawful discipline. Incompetence includes:

(1) Recklessness or excessive errors, omissions, or failures in the registrant's record of professional practice.

(2) Mental or physical disability or addiction to alcohol or drugs that leads to the impairment of the registrant's ability to exercise due skill and care in providing professional services so as to endanger the health, safety, and welfare of the public.

i. "Misconduct" means:

(1) Conviction of any crime reasonably related to the practice of the registrant's profession;

(2) An adverse civil adjudication involving dishonesty, gross negligence, or incompetence;

(3) Suspension or revocation or voluntary surrender of a professional license or registration by this state or by any other jurisdiction;

(4) Any act or practice in violation of the rules of professional conduct as set forth in sections 28-03.1-01-01 through 28-03.1-01-17;

(5) Violation of any of the administrative rules set forth in this title; or

(6) Knowingly fail to comply with continuing professional competency requirements set forth in article 28-04.

j. "Registrant" means any individual or organization who has been approved for a certificate of registration as an engineer intern, land surveyor intern, a professional engineer, a professional land surveyor, or any combination thereof, or a temporary permit to practice engineering, or a certificate of commercial practice.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-08

ARTICLE 28-02.1

ENGINEER AND LAND SURVEYOR REGISTRATION

Chapter
28-02.1-01 Applications
28-02.1-02 Processing Applications
28-02.1-03 Types of Registration
28-02.1-04 General Requirements
28-02.1-05 Qualifications and Requirements for Engineers
28-02.1-06 Qualifications and Requirements for Land Surveyors
28-02.1-07 Certificates of Authorization - Partnerships - Corporations
28-02.1-08 Certificates and Seals
28-02.1-09 Expirations - Renewals - Reinstatements
28-02.1-10 Examinations and Fees
28-02.1-11 Emergency and Remote Practice by Foreign Practitioners
28-02.1-12 Retired Status
28-02.1-13 Documents Used to Convey Real Property or Any Interest Therein

CHAPTER 28-02.1-01
APPLICATIONS

Section
28-02.1-01-01 Applications - Kinds of Applications
28-02.1-01-02 Completing Applications
28-02.1-01-03 Applications From Nonresidents [Repealed]
28-02.1-01-04 Applications From Applicants With Degrees From Foreign Schools
28-02.1-01-05 Disposition of Applications
28-02.1-01-06 Reconsideration of Applications
28-02.1-01-07 Retention of Records of Applications [Repealed]

28-02.1-01-01. Applications - Kinds of applications. Applications may be submitted to the board for registration as a:

1. Engineer intern.
2. Land surveyor intern.
3. Professional engineer.
   a. Examination.
   b. Endorsement.
4. Professional land surveyor.
   a. Examination.

b. Endorsement.

5. Professional engineer temporary permitholder.

6. Business with a certificate of commercial practice to practice engineering or land surveying.

7. Reinstatement for lapsed registration of a certificate holder.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-08

28-02.1-01-02. Completing applications.

1. All data and information requested on the board's application forms must be furnished accurately and completely.

2. When space provided on forms is inadequate, use supplementary sheets of a good grade of white paper, eight and one-half by eleven inches [215.90 by 279.40 millimeters].

3. All applications made to this board must be subscribed and sworn to on the forms used by the applicant before a notary public or other persons qualified to administer oaths.

4. In order to allow sufficient time for processing and for securing examinations, all applications for examinations must be filed with this board prior to January first for the spring examinations and July first for the fall examinations.

5. Withholding information or providing statements that are untrue or misrepresent the facts may be cause for denial of an application.

6. It is the responsibility of the applicant to supply correct addresses of all references and to be sure that the completed references forms are supplied as requested.

7. In relating experience, the applicant must account for all employment or work experience for the period of time that has elapsed since the beginning of the employment record. If not employed, or employed in other kinds of work, this should be indicated in the experience record.

8. Applications for registration properly executed and issued with verification by the national council of examiners for engineers and surveyors (NCEES) may be accepted in lieu of the same information that is required on the form prescribed by this board.

9. Provide the name and address of the corporate officers and directors or the business partners.

10. To list the names and addresses of all employees who are duly registered to practice professional engineering or professional land surveying in North Dakota.

11. Provide the name and address of the registered agent for those business entities required to have a registered agent.

12. Submitted application records become the property of the board.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-12

28-02.1-01-03. Applications from nonresidents. Repealed effective April 1, 1999.

28-02.1-01-04. Applications from applicants with degrees from foreign schools.

1. All foreign language documentation submitted with the completed application must be accompanied with translations certified to be accurate by a competent authority.

2. All applicants shall furnish evidence of experience that can be verified.

3. All applicants seeking registration must be prepared to write examinations that are administered in the English language.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-13

28-02.1-01-05. Disposition of applications. Applications may be approved; deferred for further information, more experience, acceptable references, or other reasons as determined by the board; or may be denied.

1. **Approved applications.** When an application is approved by the board showing that the applicant has met all the requirements for registration or certification required by the statutes of this state, the applicant must be granted registration or certification with notification by the executive director of the board.

2. **Deferred applications.** Applications deferred for any reason require proper remedy as requested before further consideration by the board.

3. **Denied applications.** Applications may be denied when in the board's judgment:

   a. Reinstatement is requested after revocation and there is insufficient rehabilitation;

   b. An application has been denied for cause in other jurisdictions; or

   c. The applicant has failed to establish the applicant is of good character and reputation.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-25

28-02.1-01-06. Reconsideration of applications. Reconsideration may be requested of an application that has been denied or deferred when the request is based on additional information. Request must be made within one year after the decision of the board to deny or defer the original application.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-08, 43-19.1-14, 43-19.1-17

28-02.1-01-07. Retention of records of applications. Repealed effective October 1, 2010.

CHAPTER 28-02.1-02
PROCESSING APPLICATIONS

Section
28-02.1-02-01 Processing of Applications

28-02.1-02-01. Processing of applications.

1. All information received from references named by the applicant must be received at the board office. No member of the board or relative of the applicant may be named as a reference.

2. An applicant for registration as a professional engineer or professional land surveyor may not be admitted to the examination until the applicant's application has been received, processed, and approved by the board.

3. An applicant may not confer with any member of the board regarding an applicant's case while it is pending before the board. Any applicant may appear before the board at a scheduled meeting.

4. Applicants for registration as a professional engineer or professional land surveyor whose applications have been approved, but who fail to appear for examination four consecutive times, must be deemed to have withdrawn their applications. Further consideration must be based on reapplication.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2014.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-08, 43-19.1-12

CHAPTER 28-02.1-03
TYPES OF REGISTRATION

Section
28-02.1-03-01 Types of Registration

28-02.1-03-01. Types of registration. Engineers and land surveyors may become registered professional practitioners by examination, endorsement, or by temporary permit.

1. **Registration by examination**. Registration by examination is generally a two-step process for those applicants who have met the general qualification requirements; who have met certain education requirements or who have the experience deemed to be satisfactory and acceptable to the board, or both; and who have successfully passed the examinations prescribed by the board.

   a. The board accepts the written examination prepared by the national council of examiners for engineers and surveyors as its standard of examinations and qualifications.

   b. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation, an examination on the code of ethics may be required.

2. **Registration by endorsement.** Registration by endorsement is for engineers or land surveyors who hold a current registration in another jurisdiction who substantially meet, in the opinion of the board, the requirements and qualifications required by North Dakota statutes governing registration. Registration as a professional land surveyor also requires successful completion of an orientation examination pertaining to state laws and procedures.

3. **Temporary permit - Temporary registration for practicing engineering.** A temporary permit must be reviewed and approved by the board and is not a means of expedited registration. Educational and experience requirements must comply with North Dakota law. A one-time temporary permit may be issued on the basis of one project and may not exceed one year. The applicant must be legally qualified to practice and hold current registration in the state or country of residence. A temporary permit must be approved prior to practicing or

offering to practice engineering. Temporary permits for professional land surveyors are not authorized by North Dakota law.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-08, 43-19.1-12.1, 43-19.1-13, 43-19.1-14, 43-19.1-16, 43-19.1-29

CHAPTER 28-02.1-04
GENERAL REQUIREMENTS

Section
28-02.1-04-01 General Requirements
28-02.1-04-02 Experience

28-02.1-04-01. General requirements. All applicants must:

1. Complete the applications on forms approved by the board.

2. Complete the application under oath. An affidavit is required.

3. Furnish references as required but may not include board members or relatives of the applicant as references.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2014.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-12

28-02.1-04-02. Experience. The following describes what the board considers acceptable experience. The applicant must provide proof that the experience meets these requirements.

1. The experience gained through military service must be substantially equivalent in character to civilian experience in similar fields or disciplines. Generally, military experience is not favored by the board unless the applicant served in a military engineering or surveying related component of the armed services.

2. Experience must be of a grade and character that indicates to the board that the applicant is competent to practice and preferably be gained under the supervision of a registered professional engineer or professional land surveyor.

3. Experience must be substantially related to engineering or land surveying. Dual registration must fulfill experience requirements for each application without duplicate credits for time of gaining experience.

4. The board requires progressive experience in applying the principles and methods of engineering analysis and design for an applicant in fulfilling experience requirements if the applicant is seeking professional engineering registration.

5. The board requires progressive experience on surveying projects to indicate that it is of increasing quality and requiring greater responsibility. A substantial portion of the experience must be spent in charge of work related to property conveyance or boundary line

determination, or both. The experience must demonstrate adequate experience in the technical field aspects of the profession.

6. An engineering or land surveying applicant may be granted one year's experience for each postgraduate degree in the field of practice following a baccalaureate degree in the field of practice, not to exceed two years.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-14, 43-19.1-15, 43-19.1-16, 43-19.1-17

CHAPTER 28-02.1-05
QUALIFICATIONS AND REQUIREMENTS FOR ENGINEERS

Section
28-02.1-05-01 Qualifications and Requirements - Engineer Intern
28-02.1-05-02 Qualifications and Requirements - Professional Engineer by Examination

28-02.1-05-01. Qualifications and requirements - Engineer intern. Engineer intern applicants must satisfy the requirements located in North Dakota Century Code section 43-19.1-15.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-14, 43-19.1-15

28-02.1-05-02. Qualifications and requirements - Professional engineer by examination. A person applying for registration as a professional engineer by examination must have an engineer intern certificate, and appropriate experience as required by North Dakota Century Code section 43-19.1-14. The experience must be subsequent to graduation and prior to writing the principles and practice of engineering examination.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-14

CHAPTER 28-02.1-06
QUALIFICATIONS AND REQUIREMENTS FOR PROFESSIONAL LAND SURVEYORS

Section

28-02.1-06-01 Qualifications and Requirements - Land Surveyor Intern
28-02.1-06-02 Qualifications and Requirements - Professional Land Surveyor by Examination

28-02.1-06-01. Qualifications and requirements - Land surveyor intern. Land surveyor intern applicants must satisfy the requirements located in North Dakota Century Code section 43-19.1-16.1.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-16.1

28-02.1-06-02. Qualifications and requirements - Professional land surveyor by examination. A person applying for registration as a professional land surveyor by examination must have a land surveyor intern certificate and the appropriate experience as required by North Dakota Century Code section 43-19.1-16. The experience must be prior to writing the principles and practice of surveying examination.

Upon successful completion of the principles and practice of surveying examination, professional land surveyor applicants must pass an examination pertaining to land procedures and practices in North Dakota.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2014.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-16, 43-19.1-16.1

CHAPTER 28-02.1-07
CERTIFICATES OF COMMERCIAL PRACTICE

Section
28-02.1-07-01 Applications [Repealed]
28-02.1-07-02 Issuance of Certificate of Commercial Practice

28-02.1-07-01. Applications. Repealed effective October 1, 2010.

28-02.1-07-02. Issuance of certificate of commercial practice. Certificates of commercial practice are not transferable and require the organization to:

1. Advise the board within thirty days of any change of officers, directors, partners, business addresses, registered agents, or of any disciplinary actions that impair the registration and right to practice of any employee or officer of record.

2. Renew and update annually the names and addresses of the registered agent, officers, directors, or partners, and employees licensed to practice engineering or land surveying in North Dakota.

3. Keep and maintain its annual filing requirements with the secretary of state's office current and provide a copy to the board office.

4. A certificate of commercial practice is subject to the same disciplinary actions by the board as any individual registrant.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

CHAPTER 28-02.1-08
CERTIFICATES AND SEALS

Section
28-02.1-08-01 Certificates
28-02.1-08-02 Seals
28-02.1-08-03 Use of Seals

28-02.1-08-01. Certificates.

1. Certificates of registration and certificates of commercial practice issued by the board should be displayed by the registrant in a prominent place in the registrant's office or principal place of business.

2. In case a certificate is lost or destroyed, a duplicate certificate will be issued upon request. The charge for a duplicate certificate shall be determined by the board.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-20, 43-19.1-27

28-02.1-08-02. Seals.

1. The board has adopted standard seals or stamps similar to those illustrated in this section for use by registered professional engineers and professional land surveyors as prescribed by law. The seal authorized by the state board of registration for professional engineers and land surveyors for registrants is of the crimp type or rubber stamp, or electronic. Seals prepared after July 1, 2005, shall be of a design so the seal consists of two concentric circles with the diameter of the outer circle being one and three-fourth inches [44.45 millimeters] and the diameter of the inner circle being one and one-fourth inches [31.75 millimeters]. The upper portion between the two circles shall bear whichever of the following phrases is applicable to the registrant: "Registered Professional Engineer", "Registered Professional Land Surveyor", or "Registered Professional Engineer & Land Surveyor". Professional land surveyors who purchased a seal with the phrase "Registered Land Surveyor" prior to January 1, 2011, are not required to purchase a new seal. At the bottom of the annular space between the two circles shall appear the inscription "North Dakota"; the inner circle shall contain the name of the registrant, registration number, and the word "Date". The registration number assigned should be centered in the inner area of the seal in the space occupied by the word "NUMBER" and the size of the numbers should not be larger than the word "NAME". The words and parentheses "(NUMBER)" and "(NAME)" should not appear on the seal.

2. Seals may be of rubber stamp, metal impression type, computer-generated, or electronically generated. Electronic seals may not be used in any document unless the document contains a signature that meets the requirements of a digital signature.

3. A registrant shall also apply the registrant's signature across the face of the seals for a nondigital signature. A digital signature is not required to be across the face of the seal. A rubber stamp or facsimile signature is not allowed. The signature and seal must also be dated. No further certification need accompany the seal and signature.

4. The term "signature", as used herein, shall mean a handwritten identification containing the name of the person who applied it; or for electronic or digital documents shall mean a digital signature that shall include an electronic authentication process in a secure mode that is attached to or logically associated with the electronic document to which it is applied. The digital signature must be unique to, and under the sole control of, the person using it; it must also be capable of verification and be linked to a document in such manner that the digital signature is invalidated if any data on the document is altered.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2014.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-21

28-02.1-08-03. Use of seals.

1. The original copies of all drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product other than earthwork cross sections must receive a seal and signature.

   a. Studies, reports, and project specifications need the seal and signature only on a single introductory sheet.

b. Every sheet or drawing in an original set of engineering plans must receive a seal and signature.

2. Registrants may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering and land surveying documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers or land surveyors who prepared the segment.

3. Registrants shall not affix their signatures or seals to any engineering or land surveying plan or document dealing with subject matter for which the registrant lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the registrant's direct supervisory control.

4. A registrant shall not contract with a nonlicensed individual to provide these professional services.

5. A registrant may affix the seal and signature to drawings and documents depicting the work of two or more professionals, either from the same or different disciplines, provided it is designated by a note under the seal the specific subject matter for which each is responsible.

6. Any changes made to the final plans, specifications, drawings, reports, or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, or another registered individual who assumes responsible charge for the directly related documents, except as provided herein. A duly registered individual making changes to final sealed documents must assume responsible charge and reseal the directly related final documents unless the changes are construction phase revisions, including record drawings, which do not affect the functional design, and such revisions adequately reflect that changes have been made and the original plans are available for review.

7. Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge.

8. A registrant may not affix the registrant's seal or signature to documents having titles or identities excluding the registrant's name unless:

   a. Such documents were developed by the registrant or under the registrant's responsible charge and the registrant has exercised full authority to determine their development.

   b. A registrant who is required to use the standard drawings of a sponsoring agency need not affix the registrant's seal and signature to said standard drawings.

c. The registrant is providing the registrant's opinion as to the compliance of the document with specific identified rules or statutes and it is clearly identified that the registrant only reviewed the document and had no technical control over the contents of the document.

9. Electronic reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others must either contain the electronic seal and digital signature as required by this chapter, or have a digital signed and electronic sealed statement from the registrant transmitting the same which shall read: "This document(s) was originally issued and sealed by (name), Registration Number (number) on (date)".The statement shall also include the statement that "The original documents are stored at (location)", or "The original documents have been destroyed and are no longer available", whichever is applicable. Sets of plans or drawings must have this statement attached to every sheet of the set. For specifications, reports, and studies, only the cover or introductory sheet need include this statement.

10. Paper or hard copy reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others shall contain a reproduction of the seal and signature. A new seal and original signature will not be required with such paper distribution.

11. Working drawings and unfinished documents must comply with North Dakota Century Code section 43-19.1-21.

History: Effective October 1, 2004; amended effective October 1, 2010; October 1, 2014.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-21

CHAPTER 28-02.1-09
EXPIRATIONS - RENEWALS - REINSTATEMENTS

Section
28-02.1-09-01 Expirations of Certificates of Registration
28-02.1-09-02 Renewals
28-02.1-09-03 Reinstatements

28-02.1-09-01. Expirations of certificates of registration. The certificate of registration issued to land surveyor interns or engineer interns has no expiration.

History: Effective January 1, 1988; amended effective October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-15, 43-19.1-16.1

28-02.1-09-02. Renewals. Individual registrations and certificates of commercial practice may be renewed as follows:

1. Every other year, beginning with 1999, the board shall mail renewal notices prior to December first to the last address of record for each registration and certificate holder. The renewal notice shall contain the amount of the renewal fee and the pending expiration date.

2. Every year, or every other year for biennial renewals, the board shall mail certificate of commercial practice renewal notices prior to December first to the last address of record for the organization. The renewal notice shall contain the amount of the renewal fee and the pending expiration date.

3. A late fee as determined by the board shall be imposed on renewals postmarked after December thirty-first.

History: Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-22

28-02.1-09-03. Reinstatements.

1. An individual registration that has lapsed for more than one year, but less than five years, may become reinstated by paying the renewal fee for the current registration period plus two years' back renewal fee provided the lapsed registrant meets all other requirements. A holder of a certificate of commercial practice who has allowed the certificate to lapse for more than one year, but less than five years, may become reinstated by paying the current year renewal fee plus one year back renewal fee.

2. Registrations and certificates that have lapsed five years or more require reapplication updating all the required information of the applicant as if an original application. The board may require reexamination of registrants for all or a portion of the examination qualification requirements.

3. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active engineering or land surveying practice provided the retired registrant meets all other requirements. All rights and responsibilities of a valid or active registration will be in effect, including compliance with continuing professional competency requirements.

4. A registrant whose license has been lapsed or retired for one year or more and who meets all other requirements is required to file an interim continuing professional competency report within one year of the date of reinstatement verifying that a minimum of fifteen professional development hours have been accomplished.

5. A registrant whose license has been lapsed or retired for less than one year and who meets all other requirements must show compliance within the previous two years with the continuing professional competency requirements set forth in article 28-04.

History: Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-22

CHAPTER 28-02.1-10
EXAMINATIONS AND FEES

Section
28-02.1-10-01 Examinations
28-02.1-10-02 Fees

28-02.1-10-01. Examinations.

1. The engineering and land surveying examinations are held when offered by the national council of examiners for engineering and surveying.

2. An examination for registration as a professional land surveyor pertaining to land surveying laws, procedures, and practices in North Dakota shall require a passing score determined by the board.

3. An applicant failing to pass a professional examination may take the next scheduled examination after six months by payment of the examination fee.

4. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation of a registrant whose registration has been subject to disciplinary action, an examination on the code of ethics may be required.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-19

28-02.1-10-02. Fees. The following fees will be charged for an initial two-year period:

Registration Fees

Professional engineer	$150.00
Professional land surveyor	$150.00
Certificate of commercial practice	$100.00
Temporary permit	$200.00

Examination fee (in addition to the registration and renewal fees) at board cost, including scoring and proctoring and ten dollars for postage and handling.

Cost of administration of continuing education or professional competency programs may be assessed and billed annually to the registrant. Billings will be separately identified apart from the renewal fees.

Renewal Fees
The following biennial renewal fees may not exceed the following:

	If Renewal Received Prior to December 31	If Renewal Received After December 31
Professional engineer	$150.00	$200.00
Professional land surveyor	$150.00	$200.00
Professional engineer and land surveyor	$280.00	$400.00
Retiree	$20.00	$20.00

The following annual renewal fees will be charged:

Certificate of commercial practice	$100.00

History: Effective January 1, 1988; amended effective August 1, 1994; November 1, 1998; April 1, 1999; October 1, 2004; January 1, 2011.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-18, 43-19.1-27

CHAPTER 28-02.1-11
EMERGENCY AND REMOTE PRACTICE BY FOREIGN PRACTITIONERS

Section
28-02.1-11-01 Definitions
28-02.1-11-02 Indirect Practice Without a License
28-02.1-11-03 Emergency Practice Without a License
28-02.1-11-04 Direct Practice Without a License

28-02.1-11-01. Definitions. These definitions shall apply to this chapter only:

1. "Board" means the state board of registration for professional engineers and land surveyors provided for by North Dakota Century Code chapter 43-19.1.

2. "Foreign practitioner" means an individual who currently holds and maintains a license in good standing to engage in engineering or land surveying in a state or jurisdiction other than North Dakota and who is not the subject of a pending disciplinary action in any state or jurisdiction.

3. "Good standing" means a foreign practitioner holds a current license to practice engineering or land surveying that is not issued on a temporary or restricted basis and is not encumbered or on probation and is not suspended or revoked.

4. "License" means a license, certificate, permit, or similar authorization to practice engineering or land surveying that is issued by a government agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license, which are at least as stringent as the requirements imposed in North Dakota to obtain and maintain a license to practice engineering or land surveying.

History: Effective November 1, 2002; amended effective October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-51-03

28-02.1-11-02. Indirect practice without a license. A foreign practitioner shall not provide services in this state without obtaining a license from the board unless such services are provided pursuant to subsection 1 of North Dakota Century Code section 43-51-03, North Dakota Century Code section 43-51-04, or the successor statutes thereto, or any other statutes or an administrative rule adopted by the board.

History: Effective November 1, 2002; amended effective October 17, 2002.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-51-03

28-02.1-11-03. Emergency practice without a license. A foreign practitioner offering land surveying services under North Dakota Century Code section 43-51-04 shall be limited to services comprising the determination of incidental topography within the meaning of subsection 4 of North Dakota Century Code section 43-19.1-02.

History: Effective November 1, 2002; amended effective October 17, 2002.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-51-04

28-02.1-11-04. Direct practice without a license. Notwithstanding the provisions of North Dakota Century Code section 43-51-05 no foreign practitioner may provide services in this state without obtaining a license from the board unless allowed to do so by some other statute or an administrative rule adopted by the board.

History: Effective November 1, 2002; amended effective October 17, 2002.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-51-05

CHAPTER 28-02.1-12
RETIRED STATUS

Section
28-02.1-12-01 Eligibility for Retired Status
28-02.1-12-02 Affidavit
28-02.1-12-03 Continuing Professional Competency Exemption
28-02.1-12-04 Privileges
28-02.1-12-05 Restrictions
28-02.1-12-06 Ineligibility for Retired Status
28-02.1-12-07 Penalties for Noncompliance

28-02.1-12-01. Eligibility for retired status. Any individual who has been issued a certificate of registration, as a professional engineer or professional land surveyor, having discontinued active practice as an engineer or land surveyor, or both, may be eligible to apply for a retired status of registration. For the purpose of this provision, "active practice" is defined as exercising direct supervision and control over the development and production of an engineering or land surveying document or any related activities pertaining to the offer of or the providing of professional engineering or land surveying services.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

28-02.1-12-02. Affidavit. Those persons wishing to obtain the status of a retired registration shall complete an affidavit on a form as provided by the board. Affidavits shall be sent to the board office. Upon receipt of said affidavit and, if deemed eligible by the board, the retired status would become effective on the date of approval by the board. It shall not be necessary that an expired certificate of registration be renewed to be eligible for this status. The board will not provide refund of renewal fees if the application for retired status is made and granted before the date of expiration of the certificate of registration.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

28-02.1-12-03. Continuing professional competency exemption. Retired registrants are exempt from continuing professional competency requirements.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

28-02.1-12-04. Privileges. A retired registrant is permitted to:

1. Retain the board-issued wall certificate of registration;

2. Use the title professional engineer or registered land surveyor, or professional land surveyor provided that it is supplemented by the term "retired", or the abbreviation "ret";

3. Work as an engineer or land surveyor in a volunteer capacity, provided that the retired registrant does not create an engineering or land surveying document, and does not use the individual's seal, except as provided for in subsection 4;

4. Provide experience verifications and references for persons seeking registration. When completing reference or experience verification forms and if using the person's professional seal, the retired registrant shall place the word "retired" in the space designated for the date of expiration;

5. Serve in an instructional capacity on engineering and land surveying topics;

6. Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to engineering or land surveying work performed by the registrant before the person was granted a retired registration; and

7. Serve in a function that supports the principles of registration and promotes the professions of engineering and land surveying, such as members of commissions, boards, or committees.

History: Effective October 1, 2004; amended effective October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

28-02.1-12-05. Restrictions. A retired registrant is not permitted to:

1. Perform any engineering or land surveying activity unless said activity is under the direct supervision of a North Dakota registered professional engineer or professional land surveyor who has a valid or active registration in the records of the board;

2. Act as the designated engineer or the engineer in responsible charge for a North Dakota engineering organization or act as the designated land surveyor or land surveyor in responsible charge for a North Dakota land surveying organization; or

3. Apply the person's professional engineer's or professional land surveyor's seal to any plan, specification, plat, or report, except as provided for in subsection 4 of section 28-02.1-12-04.

History: Effective October 1, 2004; amended effective October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

28-02.1-12-06. Ineligibility for retired status. Under no circumstances shall a registrant be eligible for a retired registration if the person's certificate of registration has been revoked, surrendered, or in any way permanently terminated by the board. Registrants who are suspended from practice or who are subject to terms of a board order, or both, at the time they request retirement status shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-27

28-02.1-12-07. Penalties for noncompliance. Any violations of this chapter shall be considered misconduct or malpractice, or both. Such violations are subject to disciplinary action.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-08

CHAPTER 28-02.1-13
DOCUMENTS USED TO CONVEY REAL PROPERTY OR ANY INTEREST THEREIN

Section
28-02.1-13-01 Survey Requirements for Preparation of Legal Descriptions and Conveyance of Property

28-02.1-13-01. Survey requirements for preparation of legal descriptions and conveyance of property. Any registrant preparing a description, including without limitation a legal, property, or boundary description for, or assisting in the filing of, a document that will, or may, be used to convey real property or any interest therein, other than easements, including without limitation an auditor's plat, outlot, deed, or conveyance of rights of way, must conduct a survey of the property being conveyed and comply with all the requirements related thereto contained in North Dakota Century Code sections 40-50.1-01 and 40-50.1-02.

Descriptions used in conveyances of rights of way in which possession of title is obtained may be prepared without the setting of all exterior monuments if all four of the following requirements are met:

1. The rights of way are retraceable by using established monuments;

2. Exterior monuments are set wherever there is a change of width to the rights of way;

3. Exterior monuments are set wherever there is a change in direction of the rights of way other than changes of direction at section corners; and

4. Monuments are set at intersections of rights of way with section lines or section line rights of way.

Descriptions used in the conveyance of easements having a term of five years or more must be retraceable in each section of land over which they cross by using established subdivision or public land survey system monuments existing or placed at the time of the easement conveyance.

History: Effective October 1, 2004; amended effective July 1, 2009.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-01, 43-19.1-08

ARTICLE 28-03.1

RULES OF PROFESSIONAL CONDUCT

Chapter
28-03.1-01 Code of Ethics

CHAPTER 28-03.1-01
CODE OF ETHICS

Section
28-03.1-01-01 General Statement
28-03.1-01-02 Action by Another Jurisdiction
28-03.1-01-03 Standards of Integrity
28-03.1-01-04 Protection of Public
28-03.1-01-05 Advertising
28-03.1-01-06 Aid Public Understanding [Repealed]
28-03.1-01-07 Issuance of Public Statements Related to Engineering or Surveying
28-03.1-01-08 Qualification for Work Projects
28-03.1-01-09 Disclosure of Confidential Information
28-03.1-01-10 Disclosure of Conflict of Interest
28-03.1-01-11 Compensation From Other Parties
28-03.1-01-12 Solicitation of Work
28-03.1-01-13 Reporting of Unethical or Illegal Practice
28-03.1-01-14 Professional Relationships
28-03.1-01-15 Proprietary Interests of Others
28-03.1-01-16 Professional Enhancement [Repealed]
28-03.1-01-17 Professional Registration Applications
28-03.1-01-18 Public Understanding and Professional Enhancement

28-03.1-01-01. General statement. In order to establish and maintain a high standard of integrity, skills, and practice in the profession of engineering and land surveying, the code of ethics contained in this chapter is binding upon every person holding a certificate of registration as a professional engineer or professional land surveyor, and upon all agents, employees, officers, or partners.

This chapter is specifically designed to further safeguard the life, health, property, and public welfare of the citizens of North Dakota, and must be construed to be a reasonable exercise of the police power vested in the board of registration for professional engineers and land surveyors by virtue of North Dakota Century Code chapter 43-19.1, and as such the board can establish conduct, policy, and practices to be adopted.

These rules are to be read and interpreted without regard to race, creed, or sex.

The engineer or land surveyor who holds a certificate of registration from the board is charged with having knowledge of the existence of this chapter for

professional conduct as an engineer or land surveyor, and also must be deemed to be familiar with the provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege as opposed to a right, and the engineer or land surveyor must be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-02. Action by another jurisdiction. A registrant who acts, either as an individual or through a business entity, may be deemed by the board to be guilty of misconduct in professional practice for an action that in this state would constitute a violation of North Dakota Century Code chapter 43-19.1, or of this title, and:

1. The registrant has received a reprimand or civil penalty as a result of a disciplinary action in another jurisdiction.

2. The registrant's license has been suspended, revoked, denied, or voluntarily surrendered as a result of disciplinary action in another jurisdiction.

3. The registrant is convicted in a court of competent jurisdiction of a felony without restoration of civil rights.

History: Effective January 1, 1988; amended effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-25

28-03.1-01-03. Standards of integrity. Registrants shall be guided in all their professional relations by the highest standards of integrity. The registrant will act in professional matters as a faithful agent or trustee for each client or employer.

1. Registrants shall admit and accept their own errors when proven wrong and refrain from distorting or altering the facts in an attempt to justify their decisions.

2. Registrants shall advise their clients or employers when they believe a project will not be successful.

3. Registrants shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering or land surveying employment, registrants shall notify their employer.

4. Registrants shall not employ or attempt to employ an individual by false or misleading pretenses.

5. Registrants shall not engage in any act tending to promote their own interests to the detriment of the profession.

6. Registrants shall be truthful in professional reports, statements, or testimony. Registrants shall include all relevant and pertinent information in such reports, statements, or testimony.

7. Registrants shall not willfully engage in any conduct or practice that intentionally deceives the public.

8. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading or statements intended or likely to create an unjustified expectation.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-04. Protection of public. Registrants shall be cognizant that their first and foremost responsibility is to the public welfare in the performance of services to clients and employers. The registrant:

1. Will regard one's duty to the public welfare as paramount.

2. Will not complete, sign, or seal plans or specifications that are not of a design safe to the public health and welfare and in conformity with accepted standards. In the course of work on a project, if a registrant becomes aware of an action taken by the client or employer against the registrant's advice that violates applicable state or municipal laws and regulations and which, in the registrant's judgment, will adversely affect the public life, health, or safety, the registrant shall take the following actions:

   a. Advise the client or employer in writing of the registrant's refusal to consent to the decision and give reasons for that refusal; and

   b. If the registrant's advice is ignored despite the objection, the registrant shall provide a copy of the registrant's objection and reasoning to the public official charged with the enforcement of the applicable state or municipal laws and regulations.

History: Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-05. Advertising. Registrants shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the advertisement shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-06. Aid public understanding. Repealed effective October 1, 2010.

28-03.1-01-07. Issuance of public statements related to engineering or surveying. Registrants shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

1. Registrants shall not willfully engage in any conduct or practice that deceives the public.

2. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact.

3. Registrants shall express an opinion only when it is founded upon accurate information.

4. The registrant shall be completely objective and truthful in all professional reports, statements, or testimony. Registrants shall include all relevant and pertinent information in such reports, statements, or testimony.

5. The registrant, when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the testimony.

6. The registrant will issue no statements, criticisms, or arguments on professional matters connected with public policy that are inspired or paid for by an interested party or parties, unless such statement is prefaced with a comment explicitly identifying the registrant, by disclosing the identity of the party or parties on whose behalf the

statement is being made, and by revealing the existence of any pecuniary interest the registrant may have in the instant matter.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-08. Qualification for work projects. The registrant will undertake assignments for which the registrant will be responsible only when qualified by education or experience. The registrant will engage, or advise engaging, experts and specialists whenever the client's or employer's interests are best served by such service.

1. The registrant may accept an assignment requiring education, training, or experience outside of the registrant's own field of competence, but only to the extent that such services are restricted to those phases of the project in which the registrant is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.

2. The registrant shall not affix the registrant's signature or seal, or both, to any plan or document dealing with subject matter in which the registrant lacks competence acquired through education or experience, nor to any plan or document not prepared by the registrant or under the registrant's responsibility. In the event a question as to the competence of a registrant to perform a professional assignment in a specific technical field arises and cannot be otherwise resolved to the satisfaction of the board, the board, upon request of the registrant or by its own volition, may require the registrant to submit to whatever examination it deems appropriate.

3. In providing services, the registrant shall take into account all applicable federal, state, and local laws and regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.

History: Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-09. Disclosure of confidential information. Registrants shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without the client's or employer's consent.

1. Registrants in the employ of others, without the consent of all interested parties, shall not enter promotional efforts or negotiations for work or

make arrangements for other employment as a principal or to practice in connection with a specific project for which the registrant has gained particular and specialized knowledge.

2. Without the consent of all interested parties, registrants shall not participate in or represent an adversary interest in connection with a specific project or proceeding in which the registrant has gained particular specialized knowledge on behalf of a former client or employer.

History: Effective January 1, 1988; amended effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-10. Disclosure of conflict of interest. Registrants shall make full prior disclosures to their employers or clients of all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

1. If the employer or client objects to such an association or financial interest, the registrant shall either terminate the association or interest or offer to give up the employment.

2. Registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body that they serve.

3. Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member.

4. A registrant shall not accept employment when duty to the client or the public would conflict with the personal interest of the registrant or the interest of another client and would influence the registrant's judgment or the quality of the registrant's services.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-11. Compensation from other parties. The registrant will not accept compensation, financial or otherwise, from more than one interested party for the same service. The registrant:

1. Will not accept financial or other considerations, including free engineering designs or land surveying plans, from material or equipment suppliers for specifying their product.

2. Will not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with the registrant's clients or employer in connection with work for which the engineer or land surveyor is responsible.

3. Shall not solicit or accept gratuities, gifts, travel, lodging, loans, entertainment, or other favors, directly or indirectly, from contractors, their agents, or other third parties dealing with a client or employer in connection with work for which the registrant is responsible, which can be determined to be an effort to improperly influence the registrant's professional judgment. Minor expenditures such as advertising trinkets, novelties, and meals are excluded. Neither shall a registrant make any such improper offer.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-12. Solicitation of work. A registrant shall seek and engage in only the professional work or employment the professional is competent and qualified to perform by reason of education, training, or experience.

1. A registrant shall not falsify or misrepresent the extent of the registrant's education, training, experience, or qualifications to any person or to the public or misrepresent the extent of the registrant's responsibility in connection with any prior employment or projects.

2. A registrant shall not transmit, distribute, or publish or allow to be transmitted, distributed, or published, any false or misleading information regarding the registrant's own qualifications, training, or experience or that of the registrant's employer, employees, associates, or joint venturers.

3. Registrants shall not offer, give, solicit, or receive, either directly or indirectly, any political contribution in an amount intended to influence the award of a contract by public authority, or which may be reasonably construed by the public of having the effect or intent to influence the award of a contract.

4. Registrants shall not pay a commission, percentage, or brokerage fee in order to secure work except to a bona fide employee.

5. A registrant shall not tender any gift, pay, or offer to pay, directly or indirectly, anything of substantial value, whether in the form of a

commission or otherwise, as an inducement to secure employment. A registrant is not prohibited from paying a commission to an employment agency for securing a position.

6. A registrant shall not knowingly seek or accept employment for professional services for an assignment for which another registrant is employed or contracted to perform. This prohibition shall not preclude a registrant from responding to a client-initiated or owner-initiated solicitation.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-13. Reporting of unethical or illegal practice. A registrant who has knowledge or reasonable grounds for believing that another registrant has violated any statute or rule regulating the practice of the profession shall have the duty of presenting such information to the board.

1. A registrant possessing knowledge of a violation shall report such knowledge to the board in writing and shall cooperate with the board in furnishing such further information or assistance as it may require.

2. A registrant, when questioned concerning any alleged violation on the part of another person by any member or authorized representative of the board commissioned or delegated to conduct an official inquiry, shall neither fail nor refuse to divulge such information as the registrant may have relative thereto.

3. Registrants must notify the board within thirty days if another state has disciplined them with a reprimand, censure, suspension, temporary suspension, probation, revocation, or refusal to renew a license, or if they have voluntarily surrendered their license as part of a settlement proceeding.

4. If a registrant, during the course of the registrant's work, discovers a material discrepancy, error, or omission in the work of another registrant, which may impact the life, health, property, and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the registrant whose work is believed to contain the discrepancy, error, or omission. Such communication shall reference specific codes, standards, or physical laws that are believed to be violated and identification of documents that are believed to contain the discrepancies. The registrant whose work is believed to contain the discrepancy shall respond in writing within thirty calendar days to any question about the work raised by another registrant. Failure to respond on the part of the registrant whose work is believed to contain the discrepancy shall be considered a violation of these rules. The

discoverer shall notify the board in the event a response satisfactory to the discoverer is not obtained within thirty days.

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-14. Professional relationships. The registrant shall not knowingly associate professionally with or allow the use of one's name with persons not legally qualified to render the professional services for which the association is intended.

1. Registrants in private practice shall not review the work of another registrant for the same client, except with the knowledge of such registrant, or unless the connection of such registrant with the work has been terminated. This prohibition shall not preclude a registrant from responding to a client-initiated or owner-initiated solicitation for a second opinion.

2. Registrants in governmental, industrial, or educational employment may review and evaluate the work of other registrants when so required by their employment duties.

3. Registrants in sales or industrial employment may make engineering comparisons of represented products with products of other suppliers.

4. Registrants shall not use association with a nonregistrant, a corporation, or partnership, as a cloak for unethical acts.

5. The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:

   a. Federal, state, and local laws and regulations, including building permit requirements; or

   b. Registration requirements.

6. The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements.

History: Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-15. Proprietary interests of others.

1. Whenever possible, the registrant will name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.

2. When a registrant uses designs supplied by a client, the designs remain the property of the client and should not be duplicated by the registrant for others without express permission.

3. Before undertaking work for others in which the registrant may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, the registrant should enter into an agreement regarding the ownership of the improvements, plans, designs, inventions, or other records.

4. Designs, data, records, and notes made by a registrant and referring exclusively to the employer's work are the employer's property.

History: Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-16. Professional enhancement. Repealed effective October 1, 2010.

28-03.1-01-17. Professional conduct.

1. Registrants shall indicate any reservation on a reference for an applicant if they have reason to believe the applicant is unqualified by education, training, or experience to become licensed. The registrant's opinion shall be based on the qualifications a reasonable and prudent professional would require an applicant to possess.

2. A registrant shall not submit a materially false statement or fail to disclose a material fact requested in connection with the application for certification or licensure in this state or any other state.

3. Registrants shall comply with the licensure laws and rules governing their professional practice in any United States jurisdiction.

4. A registrant shall not further the application for certification or licensure of another person known by the registrant to be unqualified in respect to character, education, or other relevant factor.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

28-03.1-01-18. Public understanding and professional enhancement. Sections 28-03.1-01-01 through 28-03.1-01-17 of this code of ethics are requirements of professional conduct and noncompliance with any of those sections is subject to disciplinary action. To enhance the professions of engineering and land surveying, the board also encourages, but does not require, a registrant to:

1. Seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health, and well-being of the registrant's community.

2. Cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers or land surveyors and students.

3. Extend public knowledge and appreciation of engineering or land surveying and its achievements and to protect the profession from misrepresentation and misunderstanding.

4. Maintain interest in the public welfare and be ready to apply the registrant's special knowledge, skill, and training for the use and benefit of the public.

5. Seek opportunities to provide career guidance for youths.

6. Provide opportunity for the professional development and advancement of engineers or land surveyors under the registrant's supervision by:

    a. Encouraging efforts to improve the registrant's education.

    b. Encouraging attendance and presentation of papers at professional and technical society meetings.

    c. Promoting professional registration at the earliest possible date.

History: Effective October 1, 2010.
General Authority: NDCC 43-19.1-08
Law Implemented: NDCC 43-19.1-24

ARTICLE 28-04

CONTINUING PROFESSIONAL COMPETENCY

Chapter
28-04-01 Continuing Education

CHAPTER 28-04-01
CONTINUING EDUCATION

Section
28-04-01-01 Purpose
28-04-01-02 Definitions
28-04-01-03 General Requirements
28-04-01-04 Recordkeeping
28-04-01-05 Qualifying Activities
28-04-01-06 Audit
28-04-01-07 Exemptions

28-04-01-01. Purpose. The purpose of mandatory continuing education is to reinforce the need for lifelong learning in order to stay current with everchanging technology, equipment, procedures, processes, tools, and established standards. Qualifying activities must have a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the registrant's field of practice. Registrants are encouraged to select meaningful activities that will be of benefit in the pursuit of their chosen fields.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

28-04-01-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 43-19.1 and North Dakota Administrative Code section 28-01-02.1-07. Additional terms are:

1. "Active participation" means making a regular, substantial contribution to an organization. Membership by itself does not constitute active participation.

2. "Contact hour" is a minimum of fifty minutes of actual instruction not to include any breaks.

3. "Continuing education units" is equivalent to ten contact hours of instruction, i.e., ten professional development hours. Continuing education units are nationally recognized and are a uniform unit of measure for continuing education and training.

4. "International association for continuing education and training programs" means those continuing education and training courses

offered by various organizations that meet the minimum requirements for a qualifying continuing education and training course as established by the international association for continuing education and training.

5. "Professional development hour" is defined as one contact hour of instruction or presentation. It is the common denominator for the other units of credit. Round off professional development hours to the nearest one-half hour. No activity under one-half hour will be accepted for credit.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

28-04-01-03. General requirements. All individual registrants must acquire thirty professional development hours every two years before renewing their license.

1. At least twenty professional development hours must be in technical subjects that directly safeguard the public's health, safety, and welfare, including technical professional management subjects such as total quality process or technical engineering or land surveying software training.

2. A maximum of ten professional development hours may be in nontechnical professional management subjects such as ethics-oriented or administration-oriented computer classes.

3. All registrants will be required to submit a list of continuing professional development activities that they participated in and sign a statement that they have met this requirement as part of the renewal process.

4. Registrants holding both professional engineering and surveying registrations must earn a minimum of one-third, or ten professional development hours in each profession with a total of thirty professional development hours every two years. A dual registrant is not required to obtain more than thirty professional development hours per biennial renewal period because of dual registrations.

5. A maximum of fifteen qualifying professional development hours may be forwarded to the subsequent biennial renewal period.

6. Comity for continuing professional development is allowed if the registrant is currently licensed in a jurisdiction or state that requires mandatory continuing professional competency and meets the minimum requirements as established by the North Dakota state board of registration for professional engineers and land surveyors.

7. New registrants shall comply with continuing education requirements as follows: registrants who receive their license prior to the fourth quarter in an odd-numbered year shall report the full biennial requirement of thirty professional development hours at the time of next renewal; and registrants who receive their license prior to the fourth quarter in an even-numbered year shall report one-half of the biennial requirement, i.e., fifteen professional development hours, at the time of next renewal.

History: Effective October 1, 2004
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

28-04-01-04. Recordkeeping. Recordkeeping is the responsibility of the registrant. Adequate records must be maintained for a minimum of four years from the date of last biennial renewal for auditing purposes. Records may be maintained by a professional registry, such as the professional development registry for engineers and surveyors. Records that are maintained by such a registry do not necessarily require approval of these courses by this board. Records required include:

1. A log showing the type of activity claimed, sponsoring organization, location, duration, date, instructor's or speaker's name, and professional development hour credits claimed. This permits the proper completion of professional development hour activities at renewal time. Specific information on each activity is required. Simply stating "attending education activities at ABC Company" is not acceptable.

2. Attendance verification records in the form of certificates or other documents supporting evidence of attendance. The registrant must have sufficient verification for all credits claimed.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

28-04-01-05. Qualifying activities. The board may preapprove courses, providers, or activities. Until the board preapproves such courses or activities, it is the responsibility of the registrant to determine whether the activity qualifies under this board's requirements. The board has final approval of professional development hour credit. Examples of typical qualifying and nonqualifying activities are available by contacting the office of the board or visiting the board's web site. All professional development hour allowances stated in this section are biennial allowances. Qualifying activities include:

1. **College unit, semester, or quarter hour credit for college courses.** A course must be regularly offered and participants tested with a passing grade required. One semester hour generally consists of fifteen class meetings of fifty to fifty-five minutes duration. It is assumed

that twice as much study time is required as class contact time, thus equating to forty-five professional development hours. Similarly, a quarter hour qualifying course meets ten times and thus thirty professional development hours are allowed. Monitoring courses do not require a test, and therefore only the actual class contact hours are allowed. On occasion, educational institutions may offer a one-day seminar and award fractional quarter hour credit such as one-half of a quarter hour. These courses do not qualify on the quarter hour basis since they are not part of the regular curriculum of the educational institution, do not require testing, and have no provision for additional out-of-class requirements. For courses such as this, only actual contact hours will be allowed for professional development hour credit.

2. **Interactive activities.** Other qualifying courses, seminars, employer-sponsored educational activities, programs, and activities are allowed one professional development hour credit for each contact hour. A correspondence course, videotaped programs, and online courses (self-study) must require the participant to show evidence of achievement with a final graded test.

3. **Teaching credit for short courses.** Teaching credits for the instructor are twice that of the participants in qualifying courses and seminars. However, repetitive teaching of the same course will not earn additional credit.

4. **Published paper, article, or book.** A published paper, article, or book must be a serious effort to qualify. For example, a news article in a technical or professional bulletin is not considered a published paper. Although it is recognized that often many more hours are spent in being an author of a publication, ten professional development hours are allowed for publication. Only one publication may be claimed for professional development hours per renewal period. Repetitive publication of the same paper or article will not earn additional credit.

5. **Active participation in professional and technical societies.** Active participation in professional and technical societies is to encourage registrants to participate fully in appropriate technical and professional societies. Contact with one's peers at such meetings is considered one way to stay abreast of current topics, issues, technical developments, ethical situations, and learning opportunities. Two professional development hours per biennium can be earned for each organization with a maximum of six professional development hours per biennium allowed. All technical and professional societies are included, but this does not include civic or trade organizations.

6. **Patents.** Patents are allowed ten professional development hours after a patent is issued and the inventor submits details to the board. The invention must be related to the registrant's profession.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

28-04-01-06. Audit. Audits can be conducted anytime up to three years after the biennial renewal is submitted to ensure compliance with continuing education requirements. If selected for audit, the registrant will be contacted to provide necessary documentation. Each registrant selected for audit must respond with detailed information on the professional development hour activities within thirty days. If the audit conducted indicates a failure to comply with continuing education requirements, the registrant has sixty calendar days after receipt of written notice to further reinforce the claim of professional development hour credits or to acquire sufficient professional development hour credit to meet the requirements. The board may also audit a registrant's professional development hour activities based on complaints or charges against a registrant. Registrants who refuse to comply with continuing professional competency requirements may be subject to disciplinary action as allowed by North Dakota Century Code section 43-19.1-25.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

28-04-01-07. Exemptions. A registrant may be exempt from the continuing education requirements for one of the following reasons:

1. A registrant serving on temporary active duty in the armed forces of the United States, or a registrant serving on regular active duty who is deployed for a period of time exceeding one hundred twenty consecutive days in a year, shall be exempt from obtaining the professional development hours required during that year.

2. Registrants experiencing physical disability, illness, temporary leave from professional activity, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board. In the event such a person elects to return to active practice of professional engineering or land surveying, fifteen professional development hours must be earned before returning to active practice for each year exempted not to exceed the biennial requirement of thirty professional development hours.

3. Professional engineer registrants exempt from registration by North Dakota Century Code section 43-19.1-29 but voluntarily registered are exempt from continuing professional competency requirements. A

claim of exemption under this provision must be verified by the board. This exemption is based on the registrant's primary employment. If the registrant provides engineering services outside the scope of primary employment, the exemption will be voided and the registrant will be required to comply with the continuing professional competency requirements. A person who is registered because of a requirement in the person's job description or qualification for a pay grade is not voluntarily registered. Noncompliance with the provisions of this exemption shall be grounds for disciplinary action as allowed by North Dakota Century Code section 43-19.1-25.

4. Registrants who qualify for retired status on the board-approved renewal form shall be exempt from the continuing education requirements. A registrant whose license has been retired for one year or more and who meets all other requirements may reinstate a retired license. A registrant who has reinstated a license is required to file an interim continuing professional competency report within one year of the date of reinstatement verifying that a minimum of fifteen professional development hours have been accomplished. A registrant whose license has been retired for less than one year and who meets all other requirements may reinstate a retired license. A registrant who has reinstated a license must show compliance within the previous two years with the continuing professional competency requirements set forth in this chapter.

History: Effective October 1, 2004.
General Authority: NDCC 43-19.1-33
Law Implemented: NDCC 43-19.1-33

ARTICLE 33-18

WATER WELL CONTRACTORS

Chapter
33-18-01 Water Well Construction and Water Well Pump Installation
33-18-02 Ground Water Monitoring Well Construction Requirements

CHAPTER 33-18-01
WATER WELL CONSTRUCTION AND WATER WELL PUMP INSTALLATION

Section
33-18-01-01 Responsibility
33-18-01-02 Definitions
33-18-01-03 Plans and Specifications
33-18-01-04 Location of Wells
33-18-01-05 Protection of Ground Water Sources
33-18-01-06 General Well Construction Requirements
33-18-01-07 Pump Installation for Water Wells
33-18-01-08 Storage Tanks
33-18-01-09 Materials for Water Distribution
33-18-01-10 Cross-Connection Control

33-18-01-01. Responsibility. It is the responsibility of any person, partnership, association, or corporation engaged in the business of construction of water wells, the installation of water well pumps, pitless units, or other appurtenances, or both, or drilling of geothermal systems, to comply within the meaning of this chapter pursuant to North Dakota Century Code chapters 23-01, 43-35, and 61-28.1.

A person, partnership, association, or corporation may not engage in the business of water well construction, the installation of water well pumps, pitless units, or other appurtenances, or both, or drilling of geothermal systems, unless a certified water well contractor, water well pump and pitless unit installer, or geothermal system driller is in charge.

The certified water well contractor, water well pump and pitless installer, or geothermal system driller in charge shall provide inspection and supervision of all water well construction activities, installation of water well pumps, pitless units, or other appurtenances, or both, or drilling of geothermal systems.

History: Amended effective January 1, 1984; April 1, 1997; July 1, 2008.
General Authority: NDCC 43-35-19
Law Implemented: NDCC 43-35-19

33-18-01-02. Definitions. For the purpose of this chapter, the following definitions shall apply:

1. "Abandoned well" means a well whose use has been permanently discontinued.

2. "Annular space" means the opening between a well hole excavation and the well casing or curb, or between a casing pipe and a liner pipe.

3. "Appurtenances" means valves, meters, taps, gauges, or other devices required for adequate control or measurement of the well output.

4. "Aquifer" means a water-bearing formation that transmits water in sufficient quantities to supply a well.

5. "Casing" shall mean the pipe installed in the drill hole to give unobstructed access to the water-bearing formation.

6. "Constructing" a well includes boring, digging, drilling, or excavation in installing casings, well screens, and other appurtenances.

7. "Contamination" means alteration of the physical, chemical, or biological quality of the water so that it is harmful or potentially injurious to the health of the users or for the intended use of the water.

8. "Department" means the North Dakota state department of health.

9. "Disinfection" means the killing of infectious agents outside the body by chemical or physical means.

10. "Drawdown" means the extent of lowering the water surface in a well and of the water table adjacent to the well, resulting from the discharge of water from the well by pumping or natural flow.

11. "Drilling" means making any opening in the earth’s surface by drilling, boring, or otherwise, and includes inserting any object into any part of the earth’s surface for the purpose of obtaining an underground water supply except drainage tiles or similar devices designed primarily to improve land by removing excess water.

12. "Established ground surface" means the permanent elevation of the surface of the ground at the site of the well.

13. "Filter pack" means a clean sand or sand and gravel material of selected grain size and gradation which is installed in the annular space between a well hole excavation and the outside of the well screen for the purpose of preventing formation material from entering the screen.

14. "Geothermal system driller" means any person who is certified to conduct the business of drilling, boring, or excavating for the purpose of constructing or substantially modifying a geothermal energy extraction facility.

15. "Ground water source" means all water obtained from dug, drilled, bored, or driven well, infiltration lines, and springs.

16. "Grout" or "grouting material" means any stable impervious bonding material which is capable of providing a watertight seal between the casing and the formation throughout the depth required to protect against objectionable matter and which is reasonably free of shrinkage.

17. "Liner pipe" means a pipe installed inside a completed and cased well for the purpose of sealing off undesirable water or for repairing ruptured or punctured casing or screens.

18. "Pitless adapter" means a commercially manufactured device designed for attachment to a well casing and is so constructed as to prevent the entrance of contaminants into the well or potable water supply, conduct water from the well below the frostline to prevent freezing, and provide full access to the water system components within the well.

19. "Pitless unit" means a factory-assembled device with cap which extends the upper end of a well casing to above grade and is so constructed as to prevent the entrance of contaminants into the well or potable water supply, conduct water from the well below the frostline to prevent freezing, and provide full access to the well and the water system components within the well.

20. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the bacteriological and chemical quality conforming to applicable standards.

21. "Pressure tank" or "hydropneumatic tank" means a closed water storage container constructed to operate under a designed pressure rating to modulate the water system pressure within a selected range.

22. "Private water supply" means one that is not for public use.

23. "Public water supply" means a water supply connected to at least fifteen service connections or regularly serves an average of twenty-five persons daily, sixty days out of the year.

24. "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water for any use, including, without limitation, seals and tanks, together with fittings and controls.

25. "Repair" means any action which results in a breaking or opening of the well seal or replacement of a pump.

26. "Shall" means mandatory compliance with all aspects of the rules and regulations for water well construction and water well pump installation.

27. "Should" means provisions which are not mandatory but which are recommended or desirable procedures or methods. Deviation from the rules and regulations for water well construction and water well pump installation is subject to individual consideration.

28. "Static water level" means the elevation of the surface of the water in a well when no water is being discharged therefrom.

29. "Water well contractor" means any person who is certified to conduct the business of well drilling under the provisions of North Dakota Century Code chapter 43-35.

30. "Water well pump and pitless unit installer" means any person who is certified to conduct the business of installing water well pumps and pitless units under the provisions of North Dakota Century Code chapter 43-35.

31. "Well development" means the general process to achieve sand-free water at the highest possible well capacity.

32. "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.

33. "Well vent" means an outlet at the upper terminal of the well casing to allow equalization of air pressure in the well and escape of toxic or inflammable gases.

34. "Wells" means any artificial opening or artificially altered natural opening however made by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn; provided, that this definition does not include a natural spring, stock ponds, or holes drilled for the purpose of exploration for production of oil, gas, gravel, or other minerals.

History: Amended effective September 1, 1986; April 1, 1997; July 1, 2008.
General Authority: NDCC 43-35-19, 43-35-19.1
Law Implemented: NDCC 43-35-19, 43-35-19.1

33-18-01-03. Plans and specifications. No public water well shall be constructed or modified, or water well pump, pitless unit, or other appurtenances be installed without prior approval of plans and specifications. Plans and specifications shall be submitted to the department for review prior to construction. Note chapter 33-03-08. The plans and specifications shall include:

1. Proposed well location.

2. Location and depths of existing wells, location of septic tanks, absorption fields, sewers, barnyards, feedlots, landfills, and high water marks of lakes or streams with a radius of five hundred feet [152.4 meters].

3. Elevation of highest known flood levels, upper terminal of well casing, floor of structure, and outside grade.

4. A schematic drawing of the well construction showing diameter and depth of drill holes, casing and liner diameters and depths, grouting depths, and other details as necessary to completely describe the proposed well.

5. Certification that the state engineer, North Dakota state water commission, has issued a conditional water permit for the beneficial use of water from the well to be constructed, if such a permit is required pursuant to North Dakota Century Code section 61-04-02.

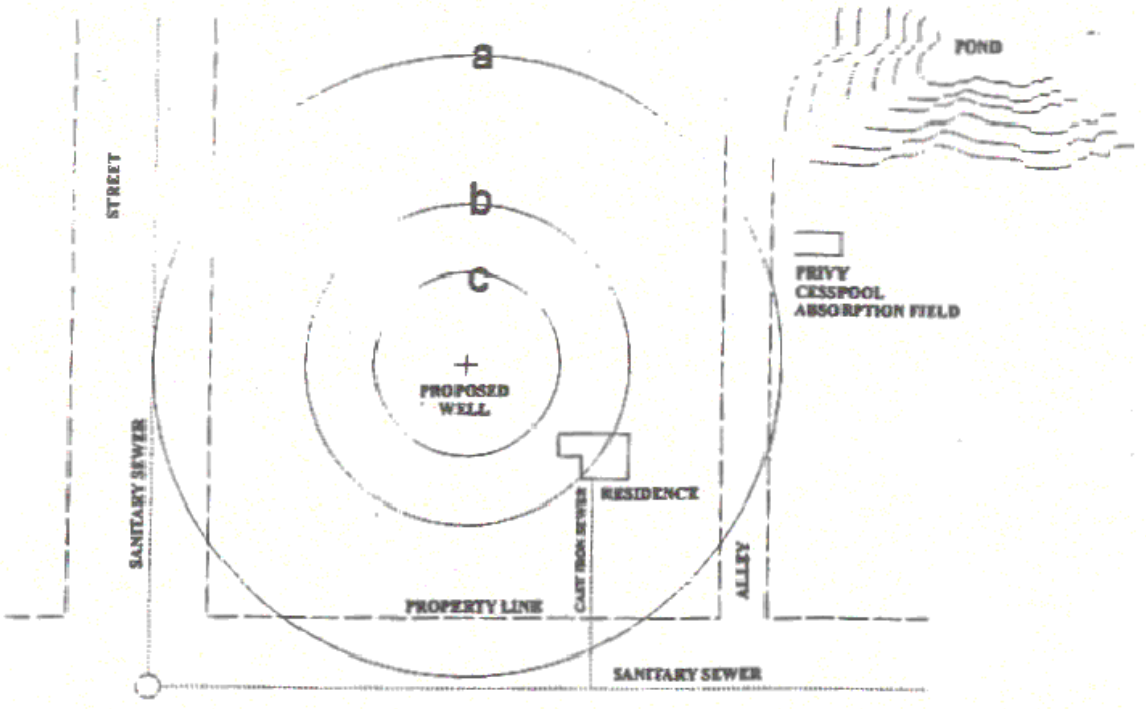
Routine maintenance and repair does not require submission of plans and specifications.

History: Amended effective January 1, 1984.
General Authority: NDCC 43-35-19
Law Implemented: NDCC 43-35-19

33-18-01-04. Location of wells.

1. **Relation to sources of contamination.** Determination of minimum lateral distances of a well from potential sources of contamination, involves evaluation of the character and location of the sources of contamination, types of geologic formations, depth to the aquifer, effect on ground water movement by well pumping, and possibilities of flooding of the site by surface waters.

   Based on experience, accepted minimum lateral distances for some common sources of pollution with respect to a well have been established. The lack of specific distances for other possible sources of contamination such as refuse disposal sites, excavations, waste treatment facilities, buried oil and gasoline storage tanks, improperly constructed wells and cisterns, etc., does not minimize their potential hazards.



The site should be on high ground and be:

a. At least one hundred feet [30.48 meters] (fifty feet [15.24 meters] for private wells) from privy pits, cesspools, septic tanks, absorption fields, barnyards, feedlots, high water marks of lakes, streams, sloughs, ponds, etc., when well is constructed in unconsolidated soils with filtering properties.

b. At least thirty feet [9.14 meters] from sewerlines.

c. At least ten feet [3.05 meters] from basements or pits.

d. At least twenty feet [6.1 meters] from overhead powerlines and other hazardous devices. Note North Dakota Administrative Code section 24-02-01-03.

Greater distances are always preferable and often necessary, depending upon soil conditions. When wells are constructed in consolidated formations, care must be taken in locating the wells as pollutants have traveled great distances in such formations.

2. **Relation to buildings.** When a well must be located adjacent to a building, it shall be located so that the centerline of the well extended vertically will clear any projection from the building by not less than two feet [60.96 centimeters].

Every well shall be reasonably accessible for proper repair, cleaning, testing, inspection, or other attention as may be necessary.

The well casing shall not extend through nor shall the top of the well casing or any other well opening terminate in the basement of any building or in a pit, room, or other space which is below ground surface.

History: Amended effective January 1, 1984.
General Authority: NDCC 43-35-19
Law Implemented: NDCC 43-35-19

33-18-01-05. Protection of ground water sources.

1. **Minimum protective depths of wells.** All wells shall be watertight to exclude contamination. Wells shall be designed to seal off formations that are or may be contaminated or undesirable.

   Unless approved otherwise by the department, the annular space between a well hole excavation and the outside of the well casing shall be filled with neat cement grout, high-solids bentonite clay grout, bentonite chips, or bentonite tablets at least one and one-half inches [3.81 centimeters] in thickness from a depth of not less than thirty feet [9.1 meters] to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed. Wells with a depth of thirty feet [9.1 meters] or less shall be grouted from within two feet [60.96 centimeters] of the top of the well screen to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed. Greater depths are preferable and may be required for specific installations as determined by review of the plans and specifications.

   The annular space of wells constructed in unconsolidated formations without overlying confining beds and static water levels less than thirty feet [9.1 meters] below the ground surface shall be filled with neat cement grout, high-solids bentonite clay grout, bentonite chips, or bentonite tablets at least one and one-half inches [3.81 centimeters] in thickness from the static water level or a depth of not less than ten feet [3.0 meters], whichever is greater, to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed.

   Driven well casing may, when conditions warrant, be installed without grouting.

2. **Required protection for various sources.**

   a. Radial collector wells. The location of all caisson construction joints and porthole assemblies shall be indicated. The caisson wall shall be substantially reinforced. Radial collectors shall be in areas and at depths approved by the department. Provisions shall be made to assure minimum vertical rise. The top of the caisson shall be

covered with a watertight floor. All openings in the floor shall be curbed and protected from entrance of foreign material. Pump discharge piping shall not be placed through caisson walls.

b. Dug or bored wells. Dug or bored wells greater than two feet [60.96 centimeters] in diameter shall be developed only where geological conditions preclude the development of a satisfactory drilled well.

Every dug or bored well shall have a continuous watertight casing. The section of casing in the producing zone serving as the well screen shall readily admit water and be structurally sound to withstand external pressures.

The open space between the excavation and the installed casing shall be sealed with neat cement grout, high-solids bentonite clay grout, bentonite chips, or bentonite tablets.

The watertight casing shall extend at least twelve inches [30.48 centimeters] above finished ground surface. A cover slab at least four inches [10.16 centimeters] thick, adequately reinforced and having a diameter sufficient to overlap the lining by two inches [5.08 centimeters] shall be provided. The slab shall be constructed without joints.

The top of the slab shall be sloped to drain to all sides and a watertight joint made where the slab rests on the well casing using cement mortar or a mastic compound.

A manhole, if installed, shall be provided with a curb cast in the slab and extending at least four to six inches [10.16 to 15.24 centimeters] above the slab. The manhole shall have a watertight overlapping cover extending down around the curb by at least two inches [5.08 centimeters].

Adequate sized pipe sleeve or sleeves shall be cast in place in the slab to accommodate the type of pump or pump piping proposed for the well.

c. Infiltration wells. Infiltration wells may be considered where geological conditions preclude possibility of developing an acceptable drilled well. The area around the well shall be under the control of the water purveyor for a distance acceptable to or required by the department. The flow in the lines shall be by gravity to a collecting well. The water shall be continuously chlorinated to assure bacterial purity.

d. Flowing wells. The construction of flowing wells shall be in compliance with North Dakota Century Code chapter 61-20.

The construction of flowing wells shall be such that the flow from them can be controlled. Well casing shall be installed, and the annular space grouted with neat cement to form a tight seal. The neat cement grout shall extend upward from within twenty feet [6.1 meters] of the top of the aquifer to the ground surface or the upper end of the well casing if a pitless unit or adapter is installed.

Well casings shall be joined in a watertight manner. Flow control should consist of valved pipe connections, watertight pump connections, or receiving reservoirs set at an elevation corresponding to the artesian head.

e. Existing wells. The department shall be consulted for requirements concerning the reconstruction of existing wells.

History: Amended effective January 1, 1984; September 1, 1986; April 1, 1997.
General Authority: NDCC 43-35-19, 43-35-19.1
Law Implemented: NDCC 43-35-19, 43-35-19.1

CHAPTER 33-18-02
GROUND WATER MONITORING WELL CONSTRUCTION REQUIREMENTS

Section
33-18-02-01 Purpose
33-18-02-02 Applicability
33-18-02-03 Exclusions
33-18-02-04 Definitions
33-18-02-05 Borehole and Well Locations
33-18-02-06 Drilling Methods
33-18-02-07 Borehole and Monitoring Well Documentation
33-18-02-08 Monitoring Well Construction Materials
33-18-02-09 Monitoring Well Development
33-18-02-10 Borehole and Monitoring Well Abandonment

33-18-02-01. Purpose. The purpose of this chapter is to establish minimum acceptable standards for the design, installation, construction, decommissioning, and documentation of boreholes and ground water monitoring wells.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-02. Applicability. The installation, construction, and decommissioning of boreholes and ground water monitoring wells must be supervised onsite by a certified and licensed contractor.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-18.2, 43-35-19.2

33-18-02-03. Exclusions.

1. Injection wells for the oil and gas industry;

2. Boreholes, piezometers, and monitoring wells for dams;

3. Monitoring well or borehole construction used for mineral exploration addressed under existing federal or state law;

4. Boreholes advanced above an aquifer for the purpose of determining the local stratigraphy; and

5. Special cases, with prior approval of the department.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-04. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-35, except that:

1. "Annular-space: annulus" means the space between a casing and a riser or between the riser and the borehole.

2. "Aquifer" means a water-bearing formation that transmits water in sufficient quantities to supply a well for a beneficial use.

3. "Borehole" means an open or cased subsurface hole created by drilling.

4. "Casing" means the pipe installed to maintain the integrity of the borehole. The term casing is used in this chapter only in reference to protective casing; the definition is included to distinguish the term from riser.

5. "Department" means the state department of health.

6. "Monitoring well" means any cased excavation or opening into the ground made by digging, boring, drilling, driving, jetting, or other methods for the purpose of determining the physical, chemical, biological, or radiological properties of groundwater.

7. "Riser" means the pipe extending from the well screen to or above the ground surface.

8. "Shall" or "must" means mandatory compliance with all aspects of the specific provision of this chapter within which the word appears.

9. "Should" means the specific provision in which the word appears is not mandatory but is a recommended desirable procedure or method. Deviation from the provision is subject to site specific consideration by the certified contractor installing the borehole or monitoring well.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-05. Borehole and well locations.

1. Prior to the initiation of assessment activities in response to a contaminant release or when prior departmental approval is required, under existing state statute boreholes and monitoring wells must be installed at practicable locations based on plans and specifications approved by the department.

2. The riser of a monitoring well must terminate at least one foot [0.304 meter] above the ground surface, except:

a. Monitoring wells should not be located in drainage ditches, floodplains, or floodway. Where this is impractical, the monitoring well should terminate at least two feet [0.609 meter] above the one hundred year flood elevation for the well site. Those risers that do not must be constructed to preclude flood impact to the monitoring well.

b. A riser for a well constructed in a high traffic area or other limiting site conditions should be mounted flush to grade or below grade with a protective casing to minimize damage, provided that construction must include a watertight seal to preclude surface water from entering the protective casing or riser and that the well is clearly marked as a monitoring well.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-06. Drilling methods.

1. This subsection applies to areas not likely having subsurface contamination.

   a. Whenever feasible, drilling methods should not introduce water or fluids into the borehole and should optimize cuttings control at ground surface. The selected drilling method must reflect the purpose or objective of the borehole or monitoring well.

   b. During drilling of boreholes, adequate care must be taken to prevent commingling of water from separate aquifers.

   c. The nominal diameter of a borehole must provide a minimum annular space of 1.9 inches [48 millimeters].

2. This subsection applies to areas having potential subsurface contamination. In addition to the requirements of subsection 1, drilling methods in areas of potential subsurface contamination must follow the procedures in this subsection.

   a. During drilling of boreholes, precautions must be taken to prevent cross-contamination of boreholes.

      (1) Augers, center plug, and soil sampling equipment must be decontaminated following procedures appropriate for the contaminants of concern, which do not result in the cross-contaminatin of boreholes or monitoring wells and which do not conflict with the monitoring objective.

(2) The drilling sequence of boreholes must consider the objective of the site assessment, including factors such as the suspected location of the contaminant, contaminant characteristics, and local site geology.

b. All potentially contaminated cuttings, as well as development and purge water, must be handled in an environmentally safe manner. When suspected contamination includes hazardous substances as defined and regulated under North Dakota Administrative Code chapter 33-24-02, proper management methods for cuttings and water of each borehole must meet the requirements of North Dakota Century Code chapter 23-20.3 and North Dakota Administrative Code article 33-24.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-07. Borehole and monitoring well documentation.

1. A written log must be kept which records the depth below ground surface of the boundaries of all strata encountered when drilling a borehole. Each stratum encountered must be described using generally accepted geologic terminology.

2. The certified monitoring well contractor must provide a monitoring well completion report to the board of water well contractors on forms available from or acceptable to the board within thirty days after the well has been installed. A completed report must include project and location, date of drilling, logger's name and title, well number or borehole number, drilling method and fluids used, borehole diameter, total depth, decontamination procedures, and a lithologic description as provided by subsection 1. Additional information, the availability of which is dependent upon the drilling method used, should also be provided and includes moisture content, fractures, and depth at which water was first encountered. A completed report must also include certified monitoring well contractor's name and license number; riser material; screen material and screen slot size, length, placement; filter pack materials; riser and screen cleaning and installation procedures; sealing materials, placement and installation procedures; well development procedures; and any installation conditions which affected well construction.

3. When completion reports are required by the department as a matter of fulfillment of its regulatory functions, the reports must include the information required by subsections 1 and 2; a detailed drawing of each well, including dimensions, as part of the well driller's report; and a map drawn to a specified scale showing the locations of all monitoring wells with an accuracy of three feet [0.914 meter]. The map must include

manmade structure boundaries, any pertinent property boundaries, a north arrow, the location coordinates and elevation of all permanent benchmarks, the horizontal position of each monitoring well and its survey coordinates, the vertical elevation of the top riser referenced to the nearest benchmark to an accuracy of 0.01 feet [0.003 meter], and the respective identification number for each well.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-08. Monitoring well construction materials.

1. Riser.

   a. Specifications. The riser for a monitoring well must retain structural integrity for the duration of the monitoring period under actual subsurface conditions.

      (1) The riser and couplings must be constructed of materials that neither absorb nor leach chemical constituents that could bias representative ground water samples. The riser and couplings must be compatible, resisting corrosion, with anticipated contaminants. Depending upon the intended use of the well, the riser should have a vented cap, except wells constructed in a potential flooding condition or flush-mounted wells must not have a vented cap.

      (2) The riser must be capable of withstanding installation and development stresses without damage.

   b. Assembly and installation.

      (1) The interior and exterior surfaces of the riser and couplings must be thoroughly cleaned in a manner that does not conflict with the monitoring objective prior to assembly and installation.

      (2) The individual sections of the riser must be joined in a manner that neither absorbs nor leaches chemical constituents that could bias representative ground water samples.

      (3) The riser must be centered, as practicable, in the borehole.

2. Screen. A ground water monitoring well must be constructed with a screen.

   a. Specifications.

(1) A screen and bottom plug must be constructed of material that is nonreactive with constituents in soil and ground water at the monitoring location.

(2) The screen must be capable of withstanding installation and well development stresses without damage.

(3) The screen must be new, machine slotted or continuous wrapped wire-wound. The screen slots must not be hand-cut or wrapped with filter fabric, unless approved prior to installation by the department.

(4) The screen slot size must retain and prevent at least fifty percent of the grain size of the collapsed formation or ninety percent of the filter pack from entering the screen.

(5) The screen placement and length must allow for entry of ground water from a predetermined zone appropriate for the collection of representative ground water samples and future fluctuations of the water table.

b. Assembly and installation.

(1) The screen and bottom plug must be thoroughly cleaned, in a manner which does not conflict with the monitoring objective, prior to assembly and prior to insertion into the borehole.

(2) The screen must be permanently joined to the well riser in a manner that neither absorbs nor leaches chemical constituents that could bias representative ground water samples.

(3) The screen must be centered, as practicable, in the borehole.

3. Filter packs.

a. Specifications. When filter packs are used, they must be compatible with the purpose or objective of the monitoring well and have a specific gravity of two and one-half or greater. The filter pack grain size must minimize formation materials from entering the screen. Collapsed formation may be used as filter pack material if it limits passage of at least fifty percent of the formation to the screen.

b. Installation. The filter pack should extend upward from the bottom of the screen to at least two feet [0.609 meter] above the top of the screen. Where shallow water tables occur, the required height of filter pack above the top of the screen may be reduced a maximum of one foot [0.304 meter] to allow space for the annulus sealant.

In special cases where the potential for a cross-connection or commingling of different water-bearing zones is documented by the monitoring well contractor requiring less than a one-foot [0.304-meter] filter pack above the screen intake, a reduction in the filter pack to less than one foot [0.304 meter] above the top of the screen to meet site specific conditions is allowed.

4. Filter pack seal. A ground water monitoring well must be installed with a filter pack seal.

   a. Specifications. The filter pack seal should extend at least two feet [0.609 meter] upward from the top of the filter pack. Where shallow water tables occur, the filter pack seal may be reduced a maximum of one foot [0.304 meter] to allow for annular space sealant. Sodium bentonite chips of size three-eighths-inch [0.95-centimeter] diameter or smaller should be placed in a manner which avoids bridging of the chips. Sodium bentonite chips or pellets must be used for seals placed below the water table, except in circumstances where the sodium bentonite may bias representative ground water samples.

   b. Installation. Sodium bentonite pellets, chips, or granules used as filter pack seal above a water table must be hydrated after placement.

5. Annulus seal. A ground water monitoring well must be installed with an annulus seal.

   a. Specifications.

      (1) The annulus seal should extend from the top of the filter pack seal upward to the ground surface seal, and it should be at least two feet [0.609 meter] in length.

      (2) Grout material:

         (a) Should have an equal or lower permeability than the least permeable geologic formation penetrated by the borehole.

         (b) Should be compatible with formation material, well casing and riser and not capable of contaminating ground water.

         (c) Should be in a form which can be positively and accurately placed to fill all voids.

         (d) Should be self-leveling in the annulus and uniform in setup.

(e) Should, when setup, assist the structural stability of the riser.

(f) Should be capable of bonding to the riser and borehole wall to provide a watertight seal.

(3) Acceptable grouts above the water table include neat cement, bentonite chips, high solids bentonite grout, or a cement and bentonite clay mixture not exceeding five pounds [2.27 kilograms] of bentonite clay per ninety-four-pound [42.6-kilograms] sack of cement.

(4) Bentonite chips or pellets may be used as a seal material in the annulus of shallow monitoring wells provided it is hydrated after each bag is poured into the annulus.

b. Installation. The annulus seal must be placed in a manner so as to ensure the proper placement and distribution of the sealant material.

6. Ground surface seal and protective casing.

a. A protective casing and locking cap is required when the monitoring well is located in an area where the well needs physical protection or is likely to be tampered with.

(1) The protective casing should consist of a metal or polyvinyl chloride assembly at least two inches [5.08 centimeters] larger in diameter than the riser and have a locking cap.

(2) The protective casing should extend from the bottom of the ground surface seal, and it should extend above the top of the riser at least one inch [2.54 centimeters] but not more than four inches [10.15 centimeters].

(3) The locking cap should be secured and locked at all times when the monitoring well is not in use.

b. The ground surface seal should consist of concrete or neat cement. If a protective casing is used, the surface seal should be placed around the protective casing and may not be placed between the protective casing and the riser. The ground surface seal should be sloped to promote drainage away from the riser or protective casing.

c. Dry bentonite pellets or chips should be placed in the annular space between the protective casing and the riser up to the level corresponding with the top of the ground surface seal.

d. A weep hole or vent should be used in the protective casing, provided it is placed at least six inches [15.2 centimeters] above the surface of the ground surface seal, but in no case should it be above a vent hole in the riser.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-09. Monitoring well development. All monitoring wells must be developed as follows:

1. The waiting period for monitoring well development after completion of well installation shall allow setup of sealants.

2. The monitoring well must be developed utilizing procedures that are compatible with the monitoring objective and that do not adversely impact well integrity. Development of the monitoring well must include at least three cycles or last for approximately one hour until the water is free of sediments or stabilizes, whichever occurs first. Stabilization occurs when successive measurements of indicator parameters, such as instrument readings for turbidity or specific conductivity, taken from separate well volumes, are within ten percent.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

33-18-02-10. Borehole and monitoring well abandonment.

1. The department may require by written notification an owner of the site of a borehole or monitoring well to decommission the borehole or monitoring well when necessary to:

   a. Eliminate physical hazards on the surface;

   b. Prevent contamination of ground water;

   c. Prevent intermingling of desirable and undesirable waters; or

   d. Eliminate unintended use.

2. Any monitoring well which is constructed and installed after March 1, 1997, and which does not meet the requirements of this chapter must be decommissioned within thirty days after written notification by the department.

3. A borehole must be decommissioned within three working days of discontinuance of use according to subsection 5.

4. A monitoring well must be decommissioned in accordance with the requirements of subsection 5 within one year of discontinuance of use unless it may be reasonably anticipated that the well will be reused in the future. If the well is anticipated to be used in the future, the owner of the well is responsible to periodically inspect and maintain the well to ensure that the well remains in compliance with the standards established in this chapter.

5. Decommissioned and plugged boreholes and monitoring wells must have equal or less permeability than the local environment resulting in no greater influence on the local environment than the original geologic formation. Factors, such as topography, hydrogeology, borehole or well construction, and contaminants, must be considered in a decommissioning operation.

   a. Immediately prior to decommissioning a monitoring well, the water in the well must be disinfected, except water containing hydrocarbons should not be disinfected with a chlorine disinfectant or other reactive compounds.

   b. Sealant materials cannot be native soil materials. An acceptable sealant for dry boreholes is concrete. Acceptable sealant materials for wet boreholes and monitoring wells include neat cement, bentonite grout, bentonite pellets, and bentonite chips. Sealant materials must:

      (1) Be durable;

      (2) Not adversely impact local geologic materials or ground water;

      (3) Form a bond and seal with the sidewall; and

      (4) Resist cracking or shrinkage.

   c. Any settling of the sealant material must be topped off. Sealant material may be terminated two and one-half feet [0.761 meter] below the ground surface in agricultural areas, in which case a native soil plug must be placed on top of the sealant material.

   d. When monitoring well construction and installation documentation is not available, the well has been damaged down hole or the well is located in a proposed future solid waste treatment or disposal area, all protective casing, riser, screen, seals, and filter pack must be removed by pulling or over drilling.

   e. Monitoring wells known by available documentation to be constructed with an impermeable annular space seal may be

decommissioned without removing the riser, screen, annular sealant, and filter pack provided:

(1) The remaining screen and riser are filled with sealant material;

(2) The ground surface seal and protective casing are removed; and

(3) The riser must be cut off at a depth to preclude interference with site specific activities, but should be no less than two and one-half feet [0.761 meter] below the surface.

History: Effective March 1, 1997.
General Authority: NDCC 43-35-19.2
Law Implemented: NDCC 43-35-19.2

CHAPTER 43-02-02
SUBSURFACE MINERAL EXPLORATION AND DEVELOPMENT

Section	
43-02-02-01	Definitions
43-02-02-05	Enforcement of Laws, Rules, and Regulations Dealing With Exploration, Development, and Production of Subsurface Minerals
43-02-02-12	Application for Permit to Drill and Recomplete
43-02-02-13	Well Location
43-02-02-20	Well Log, Completion, and Work-Over Report and Basic Data Commission Order From Examiner Hearing

43-02-02-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12, except:

1. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundreths pounds per square-inch absolute [1034.19 grams per square centimeter].

2. "Bottom hole or subsurface pressure" means the pressure in pounds per square-inch gauge under conditions existing at or near the producing horizon.

3. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.

4. "Completion" means when the well is capable of producing subsurface minerals through wellhead equipment from the ultimate producing zone after casing has been run.

5. "Deep well" means any well to explore for, develop, or produce subsurface minerals which is drilled into rocks older than the Greenhorn formation or which encounters brackish or saline formation waters.

6. "Department" means the department of mineral resources of the industrial commission.

7. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.

8. "Director" means the director of the department of mineral resources of the industrial commission.

9. "Exception location" means a location which does not conform to

the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.

10. "Field" means the general area underlaid by a concentration of subsurface minerals. Field also includes the geological formation containing such subsurface minerals.

11. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, and includes commercial electrical logs and similar records.

12. "Nonhydrocarbon gas" means all naturally occurring gaseous elements and compounds except hydrocarbons and carbon dioxide as regulated under North Dakota Century Code chapter 38-08.

13. "Occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.

14. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.

15. "Product" means any commodity made from any subsurface mineral.

16. "Recomplete" means the subsequent completion of a well in a different pool.

17. "Reservoir" means a pool or common source of supply.

18. "Saltwater handling facility" means and includes any container, such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.

19. "Shallow well" means any well drilled into rocks younger than the Belle Fourche formation which does not encounter saline or brackish formation waters for the purpose of developing or producing subsurface minerals.

20. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

21. "Testhole" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of gathering information on subsurface minerals.

22. "Waste" means:

a. Physical waste;

b. Operations which cause or tend to cause unnecessary or excessive surface loss; or

c. Operations that do not recover all of the mineral being mined that is technically and economically possible.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-05. Enforcement of laws, rules, and regulations dealing with exploration, development, and production of subsurface minerals. The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the exploration, development, and production of subsurface minerals. However, it shall be the responsibility of all owners or operators to obtain information pertaining to the regulation of subsurface minerals before operations have begun.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-12. Application for permit to drill and recomplete. A permit shall be required prior to commencement of operations for the exploration or evaluation of subsurface minerals. The application for a permit to drill (form 1-sm) shall be filed with the director, together with a permit fee of one hundred dollars. In extenuating circumstances, verbal approval may be given for site preparation by the director. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-02-11 or the applicant must have previously
filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is complete.

A permit shall be required for each deep well not included in an approved mining plan.

A permit shall be required for each testhole drilling program exploring for subsurface minerals. The area to be explored shall be outlined on the application and the permit shall be valid in the area so outlined.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section. The plat shall

also include latitude and longitude of the proposed well location to the nearest tenth of a second. Information to be included in such application shall be the proposed depth to which the well will be drilled; estimated depth to the top of important markers; estimated depth to the top of objective horizons; the proposed mud program; the proposed casing program, including size and weight; the depth at which each casing string is to be set; the proposed pad layout, including cut and fill diagrams; and the proposed amount of cement to be used, including the estimated top of the cement.

Prior to the commencement of recompletion operations or drilling horizontally, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4-sm) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it

is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide any additional information requested by the director, in addition to that specifically required by this section. The director may impose such terms and conditions on the permits issued under this section as the state geologist deems necessary.

The director shall deny an application for a permit under this section if the proposal would violate correlative rights or would cause, or tend to cause, waste. The director shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled before surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective May 1, 2004; July 1, 2013.
General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02-13. Well location. All well locations must be approved by the commission, after notification and hearing. No well drilled for solution mining of subsurface minerals shall be located closer than five hundred feet [152.4 meters] from the boundary line of property owned or leased by the operator except by order of the commission. The term boundary line as used herein is understood to mean the boundary of a contiguous set of properties either owned or leased by the operator.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-22. Well log, completion, and work-over report and basic data. After the plugging of a well, a plugging records (form 7-sm) shall be filed with the state geologist. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6-sm) shall be filed with the state geologist. In no case shall subsurface minerals be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall run a gamma ray log from total depth to ground level elevation of the well bore. Prior to completing the well, the operator shall run a log form which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived or postponed by the director if the necessity therefore can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the state geologist free of charge. Logs shall be submitted as one digital tagged image file format (TIFF) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor, and any production runs, furnished to the state geologist on recompletions or reentries, shall be kept confidential for a period of one year if requested by the operator and such period may be further extended upon approval by the commission. The one-year period shall commence on the expiration date of the permit. The confidentiality period will become void if the operator engages in a wholesale release of the confidential information in a wide public form. Any information furnished to the state geologist prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4-sm) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work, such as plugging back or drilling deeper, acidizing, shooting, formation fracturing,

squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4-sm) with the state geologist. The report shall present a detailed account of all work done and the date of such work; the daily production of subsurface minerals and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a □owing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4-sm) of such installation. The notice shall include all pertinent information on the pump and its operation, including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

The following basic data collected by the operator shall be delivered, free of charge, to the state geologist within six months of the expiration date of the permit:

1. Washed and packaged sample cuts, core chips, or whole cores except those portions of cores used for necessary testing or analysis in which case the results of testing, the analysis and the description of missing portions shall be submitted to the state geologist upon request.

2. Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.

3. Elevation and location information on the data collection points.

4. Other pertinent information as may be requested by the director.

When requested by the operator, the data submitted shall be confidential for a period of one year commencing on the expiration date of the permit. Such period may be further extended upon approval of the commission.

Data restricted to a particular stratigraphic interval containing the actual ore being explored, developed, or mined, shall be confidential as long as the operator is exploring, developing, or producing from that particular stratum. The general area, as used herein, shall be defined jointly by the state geologist and the operator. Definition of the stratigraphic interval will be made by the state geologist. Data from the stratigraphic interval will, at the discretion of the state geologist, be retained in the North Dakota office of the operator during the period of confidentiality. The

industrial commission and the state geologist shall have access to all confidential data.

The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the state geologist deems it necessary to protect the public's health, safety, and welfare.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

CHAPTER 43-02-03
OIL AND GAS CONSERVATION

Section	
43-02-03-01	Definitions
43-02-03-05	Enforcement of Laws, Rules, and Regulations Dealing With Conservation of Oil and Gas
43-02-03-07	United States Government Leases
43-02-03-09	Forms Upon Request
43-02-03-10	Authority to Cooperate With Other Agencies
43-02-03-13	Record of Wells
43-2-3-14	Access to Records
43-02-03-14.1	Verification of Certified Welders [Repealed]
43-02-03-14.2	Oil and Gas Metering Systems
43-2-3-15	Bond and Transfer of Wells
43-2-3-16	Application for Permit to Drill and Recomplete
43-02-03-16.1	Designation and Responsibilities of Operator
43-02-03-16.2	Revocation and Limitation of Drilling Permits
43-02-03-16.3	Recovery of a Risk Penalty
43-2-3-17	Sign on Well or Facility
43-2-3-18	Drilling Units - Well Locations
43-02-03-18.1	Exception Location
43-2-3-19	Site Construction
43-02-03-25	Deviation Tests and Directional Surveys
43-02-03-28	Safety Regulation
43-02-03-48.1	Central Production Facility - Commingling of Production
43-02-03-52.1	Report of Gas Produced in Association With Oil
43-02-03-66	Application for Allowable on New Oil Wells

43-02-03-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.

2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units therein in accordance with proration schedules.

3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units in an allocated pool.

4. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

5. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after

deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.

6. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.

7. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.

8. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.

9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.

10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.

11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.

12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.

13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.

14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].

16. "Director" means the director of oil and gas of the industrial commission, the

assistant director of oil and gas of the industrial commission, and their designated representatives.

17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of:

    a. Aiding in the lifting of fluids in the well; or

    b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.

19. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

20. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.

21. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

22. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.

23. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.

24. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.

25. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.

26. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.

27. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.

28. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.

29. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.

30. "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.

31. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.

32. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.

33. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.

34. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.

35. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

36. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.

37. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

38. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.

39. "Proration month" means the calendar month which shall begin at

seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.

40. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.

41. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.

42. "Recomplete" means the subsequent completion of a well in a different pool.

43. "Reservoir" means pool or common source of supply.

44. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.

45. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

46. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.

47. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry with no intent to produce oil or gas from such well.

48. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsalable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

49. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or recycling tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production. This is not to be construed as to include saltwater handling and disposal operations which typically recover skim oil

from their operations, treating mud or cuttings at a well site during drilling operations, or treating flowback water during completion operations at a well site.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; January 1, 2008; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-05. Enforcement of laws, rules, and regulations dealing with conservation of oil and gas. The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the conservation of oil and gas. However, it shall be the responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations have begun.

History: Amended effective May 1, 2004; April 1, 2012.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-07. United States government leases. The commission recognizes that all persons drilling and producing on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations. Copies of the sundry notices, reports on wells, and well data required by this chapter of the wells on United States government land shall be furnished to the commission at no expense to the commission. Federal forms may be used when filing such notices and reports except for reporting the plugging and abandonment of a well. In such instance, the plugging record (form 7) must be filed with the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1994.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-09. Forms upon request. Forms for written notices, requests, and reports required by the commission will be furnished upon request. These forms shall be of such nature as prescribed by the commission to cover proposed work and to report the results of completed work.

General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-13. Record of wells. The director shall maintain a record of official well names, to be known as the well-name register, in which shall be entered: (1) the name and location of each well; (2) the well file number; (3) the name of the operator, or the operator's agent; and (4) any subsequent name or names assigned to the well and approved by the director.

The last name assigned to a well in the well-name register shall be the official name of the well, and the one by which it shall be known and referred to.

The director may, at the director's discretion, grant or refuse an application to change the official name. The application shall be accompanied by a fee of twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-14. Access to records. The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, operation, or servicing oil and gas wells, injection wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules, and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subsection 6 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-14.1. Verification of certified welders. Repealed effective July 1, 1996.

43-02-03-14.2. Oil and gas metering systems.

1. **Application of section.** This section is applicable to all metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.

2. **Definitions.** As used in this section:

a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.

b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.

c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.

d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.

e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.

f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.

3. **Inventory filing requirements.** The owner of metering equipment shall file with the commission an inventory of all meters used for custody transfer and allocation of production from oil or gas wells, or both. Inventories must be updated on an annual basis, and filed with the commission on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:

a. Well name and legal description of location or meter location if different.

b. North Dakota industrial commission well file number.

c. Meter information:

(1) Gas meters:

(a) Make and model.

(b) Differential, static, and temperature range.

(c) Orifice tube size (diameter).

(d) Meter station number.

(2) Oil meters:

(a) Make and model.

(b) Size.

(c) Meter station number.

4. **Installation and removal of meters.** The commission must be notified of all custody transfer meters placed in service. The owner of the custody transfer equipment shall notify the commission of the date a meter is placed in service, the make and model of the meter, and the meter or station number. The commission must also be notified of all metering installations removed from service. The notice must include the date the meter is removed from service and the meter or station number. The required notices must be filed with the commission within thirty days of the installation or removal of a meter.

All allocation meters must be approved prior to installation and use. The application for approval must be on a sundry notice (form 4) and shall include the make and model number of the meter, the meter or station number, the well name, its location, and the date the meter will be placed in service.

Meter installations for measuring production from oil or gas wells, or both, must be constructed to American petroleum institute or American gas association standards or to meter manufacturer's recommended installation. Meter installations constructed in accordance with American petroleum institute or American gas association standards in effect at the time of installation shall not automatically be required to retrofit if standards are revised. The commission will review any revised standards, and when deemed necessary will amend the requirements accordingly.

5. **Registration of persons proving or testing meters.** All persons engaged in meter proving or testing of oil and gas meters must be registered with the commission. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However, such persons must notify the commission prior to commencement of the test to allow a representative of the commission to witness the testing process. A report of the results of such test shall be filed with the commission within thirty days after the test is completed. Registration must include the following:

a. Name and address of company.

b. Name and address of measurement personnel.

c. Qualifications, listing experience or specific training.

Any meter tests performed by a person not registered with the commission will not be accepted as a valid test.

6. **Calibration requirements.** Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the commission at least ten days prior to the testing of any meter.

a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, the meter must be repaired or adjusted and tested within forty-eight hours of repair or replaced.

b. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the commission to ensure measurement accuracy.

c. All gas meters must be tested with a minimum of a three-point test for static and differential pressure elements and a two-point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.

d. Test reports must include the following:

(1) Producer name.

(2) Lease name.

(3) Pipeline company or company name of test contractor.

(4) Test personnel's name.

(5) Station or meter number.

e. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:

(1) Oil meters used for custody transfer shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at each two thousand barrel interval or more frequently at the discretion of the operator.

(2) Quarterly for oil meters used for allocation of production.

(3) Semiannually for gas meters used for allocation of production.

(4) Semiannually for gas meters in gas gathering systems.

(5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, orifice plates shall be inspected semiannually, and meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.

(6) For meters measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis, orifice plates shall be inspected annually.

f. Meter test reports must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas and all meters used in crude oil custody transfer.

g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:

(1) Annually for all equipment used to test the pressure and differential pressure elements.

(2) Annually for all equipment used to determine temperature.

(3) Biennially for all conventional pipe provers.

(4) Annually for all master meters.

(5) Five years for equipment used in orifice tube inspection.

7. **Variances.** Variances from all or part of this section may be granted by the commission on the basis of economic necessity providing the variance does not affect measurement accuracy. All requests for variances must be on a sundry notice (form 4).

A register of variances requested and approved must be maintained by the commission.

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial disposal operations must be bonded in the amount of fifty thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:

a. A well that is a dry hole and is not properly plugged;

b. A well that is plugged and the site is not properly reclaimed; and

c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the

expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:

a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter,

section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.

6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is

transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

8. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill and recomplete. Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site, and the proposed road access to the nearest existing public road. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

For wells permitted on new pads built after July 31, 2013, permit conditions imposed by the commission may include, upon request of the owner of a permanently occupied dwelling within one thousand feet of the proposed well, requiring the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the oil and gas well head, if the location can be reasonably accommodated within the proposed pad location. If the facilities are proposed to be located farther from the dwelling than the well bore, the director can issue the permit without comment from the dwelling owner. The applicant shall give any such owners written notice of the proposed facilities personally or by certified mail, return receipt requested, and addressed to their last-known address listed with the county property tax department. The commission must receive written comments from such owner within five business days of the owner receiving said notice. An application for permit must include an affidavit from the applicant identifying each owner's name and address, and the date written notice was given to each owner. The owner's notice must include:

1. A copy of North Dakota Century Code section 38-08-05.

2. The name, telephone number, and if available the electronic mail address of the applicant's local representative.

3. A sketch of the area indicating the location of the owner's dwelling, the proposed well, and location of the proposed flare, tanks, and treaters.

4. A statement indicating that any such owner objecting to the location of the flare, tanks, or treaters, must notify the commission within five business days of receiving the notice.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010; April 1, 2012; April 1, 2014.
General Authority: NDCC 38-08-05
Law Implemented: NDCC 38-08-05

43-02-03-16.1. Designation and responsibilities of operator. The principal on the bond covering a well or a treating plant is the operator. The operator is responsible for compliance with all applicable laws. A dispute over designation of the operator may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-03-16.2.

History: Effective December 1, 1996; amended effective April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-16.2. Revocation and limitation of drilling permits.

1. After notice and hearing, the commission may revoke a drilling, recompletion, or reentry permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the spacing or drilling unit. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:

   a. The technical ability of the permitholder and other owners to drill and complete the well.

   b. The experience of the permitholder and other owners in drilling and completing similar wells.

   c. The number of wells in the area operated by the permitholder and other owners.

   d. Whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether the permitholder has committed to drill a well in a timely fashion.

   e. Contractual obligations such as an expiring lease.

f. The amount of ownership the permitholder and other owners hold in the spacing or drilling unit. If the permitholder is the majority owner in the unit or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the permitholder should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.

2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after operations have commenced.

3. If the commission revokes a permit upon the application of an owner and issues a permit to that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former permitholder and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.

4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the permitholder to renew the permit or to acquire another permit within the same spacing or drilling unit.

History: Effective December 1, 1996; amended effective January 1, 2006.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-16.3. Recovery of a risk penalty. The following govern the recovery of the risk penalty pursuant to subsection 3 of North Dakota Century Code section 38-08-08 and subsection 3 of North Dakota Century Code section 38-08-09.4:

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well, including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the

unleased owner execute a lease.

a. The invitation to participate in drilling must contain the following:

(1) The approximate surface location of the proposed or existing well, proposed completion and total depth, objective zone, and completion location if other than a vertical well.

(2) An itemization of the estimated costs of drilling and completion.

(3) The approximate date upon which the well was or will be spudded or reentered.

(4) A statement indicating the invitation must be accepted within thirty days of receiving it.

(5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.

(6) Drilling or spacing unit description.

b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.

c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.

d. An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced on or before ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased o wner execute a lease.

a. The invitation to participate in the unit expense must contain the following:

(1) A description of the proposed unit expense, including the location, objectives, and plan of operation.

(2) An itemization of the estimated costs.

(3) The approximate date upon which the proposal was or will be commenced.

(4) A statement indicating the invitation must be accepted within thirty days of receiving it.

(5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.

b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.

c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.

d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

e. An invitation to participate in a unit expense covering monthly operating expenses shall be effective for all such monthly operating expenses for a period of five years if the unit expense identified in the invitation to participate is first commenced within ninety days after the date set in the invitation to participate as the date upon which a response to the invitation to participate must be received. An election to participate in a unit expense covering monthly operating expenses is effective for five years after operations are first commenced. If an election to participate in a unit expense comprised of monthly operating expenses expires or lapses after five years, a risk penalty may only be assessed and collected if the owner seeking the penalty once again complies with this section.

3. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996; amended effective May 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04, 38-08-08

43-02-03-17. Sign on well or facility. Every well or facility associated with the production, transportation, purchasing, or processing of oil and gas except plugged wells shall be identified by a sign. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the well name and number (which shall be different or distinctive for each well), the name of the operator, file number, and the location by quarter-quarter, section, township, and range. For all wells and associated facilities, the sign shall also include the legal street address, if available.

Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section or show the permit number rather than the file number shall be allowed to remain.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-18. Drilling units - Well locations. In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a depth not deeper than the Mission Canyon formation must be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by order of the commission.

. Vertical or directional oil wells projected to a depth deeper than the Mission Canyon formation must be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

. . Horizontal wells with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], projected to a depth not deeper than the Mission Canyon formation, must be drilled upon a drilling unit described as a governmental section or described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.

. Horizontal wells with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], projected to a depth deeper than the Mission Canyon formation, must be drilled upon a drilling unit described as a governmental section, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.

. Gas wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

. Gas wells projected to a depth deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17

meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

4. Within thirty days, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than three years at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order, no permits shall be issued for the drilling of an offset well to the discovery well, unless approved by the director. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

5. If the director denies an application for permit, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002; January 1, 2006; April 1, 2010; April 1, 2012.
General Authority: NDCC 38-08-04, 38-08-07
Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-18.1. Exception location. If upon application for an exception location, the commission finds that a well drilled at the location prescribed by any applicable rule or order of the commission would not produce in paying quantities, that surface conditions would substantially add to the burden or hazard of such

well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery from oil and gas, the commission may enter an order, after notice and hearing, permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. The application for an exception well location shall set forth the names of the lessees of adjoining properties and the names of any unleased mineral owners of the adjoining properties. The application shall be accompanied by a plat or sketch accurately showing the property for which the exception well location is sought, the location of the proposed well, and all other completed and drilling wells on this property and on the adjoining properties. The applicant or its attorney shall certify that a copy of the application has been sent to all lessees and all unleased mineral owners of properties adjoining the tract which would be affected by the exception location. If the applicant is the lessee of adjoining tracts that would be affected by the exception, the applicant must give notice, as prescribed above, to its lessors of such tracts.

History: Effective January 1, 1983; amended effective May 1, 1990; May 1, 1994; July 1, 1996; January 1, 2008.
General Authority: NDCC 38-08-04, 38-08-07
Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-19. Site construction. In the construction of a site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil. Soil stabilization additives, liners, fabrics, and other materials to be used onsite, on access roads or associated facilities, must be reported on a sundry notice (form 4) to the director within thirty days after application. The reclamation plan for such materials shall also be included.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the site to be sloped and diked.

Well sites and associated facilities shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. Sites and associated facilities shall be designed to divert surface drainage from entering the site.

Well sites and associated facilities or appropriate parts thereof shall be fenced if required by the director.

Within six months after the completion of a well, the portion of the well site not used for well operations shall be reclaimed, unless waived by the director. Well sites and all associated facilities shall be stabilized to prevent erosion.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-25. Deviation tests and directional surveys. When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. The director is authorized to waive the deviation test for a shallow gas well if the necessity therefor can be demonstrated to the director's satisfaction. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgment, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the director on any well utilizing a whipstock or any method of deviating the well bore. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction. The survey contractor shall file with the director free of charge one certified electronic copy of all surveys, in a form approved by the director, within thirty days of attaining total depth. Such survey shall be in reference to true north. The director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the director.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; September 1, 2000; January 1, 2006; April 1, 2010; April 1, 2012.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation. During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler, electric generator, or treater shall be placed nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Placement as close as one hundred

twenty-five feet [38.10 meters] may be allowed if a spark or flame arrestor is utilized on the equipment. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

The director may require remote operated or automatic shutdown equipment to be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

No well shall be drilled nor production or injection equipment installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

The operator of any well approved after March 31, 2014, shall submit the legal street address of the well site, and well facility if separate from the well site, to the commission on a sundry notice (form 4) immediately upon receiving the legal street address.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment. The operator conducting any well stimulation shall give prior written notice, up to seven days and not less than three business days, to any operator of a well completed in the same pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within one thousand three hundred twenty feet of one another.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000;
January 1, 2006; January 1, 2008; April 1, 2012; April 1, 2014.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-48.1. Central production facility - Commingling of production.

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.

2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.

a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties).

b. A central production facility in which production going into the facility has diverse ownership.

3. The commingling of production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.

a. Common ownership central production facility. The application for permission to commingle oil and gas in a central production facility with common ownership must be submitted on a sundry notice (form 4) and shall include the following:

(1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.

(2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.

(3) An affidavit executed by a person who has knowledge as to the state of title indicating ownership is common.

(4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

b. Diverse ownership central production facility. The application for permission to commingle oil and gas in a central production facility having diverse ownership must be submitted on a sundry notice (form 4) and shall include the following:

(1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.

(2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.

(3) The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.

(4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed monthly.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

4. Any changes to a previously approved central production facility must be reported on a sundry notice (form 4) and approved by the director.

History: Effective May 1, 1992; amended effective September 1, 2000; May 1, 2004.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-52.1. Report of gas produced in association with oil. The operator of each well in every pool shall, on or before the fifth day of the second month succeeding the month in which production occurs, file with the director the amount of gas produced by each such well upon form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of

business on said fifth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000.
General Authority: NDCC 38-08-04
Law Implemented: NDCC 38-08-04

43-02-03-66. Application for allowable on new oil wells. No well shall be placed on the proration schedule until a completion report (form 6) has been filed with the director.

The discovery well of any pool hereafter discovered shall be allowed to produce at a maximum efficient rate until such time as proper spacing is set for the pool, and shall produce thereafter, only pursuant to the general proration rules and regulations of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; January 1, 2008.
General Authority: NDCC 38-08-04, 38-08-06
Law Implemented: NDCC 38-08-04, 38-08-06

CHAPTER 43-02-05
UNDERGROUND INJECTION CONTROL

Section	
43-02-05-01	Definitions
43-02-05-01.1	Application of Rules for Underground Injection Wells
43-02-05-04	Permit Requirements
43-02-05-14	Area Permits

43-02-05-01. Definitions. The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapter 38-08 except:

1. "Area of review" means an area encompassing a fixed radius around the injection well, field, or project of not less than one-quarter mile [402.34 meters].

2. "Underground injection" means the subsurface emplacement of fluids:

   a. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

   b. For enhanced recovery of oil or natural gas.

   c. For storage of hydrocarbons which are liquids at standard temperature and pressure.

3. "Underground source of drinking water" means an aquifer or any portion thereof which supplies drinking water for human consumption, or in which the ground water contains fewer than ten thousand milligrams per liter total dissolved solids and which is not an exempted aquifer.

History: Effective November 1, 1982; amended effective May 1, 1994.
General Authority: NDCC 38-08-04(2)
Law Implemented: NDCC 38-08-04(2)

43-02-05-01.1. Application of rules for underground injection wells. All underground injection wells are also subject to the provisions of chapter 43-02-03 where applicable.

History: Effective July 1, 1996.
General Authority: NDCC 38-08-04 **Law Implemented:** NDCC 38-08-04

43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the commission after notice and hearing. The application shall be on a form 14 provided by the commission and shall include at least the following information:

   a. The name and address of the operator of the injection well.

   b. The surface and bottom hole location.

   c. Appropriate geological data on the injection zone and the top and bottom confining zones including geologic names, lithologic descriptions, thicknesses, and depths.

   d. The estimated bottom hole fracture pressure of the top confining zone.

   e. Average and maximum daily rate of fluids to be injected.

   f. Average and maximum requested surface injection pressure.

   g. Geologic name and depth to base of the lowermost underground sources of drinking water which may be affected by the injection.

   h. Existing or proposed casing, tubing, and packer data.

   i. A plat depicting the area of review, (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.

   j. The need for corrective action on wells penetrating the injection zone in the area of review.

   k. Proposed injection program.

   l. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwaterwells within a one-mile [1.61-kilometer] radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.

m. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.

n. List identifying all source wells or sources of injectate.

o. A legal description of the land ownership within the area of review.

p. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.

q. All logging and testing data on the well which has not been previously submitted.

r. Schematic drawings of the injection system, including current and proposed well bore construction, surface facility construction, including the size, location, and purpose of all tanks, the height and location of all dikes and containment, including all areas underlain by a synthetic liner, and the location of all flowlines. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.

s. Traffic flow diagram of the site, depicting sufficient area to contain all anticipated traffic.

t. A review of the surficial aquifers within one mile of the proposed injection well site or surface facilities.

u. Sundry notice detailing the proposed procedure.

2. Permits may contain such terms and conditions as the commission deems necessary.

3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms

and conditions of the permit or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.

4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.

5. No person shall commence construction of an underground injection well or site without prior approval of the director.

6. Permits are transferable only with approval of the commission.

7. Permits may be modified by the commission.

8. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.

9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.

10. A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.

11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004; January 1, 2006; April 1, 2014.
General Authority: NDCC 38-08-04(2)
Law Implemented: NDCC 38-08-04(2)

43-02-05-14. Area permits.

1. The commission, after notice and hearing, may issue an area permit providing for the permitting of individual injection wells if the proposed injection wells are:

   a. Within the same field, facility site, reservoir, project, or similar unit in the same state;

   b. Of similar construction;

   c. Of the same class; and

d. Operated by a single owner or operator.

2. An area permit application shall include at least the following information:

a. The name and address of the operator.

b. A plat depicting the area permit and one-quarter mile [402.34 meters] adjacent detailing the location of all anticipated injection wells and all current producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected.

c. Appropriate geological data on the injection zone and the confining zones, including geologic names, lithologic descriptions, thicknesses, and depths.

d. Estimated fracture pressure of the top confining zone.

e. Estimated maximum injection pressure.

f. Geologic name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.

g. Proposed injection program.

h. List identifying all source wells or sources of injectate.

i. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.

j. Legal description of the land ownership within and one-quarter mile [402.34 meters] adjacent to the proposed area permit.

k. Affidavit of mailing certifying that all landowners have been notified.

l. Representative example of landowner letter sent.

m. Schematic of the proposed injection system.

n. Schematic drawing of a typical proposed injection well bore construction.

3. An area permit authorizes the director to approve individual injection well permit applications within the permitted area. The application shall be on a form 14 provided by the commission and shall include at least the following information:

a. The name and address of the operator of the injection well.

b. The surface and bottom hole location.

c. Average and maximum daily rate of fluids to be injected.

d. Existing or proposed casing, tubing, and packer data.

e. A plat depicting the area of review (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected.

f. The need for corrective action on wells penetrating the injection zone in the area of review.

g. Location of the two nearest freshwater wells by quarter-quarter, section, township, and range within a one-mile [1.61-kilometer] radius and the dates sampled. A quantitative analysis from a state-certified laboratory of the samples must be submitted with the application or within thirty days of sampling. This requirement may be waived by the director in certain instances.

h. All logging and testing data on the well which has not been previously submitted.

i. Schematic drawings of the current well bore construction and proposed well bore and surface facility construction.

j. Sundry notice detailing the proposed procedure.

4. The director is authorized to approve individual injection well permit applications within an area permit provided:

   a. The additional well meets the area permit criteria.

   b. The cumulative effects of drilling and operating additional injection wells are acceptable to the director.

5. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.

6. If the director determines the cumulative effects are unacceptable, the permit may be modified.

7. Area and individual injection well permits may contain such terms and

conditions as the commission deems necessary.

8. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.

9. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.

10. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.

11. Area and individual injection well permits are transferable only with approval of the commission.

12. Individual injection well permits may be modified by the commission.

13. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.

14. Individual injection well permits shall automatically expire one year after the date issued, unless operations have commenced to complete the well as an injection well.

15. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 2004; January 1, 2006.
General Authority: NDCC 38-08-04(2)
Law Implemented: NDCC 38-08-04(2)

ARTICLE 43-05

GEOLOGIC STORAGE OF CARBON DIOXIDE

Chapter
43-05-01 Geologic Storage of Carbon Dioxide

CHAPTER 43-05-01
GEOLOGIC STORAGE OF CARBON DIOXIDE

Section
43-05-01-01 Definitions
43-05-01-05 Storage Facility Permit
43-05-01-09 Well Permit Application Requirements
43-05-01-10 Well Permit
43-05-01-12 Amendment to Carbon Dioxide Storage Facility Well Permits

43-05-01-01. Definitions. Terms used in this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapter 38-08. Further, in this chapter:

1. "Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas.

2. "Closure period" means that period from permanent cessation of carbon dioxide injection until the commission issues a certificate of project completion.

3. "Commission" means industrial commission.

4. "Flow lines" means pipelines transporting carbon dioxide from the carbon dioxide facility injection facilities to the wellhead.

5. "Formation fracture pressure" means the pressure, measured in pounds per square inch, which, if applied to a subsurface formation, will cause that formation to fracture.

6. "Freshwater" means an underground source of drinking water unless otherwise defined by the commission.

7. "Geologic storage" means the permanent or short-term underground storage of carbon dioxide in a storage reservoir.

8. "Injection well" means a well used to inject carbon dioxide into or withdraw carbon dioxide from a reservoir.

9. "Minerals" means coal, oil, and natural gas.

10. "Operational period" means the period during which injection occurs.

11. "Permit" means a permit issued by the commission allowing a person to operate a storage facility.

12. "Postclosure period" means that period after the commission has issued a certificate of completion.

13. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

14. "Storage facility" means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. It does not include pipelines used to transport carbon dioxide to the storage facility.

15. "Storage operator" means a person holding or applying for a permit.

16. "Storage reservoir" means a reservoir proposed, authorized, or used for storing carbon dioxide.

17. "Subsurface observation well" means a well used to observe subsurface phenomena, including the presence of carbon dioxide, pressure fluctuations, fluid levels and flow, temperature, and in situ water chemistry.

18. "Underground source of drinking water" means an aquifer or any portion of an aquifer that supplies drinking water for human consumption, or in which the ground water contains fewer than ten thousand milligrams per liter total dissolved solids and is not an exempted aquifer as determined by the commission under section 43-02-05-03.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 38-22

43-05-01-05. Storage facility permit.

1. An application for a permit must include the following:

   a. A site map showing the boundaries of the storage reservoir and the location of all proposed wells, proposed cathodic protection boreholes, and surface facilities within the carbon dioxide storage facility;

b. A technical evaluation of the proposed storage facility, including the following.

(1) The name, description, and average depth of the storage reservoirs;

(2) A geologic and hydrogeologic evaluation of the facility area, including an evaluation of all existing information on all geologic strata overlying the storage reservoir, including the immediate caprock containment characteristics and all subsurface zones to be used for monitoring. The evaluation must include any available geophysical data and assessments of any regional tectonic activity, local seismicity and regional or local fault zones, and a comprehensive description of local and regional structural or stratigraphic features. The evaluation must describe the storage reservoir's mechanisms of geologic confinement, including rock properties, regional pressure gradients, structural features, and adsorption characteristics with regard to the ability of that confinement to prevent migration of carbon dioxide beyond the proposed storage reservoir. The evaluation must also identify any productive existing or potential mineral zones occurring within the facility area and any freshwater in the facility area and within one mile [1.61 kilometers] of its outside boundary. The evaluation must include exhibits and plan view maps showing the following:

(a) All wells, including water, oil, and natural gas exploration and development wells, and other manmade subsurface structures and activities, including coal mines, within the facility area and within one mile [1.61 kilometers] of its outside boundary;

(b) All manmade surface structures that are intended for temporary or permanent human occupancy within the facility area and within one mile [1.61 kilometers] of its outside boundary;

(c) Any regional or local faulting;

(d) An isopach map of the storage reservoirs;

(e) An isopach map of the primary and any secondary containment barrier for the storage reservoir;

(f) A structure map of the top and base of the storage reservoirs;

(g) Identification of all structural spill points or stratigraphic discontinuities controlling the isolation of stored carbon dioxide and associated fluids;

(h) Evaluation of the potential displacement of in situ water and the potential impact on ground water resources, if any; and

(i) Structural and stratigraphic cross sections that describe the geologic conditions at the storage reservoir or reservoirs;

(3) A review of the data of public record for all wells within the facility area, which penetrate the storage reservoir or primary or secondary seals overlying the reservoir, and all wells within the facility area and within one mile [1.61 kilometers], or any other distances deemed necessary by the commission, of the facility area's boundary. This review must determine if all abandoned wells have been plugged in a manner that prevents the carbon dioxide or associated fluids from escaping from the storage reservoir. The review required under this paragraph shall be conducted by a geologist or engineer;

(4) The proposed calculated maximum volume and areal extent for the storage reservoir using a method acceptable to and filed with the commission; and

(5) The proposed maximum bottom hole injection pressure to be utilized at the reservoir. The maximum allowed injection pressure, measured in pounds per square inch gauge, shall be approved by the commission and specified in the permit. In approving a maximum injection pressure limit, the commission shall consider the results of well tests and other studies that assess the risks of tensile failure and shear failure. The commission shall approve limits that, with a reasonable degree of certainty, will avoid initiating a new fracture or propagating an existing fracture in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water;

c. The extent of the pore space that will be occupied by carbon dioxide as determined by utilizing all appropriate geologic and reservoir engineering information and reservoir analysis, which may include various computational models if appropriate for reservoir characterization, and the projected response and storage capacity of the geologic storage unit;

d. A detailed description of the storage facility's public safety and emergency response plan. The plan must detail the safety procedures concerning the facility and residential, commercial, and public land use within one mile [1.61 kilometers], or any other distance set by the commission, of the outside boundary of the area. The public safety and emergency response procedures must include contingency plans for carbon dioxide leakage from any well, flow lines, or other facility and

identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such leaks or loss of containment from the storage reservoir. These emergency response procedures must be reviewed and updated annually;

e. A detailed worker safety plan that addresses carbon dioxide safety training and safe working procedures at the storage facility;

f. A corrosion monitoring and prevention plan for all wells and surface facilities;

g. A leak detection and monitoring plan for all wells and surface facilities. The plan must:

(1) Identify the potential for release to the atmosphere;

(2) Identify potential degradation of ground water resources with particular emphasis on underground sources of drinking water; and

(3) Identify potential migration of carbon dioxide into any mineral zone in the facility area;

h. A leak detection and monitoring plan utilizing subsurface observation wells to monitor any movement of the carbon dioxide outside of the storage reservoir. This may include the collection of baseline information of carbon dioxide background concentrations in ground water, surface soils, and chemical composition of in situ waters within the facility area and the storage reservoir and within one mile [1.61 kilometers] of the facility area's outside boundary. Provisions in the plan will be dictated by the site characteristics as documented by materials submitted in support of the permit application but must:

(1) Identify the potential for release to the atmosphere;

(2) Identify potential degradation of ground water resources with particular emphasis on underground sources of drinking water; and

(3) Identify potential migration of carbon dioxide into any mineral zone in the facility area;

i. The proposed well casing and cementing program detailing compliance with section 43-05-01-09;

j. A performance bond in an amount and under terms set by the commission to provide it with funds sufficient to satisfy any regulatory obligation that the storage operator fails to fulfill. If the commission uses a part of the bond, the storage operator shall immediately replenish the bond or secure a new bond to ensure that the full bond amount set by the commission is maintained;

k. Any other information that the commission requires; and l. A closure plan.

2. Any person filing a permit application or an application to amend an existing permit shall pay a processing fee. The fee will be based on actual processing costs, including computer data processing costs, incurred by the commission.

   a. A record of all application processing costs incurred must be maintained by the commission.

   b. Promptly after receiving an application, the commission shall prepare and submit to the applicant an estimate of the processing fee and a payment billing schedule.

   c. After the commission's work on the application has concluded, a final statement will be sent to the applicant. The full processing fee must be paid before the commission issues its final decision on an application.

   d. The applicant must pay the processing fee regardless of whether a permit is issued or denied, or the application withdrawn.

3. The commission has one year from the date an application is deemed complete to issue a final decision regarding the application.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 38-22

43-05-01-09. Well permit application requirements.

1. Following receipt of a storage facility permit, the storage operator shall submit applications to drill, deepen, convert, operate, or, upon demonstration of mechanical integrity, reenter a previously plugged and abandoned well for storage purposes.

2. Application for permits to drill, deepen, convert, operate, or reenter a well must be submitted on a form prescribed by the commission and must include at a minimum:

   a. A plat prepared by a licensed land surveyor showing the location of the proposed injection or subsurface observation well. The plat must be drawn to the scale of one inch [25.4 millimeters] equals one thousand feet [304.8 meters], unless otherwise directed by the commission and must show distances from the proposed well to the nearest storage reservoir boundary. The plat must show

the latitude and longitude of the well in decimal degrees to five significant digits. The plat must also show the location and status of all other wells that have been drilled within one-fourth mile [402.34 meters], or any other distance deemed necessary by the commission, of the proposed injection or subsurface observation well;

b. The drilling, completion, or conversion procedures for the proposed injection or subsurface observation well;

c. A well bore schematic showing the name, description, and depth of the storage reservoirs and the depth of the deepest underground source of drinking water; a description of the casing in the injection or subsurface observation well, or the proposed casing program, including a full description of cement already in place or as proposed; and the proposed method of testing casing before use of the injection well;

d. A geophysical log, if available, through the storage reservoir to be penetrated by the proposed injection well or if an injection or subsurface observation well is to be drilled, a complete log through the reservoir from a nearby well is permissible. Such log must be annotated to identify the estimated location of the base of the deepest underground source of drinking water, showing the stratigraphic position and thickness of all confining strata above the reservoirs and the stratigraphic position and thickness of the reservoir.

3. No later than the conclusion of well drilling and completion activities, a permit application shall be submitted to operate an injection well and must include at a minimum:

a. A schematic diagram of the surface injection system and its appurtenances;

b. A final well bore diagram showing the name, description, and depths of the storage reservoir and the base of the deepest underground source of drinking water and a diagram of the well depicting the casing, cementing, perforation, tubing, and plug and packer records associated with the construction of the well;

c. The well's complete dual induction or equivalent log through the storage reservoir. Such a log shall be run prior to setting casing through the storage reservoir. Logs must be annotated to identify the estimated location of the base of the deepest underground source of drinking water, showing the stratigraphic position and thickness of all confining strata above the storage reservoir and the reservoir's stratigraphic position and thickness unless that information has been previously submitted. When approved in advance by the commission, this information can be demonstrated with a dual induction or equivalent log run in a nearby well

or by such other method acceptable to the commission;

d. An affidavit specifying the chemical constituents of the injection stream other than carbon dioxide and their relative proportions;

e. Proof that the long string of casing of the well is cemented adequately so that the carbon dioxide is confined to the storage reservoirs. Such proof must be provided in the form of a cement bond log or the results of a fluid movement study or such other method specified by the commission; and

f. The results of a mechanical-integrity test, if applicable to well type, of the casing in accordance with the pressure test requirements of this section if a test was run within one calendar year preceding the request for a conversion permit for a previously drilled well.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 38-22

43-05-01-10. Well permit.

1. Upon review and approval of the application to drill, deepen, convert, reenter, or operate an injection well, submitted in accordance with section 43-05-01-09, the commission shall issue permits to drill and operate.

2. A permit shall expire twelve months from the date of issue if the permitted well has not been drilled, deepened, reentered, operated, or converted.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 38-22

43-05-01-12. Amendment to carbon dioxide storage facility well permits.

1. An amendment to a well permit for a change in injection formation, or modifying the maximum allowable injection rate and pressure, must comply with the provisions of section 43-05-01-05.

2. Modifying well construction must comply with section 43-05-01-09.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 38-22

CHAPTER 69-05.2-04
AREAS UNSUITABLE FOR MINING

Section

69-05.2-04-01 Areas Unsuitable for Mining - Permit Application Review Procedures [Repealed]

69-05.2-04-01.1 Areas Unsuitable for Mining - Areas Where Surface Coal Mining Operations Are Prohibited or Limited

69-05.2-04-01.2 Areas Unsuitable for Mining - Exception for Existing Operations From Areas Where Mining is Prohibited

69-05.2-04-01.3 Areas Unsuitable for Mining - Procedures for Relocating or Closing a Public Road or Waiving the Buffer Zone for a Public Road

69-05.2-04-01.4 Areas Unsuitable for Mining - Procedures for Waiving the Prohibition on Mining Within the Buffer Zone Around an Occupied Dwelling

69-05.2-04-01.5 Areas Unsuitable for Mining - Submission of Requests for Valid Existing Rights Determinations

69-05.2-04-01.6 Areas Unsuitable for Mining - Processing Requests for Valid Existing Rights Determinations

69-05.2-04-01.7 Areas Unsuitable for Mining - Commission Obligations at Time of Permit Application Review

69-05.2-04-02 Areas Unsuitable for Mining - Exploration

69-05.2-04-03 Areas Unsuitable for Mining - Petitions for Designating Lands Unsuitable

69-05.2-04-04 Areas Unsuitable for Mining - Initial Processing - Recordkeeping - Notification Requirements for Designating Lands Unsuitable

69-05.2-04-05 Areas Unsuitable for Mining - Hearing Requirements for Designating Lands Unsuitable

69-05.2-04-06 Areas Unsuitable for Mining - Commission Decision for Designating Lands Unsuitable

69-05.2-04-07 Areas Unsuitable for Mining - Data Base and Inventory System for Designating Lands Unsuitable

69-05.2-04-08 Areas Unsuitable for Mining - Public Information for Designating Lands Unsuitable

69-05.2-04-09 Areas Unsuitable for Mining - Commission Responsibility for Implementation for Designating Lands Unsuitable

69-05.2-04-01. Areas unsuitable for mining - Permit application review procedures. Repealed effective March 1, 2004.

69-05.2-04-01.1. Areas unsuitable for mining - Areas where surface coal mining operations are prohibited or limited.

1. Unless the permit applicant has valid existing rights as determined under section 69-05.2-04-01.5 or qualifies for the exception for existing operations under section 69-05.2-04-01.2, surface coal mining operations must not be located:

a. On any lands listed in subsections 1 through 5 of North Dakota Century Code section 38-14.1-07.

b. Within the boundaries of study rivers or study river corridors established in any guidelines issued under the Wild and Scenic Rivers Act [16 U.S.C. 1276(a)].

2. The commission will not issue a permit or approve an incidental boundary revision for mining on federal lands within a national forest before the secretary of the United States department of the interior, under 30 CFR 761, finds that:

a. There are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations; and

b. With respect to lands that do not have significant forest cover within national forests west of the one hundredth meridian, the secretary of the United States department of agriculture has determined that surface mining is in compliance with the Surface Mining Reclamation and Control Act of 1977 [30 U.S.C. 1201 et seq.]; the Multiple-Use Sustained Yield Act of 1960 [16 U.S.C. 528-531]; the Federal Coal Leasing Amendments Act of 1975 [30 U.S.C. 181 et seq.]; and the National Forest Management Act of 1976 [16 U.S.C. 1600 et seq.].

3. The prohibition on surface coal mining activities being within one hundred feet [30.48 meters], measured horizontally, of the outside right-of-way line of any public road does not apply:

a. Where a mine access or haul road joins a public road; or

b. When, as provided by section 69-05.2-04-01.3, the commission or the appropirate public road authority with jurisdiction over the road allows the road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation.

4. The prohibition on surface coal mining activities being within five hundred feet [152.40 meters], measured horizontally, of any occupied dwelling does not apply if the owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone as provided in section 69-05.2-04-01.4.

5. The prohibition on surface coal mining activities within one hundred feet [30.48 meters], measured horizontally, of a cemetery does not apply if

the cemetery is relocated in accordance with all applicable laws and rules.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-04-01.2. Areas unsuitable for mining - Exception for existing operations from areas where mining is prohibited. The prohibitions and limitations of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 do not apply to coal mining operations for which a valid permit existed when the land came under these protections. This exception applies only to lands that were permitted for mining on August 3, 1977.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-04-01.3. Areas unsuitable for mining - Procedures for relocating or closing a public road or waiving the buffer zone for a public road.

1. This section does not apply to:

   a. Lands for which a person has valid existing rights, as determined under section 69-05.2-04-01.5.

   b. Lands within the scope of the exception for existing operations in section 69-05.2-04-01.2.

   c. Access or haul roads that join a public road.

2. The applicant must obtain any necessary approvals from the authority with jurisdiction over the road before:

   a. Relocating a public road;

   b. Closing a public road; or

   c. Conducting surface coal mining operations within one hundred feet [30.48 meters], measured horizontally, of the outside right-of-way line of a public road.

3. Before approving an action proposed under subsection 2, the commission, or the public road authority with jurisdiction over the road, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the commission will, if not included in the road authority's approval process:

a. Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation.

b. If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality.

c. Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If the commission holds a hearing, this finding will be made within thirty days after the hearing. However, if no public hearing is held and the commission makes this written finding, it may be delayed until the permit is issued.

4. Copies of the road authority's approval documents, including the written finding, must be provided to the commission.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-04-01.4. Areas unsuitable for mining - Procedures for waiving the prohibition on mining within the buffer zone around an occupied dwelling.

1. This section does not apply to:

   a. Lands for which a person has valid existing rights, as determined under section 69-05.2-04-01.5.

   b. Lands within the scope of the exception for existing operations in section 69-05.2-04-01.2.

2. If the applicant proposes to conduct surface coal mining operations within five hundred feet [152.40 meters], measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

3. If the applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within five hundred feet [152.40 meters] of the dwelling, a new waiver is not needed.

4. If the applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be

deemed to have constructive knowledge if the waiver has been properly filed with the recorder in the county where the dwelling is located or if surface coal mining operations have occurred within the five-hundred-foot [152.40-meter] zone before the date of purchase.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.

1. Except for certain federal lands, the commission is responsible for making valid existing rights determinations based on the definition of valid existing rights in section 69-05.2-01-02. The office of surface mining reclamation and enforcement must make the determination on federal lands within:

   a. The national park system.

   b. The national wildlife refuge systems.

   c. The national system of trails.

   d. The national wilderness preservation system.

   e. The national wild and scenic rivers system, including study rivers and corridors.

   f. National recreation areas.

   g. A national forest.

2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:

   a. A property rights demonstration under subdivision a of the definition of valid existing rights in section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:

      (1) A legal description of the land to which the request pertains.

      (2) Complete documentation of the character and extent of the applicant's current interests in the surface

and mineral estates of the land to which the request pertains.

(3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.

(4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.

(5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.

(6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.

(7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.

(8) If the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.

(9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

b. If the request relies upon the all permits or good-faith standard in paragraph 1 of subdivision b of the definition of valid existing rights in section 69-05.2-01-02, the information required under subdivision a must be submitted. In addition, the following must be provided:

(1) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came

under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

(2) Application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

(3) An explanation of any other good-faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

c. If the request relies upon the "needed for and adjacent standard" in paragraph 2 of subdivision b of the definition of valid existing rights in section 69-05.2-01-02, the information required under subdivision a must be submitted. In addition, an explanation must be provided to explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

d. If the request relies upon one of the standards for roads in paragraphs 1, 2, and 3 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, satisfactory documentation must be submitted to show that:

(1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the applicant has a legal right to use the road for surface coal mining operations;

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and, under the document creating the right of way or easement and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land

came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

69-05.2-04-01.6. Areas unsuitable for mining - Processing requests for valid existing rights determinations.

1. The commission will conduct an initial review to determine whether the request includes all applicable components of the submission requirements of section 69-05.2-04-01.5. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of section 69-05.2-04-01.5, the commission will notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of section 69-05.2-04-01.5, the commission will notify the applicant and implement the notice and comment requirements of subsection 5. Upon receipt of that notice, the applicant must file a copy of the request in the office of the county auditor of the county in which the land is located.

4. If the applicant does not provide information that the commission requests under subsection 2 within the time specified or as subsequently extended, the commission will issue a determination that valid existing rights have not been demonstrated, as provided by subdivision d of subsection 6.

5. Notice and comment requirements and procedures.

   a. When the request satisfies the completeness requirements of subsection 3, the commission will notify the applicant to publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. A copy of the published notice must be provided to the commission. The notice must include:

      (1) The location of the land to which the request pertains.

      (2) A description of the type of surface coal mining operations planned.

(3) A reference to and brief description of the applicable standards under the definition of valid existing rights in subsection 120 of section 69-05.2-01-02.

(a) If the request relies upon the all permits or good-faith standard or the needed for and adjacent standard in the definition of valid existing rights, the notice also must include a description of the property rights that are claimed by the applicant and the basis of that claim.

(b) If the request relies upon the standard in paragraph 1 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. In addition, the notice must include a description of the basis for the applicant's claim to a legal right to use that road for surface coal mining operations.

(c) If the request relies upon the standard in paragraph 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

(4) If the request relies upon one or more of the standards in subdivision b and paragraphs 1 and 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, a statement that the commission will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by subdivision c, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the valid existing rights claim.

(5) A description of the procedures that the commission will follow in processing the request as required by this section.

(6) The closing date of the comment period, which must be a minimum of thirty days after the publication date of the notice.

(7) A statement that interested persons may obtain a thirty-day extension of the comment period upon request.

(8) The name and address of the commission and county auditor's office where copies of the request are available for public inspection and that comments and requests for extension of the comment period be sent to the commission.

b. The commission will promptly provide a copy of the notice required under subdivision a to:

(1) All reasonably locatable owners of surface and mineral estates in the land included in the request.

(2) The owner of the feature causing the land to come under the protection of North Dakota Century Code section 38-14.1-07, and, when applicable, the agency with primary jurisdiction over that feature. For example, both the landowner and the state historic preservation officer must be notified if surface coal mining operations would adversely impact any site listed on the national register of historic places.

c. The letter transmitting the notice required under subdivision b must provide a thirty-day comment period, starting from the date of service of the letter, and specify that another thirty days is available upon request. At its discretion, the commission may grant additional time for good cause upon request; however, comments received after the closing date of the comment period do not necessarily have to be considered.

6. Commission decision process.

a. The commission will review the materials submitted under subsection 2 of section 69-05.2-04-01.5, comments received under subsection 5, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the commission will notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that it deems necessary to remedy the inadequacy.

b. Once the record is complete and adequate, the commission will determine if valid existing rights have been demonstrated. The decision document will explain whether or not all applicable elements of the definition of valid existing rights have been satisfied. It will contain findings of fact and conclusions and specify the reasons for the conclusions.

c. The following apply only when the request relies upon one or more of the standards in subdivision b and paragraphs 1 and 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02.

(1) The commission will issue a determination that valid existing rights have not been demonstrated if the property rights claimed in the request are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The commission will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under subdivisions a and c of subsection 5.

(2) If the record indicates disagreement as to the accuracy of the property rights claimed, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the commission will evaluate the merits of the information in the record and determine whether the requisite property rights that have been demonstrated exist under subdivision a and paragraphs 1 and 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, as appropriate. The commission will then proceed with the decision process under subdivision b.

d. The commission will issue a determination that valid existing rights have not been demonstrated if information requested under subsection 2 or subdivision a is not submitted within the time specified or as subsequently extended. The commission will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

e. After making a determination, the commission will:

(1) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, surface and mineral owners of the land to which the determination applies, owner of the feature causing the

land to come under the protection, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection.

(2) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. This notice will include an explanation of appeal rights under subsection 7.

7. A valid existing rights determination is subject to administrative and judicial review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.

8. Except as provided by subsection 6 of section 69-05.2-10-01, the commission will make the valid existing rights request and all related records available to the public as required by subsection 3 of North Dakota Century Code section 38-14.1-13 and provide copies of records to the appropriate county auditor as required by subsection 5 of North Dakota Century Code section 38-14.1-27.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

69-05.2-04-01.7. Areas unsuitable for mining - Commission obligations at time of permit application review.

1. Upon receipt of an administratively complete permit application or revision application that proposes to add acreage to the permit, the commission will review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

2. The commission will reject any portion of the application that would locate surface coal mining operations on land protected under North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 unless:

a. The site qualifies for the exception for existing operations under section 69-05.2-04-01.2;

b. A person has valid existing rights for the land, as determined under section 69-05.2-04-01.6;

c. The applicant obtains a waiver or exception from certain prohibitions in accordance with sections 69-05.2-04-01.3 and 69-05.2-04-01.4; or

d. For lands protected by subsection 3 of North Dakota Century Code section 38-14.1-07, both the commission and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection 4.

3. If the commission has difficulty determining whether an application includes land within an area specified in subsection 1 of North Dakota Century Code section 38-14.1-07, subdivision b of subsection 1 of section 69-05.1-04-01.1, or within the specified distance from a structure or feature listed in subsection 5 of North Dakota Century Code section 38-14.1-07, the commission will request that any federal, state, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.

   a. The request for location verification must:

      (1) Include relevant portions of the permit application.

      (2) Provide the agency with thirty days after receipt to respond, with a notice that another thirty days is available upon request.

      (3) Specify that the commission will not necessarily consider a response received after the comment period in paragraph 2.

   b. If the agency does not respond in a timely manner, the commission may make the necessary determination based on available information.

4. The following are procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.

   a. If the commission determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the national register of historic places, the commission will request that the federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request will:

      (1) Include a copy of applicable parts of the permit application.

      (2) Provide the agency with thirty days after receipt to respond, with a notice that another thirty days is available upon request.

      (3) State that failure to interpose an objection within the time specified under paragraph 2 will constitute approval of the proposed operation.

b. The commission may not issue a permit for a proposed operation subject to subdivision a unless all affected agencies jointly approve.

c. Subdivisions a and b do not apply to:

(1) Lands for which a person has valid existing rights, as determined under section 69-05.2-04-01.6.

(2) Lands within the scope of the exception for existing operations in section 69-05.2-04-01.2.

History: Effective March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-04-02. Areas unsuitable for mining - Exploration. Designation of any area as unsuitable for all or certain types of surface coal mining operations under North Dakota Century Code section 38-14.1-05 and this chapter does not prohibit coal exploration operations if conducted according to North Dakota Century Code chapter 38-12.1 and chapter 43-02-01. Exploration operations on lands designated unsuitable for mining must be approved by the appropriate state agency to ensure that exploration does not interfere with any value for which the area was designated unsuitable.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-08

69-05.2-04-03. Areas unsuitable for mining - Petitions for designating lands unsuitable.

1. **Right to petition.** Any person having an interest which is or may be adversely affected may petition the commission to designate an area unsuitable for surface coal mining operations, or terminate an existing designation. Petitions must be in writing, and signed and acknowledged by the petitioner.

2. **Designation.** A petition to designate must include:

a. A United States geological survey topographic map showing the perimeter, location, and size of the area.

b. Allegations of facts, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of mining operations. This information must meet the criteria in North Dakota Century Code section 38-14.1-05 and assume that mining practices required under this article would be followed if the area were to be mined. Each of the allegations should be specific as to the mining operation, if known, and the portion of the petitioned

area and the petitioner's interests, and be supported by evidence that tends to establish the validity of the allegation for the mining operation or portion of the area.

c. A description of how mining the area has affected or may adversely affect people, land, air, water, or other resources.

d. The petitioner's name, address, and telephone number.

e. The petitioner's interest which is or may be adversely affected.

f. Any other readily available information required by the commission.

3. **Termination.** A petition to terminate must include:

a. A United States geological survey topographic map showing the perimeter, location, and size of the area.

b. Allegations of facts covering all lands for which termination is proposed. Each allegation must be specific as to the mining operation, if any, and to the portions of the area and petitioner's interests to which the allegation applies. The allegations must be supported by evidence not contained in the record of the designation proceeding that tends to establish their validity for the mining operation or portion of the area, assuming that mining practices required under this article would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented. Allegations and supporting evidence should be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(1) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on subsection 2 of North Dakota Century Code section 38-14.1-05;

(2) Reclamation now being technologically and economically feasible, if the designation was based on subsection 1 of North Dakota Century Code section 38-14.1-05; or

(3) The resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with those operations during and after mining, if the designation was based on subsection 2 of North Dakota Century Code section 38-14.1-05.

c. The petitioner's name, address, and telephone number.

d. The petitioner's interest which is or may be adversely affected by continuation of the designation.

e. Any other readily available information required by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-06

69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.

1. Within thirty days of receipt of a petition, the commission will notify the petitioner by certified mail whether the petition is complete under section 69-05.2-04-03.

2. The commission will determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the commission finds no identified coal resources in that area, it will return the petition with a statement of findings.

3. The commission may reject frivolous petitions and those not stating a prima facie case. Once the requirements of section 69-05.2-04-03 are met, no party shall bear any burden of proof, but each accepted petition will be considered and acted upon under the procedures of this chapter.

4. When considering a petition for an area which was previously and unsuccessfully proposed for designation, the commission will determine if the new petition presents new allegations of facts. If not, the commission will return it, with a statement of findings and a reference to the record of the previous designation proceedings.

5. If the commission determines that the petition is incomplete or frivolous, the commission will return it with a written statement of the reasons and, in the case of an incomplete petition, the information needed to make the petition complete. A petitioner to whom an incomplete petition has been returned shall have thirty days from the date the petitioner receives the commission's written statement to resubmit the petition. The permit application review period provided by subsection 3 of section 69-05.2-05-01 will be suspended until the petition is resubmitted or the additional thirty-day period has expired, whichever occurs first.

6. The commission will notify the petitioner of any permit application received which proposes to include any area covered by the petition.

7. Any petition received after the close of the public comment period specified in subsection 1 of North Dakota Century Code section 38-14.1-18 on a permit application relating to the same permit area will not prevent the commission from issuing a decision on that application.

The commission may return any petition received thereafter with a statement why the commission cannot consider the petition.

8. The commission will promptly notify the public of receipt of a petition by an advertisement in the local newspaper and the newspaper of broadest circulation in the region of the petitioned area. The commission will circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record, and other persons known to the commission to have an interest in the property.

9. Within three weeks after the determination that a petition is complete, the commission will notify the general public of its receipt and request relevant information through a newspaper advertisement placed once a week for two consecutive weeks in the official newspaper of each county containing the petitioned area and in other daily newspapers of general circulation in the locality covered by the petition.

10. Until three days before the commission holds a hearing under section 69-05.2-04-05, any person may intervene by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

11. Beginning immediately after a complete petition is filed, the commission will compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the commission. The commission will make the record available in its offices for public inspection free of charge, and copying, at a reasonable cost, during normal business hours. The commission will also file a copy of the complete petition and copies of all other documents relating to the petition with the relevant county auditors.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

69-05.2-04-05. Areas unsuitable for mining - Hearing requirements for designating lands unsuitable.

1. Within ten months after receipt of a complete petition, the commission will hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held prior to the commission's decision. If a hearing is held, the commission will make a record.

2. Not less than thirty days before the hearing, the commission will give notice by certified mail of the date, time, and location of the hearing to:

a. Local, state, and federal agencies which may have an interest in the decision.

b. The petitioner and intervenors.

c. Any person with an ownership or other interest known to the commission in the area covered by the petition.

3. The last publication of the notice of hearing required by subsection 3 of North Dakota Century Code section 38-14.1-06 must occur no more than seven days before the hearing.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-05, 38-14.1-06

69-05.2-04-06. Areas unsuitable for mining - Commission decision for designating lands unsuitable.

1. In reaching its decision, the commission will use:

a. The information contained in the data base and inventory system.

b. Information provided by other governmental agencies.

c. The detailed statement prepared under subsection 3 of North Dakota Century Code section 38-14.1-05.

d. Any other relevant information submitted during the comment period.

2. The commission will issue a final written decision, including a statement of reasons, within sixty days of completion of the public hearing, or, if no public hearing is held, within twelve months after receipt of the complete petition. The commission will serve the decision by certified mail on the petitioner, other parties to the proceeding, and the office of surface mining reclamation and enforcement.

3. The decision of the commission on a petition, or the failure of the commission to act within the time limits set forth in this section, is subject to review under North Dakota Century Code section 38-14.1-35.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04, 38-14.1-35

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

1. The commission will develop a data base and inventory system to evaluate if reclamation is feasible in areas covered by petitions.

2. The commission will include in the system information relevant to the criteria in North Dakota Century Code section 38-14.1-05 from appropriate state and federal agencies.

3. The commission will add to the data base and inventory system information:

   a. On potential coal resources of the state, demand for those resources, the environment, the economy, and the supply of coal, sufficient to enable the commission to prepare the statements required by subsection 3 of North Dakota Century Code section 38-14.1-05; and

   b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04

69-05.2-04-08. Areas unsuitable for mining - Public information for designating lands unsuitable. The commission will:

1. Make the information and data base system developed under section 69-05.2-04-07 available to the public for inspection free of charge and for copying at reasonable cost.

2. Provide information to the public on the petition procedures necessary to have an area designated unsuitable or to have designations terminated and describe how the inventory and data base system can be used.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04

69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:

1. Not issue permits which are inconsistent with designations made under North Dakota Century Code chapter 38-14.1 and this article.

2. Maintain a map of areas designated as unsuitable for all or certain types of mining operations.

3. Make available to any person information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal according to subsection 3 of North Dakota Century Code section 38-14.1-13.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-04

CHAPTER 69-05.2-08
PERMIT APPLICATIONS - PERMIT AREA - REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section

69-05.2-08-01 Permit Applications - Permit Area - Environmental Resources Information
69-05.2-08-02 Permit Applications - Permit Area - General Map Requirements
69-05.2-08-03 Permit Applications - Permit Area - Description of the Cultural and Historic Resources [Repealed]
69-05.2-08-04 Permit Applications - Permit Area - Description of Hydrology and Geology - General Requirements
69-05.2-08-05 Permit Applications - Permit Area - Geology Description
69-05.2-08-06 Permit Applications - Permit Area - Ground Water Information
69-05.2-08-07 Permit Applications - Permit Area - Surface Water Information
69-05.2-08-08 Permit Applications - Permit Area - Vegetation and Land Use Information
69-05.2-08-09 Permit Applications - Permit Area - Prime Farmland - Reconnaissance Investigation
69-05.2-08-10 Permit Applications - Permit Area - Soil Resources Information
69-05.2-08-11 Permit Applications - Permit Area - Use of Other Suitable Strata
69-05.2-08-12 Permit Applications - Permit Area - Topographic Data [Repealed]
69-05.2-08-13 Permit Applications - Permit Area - Alluvial Valley Floor Determination
69-05.2-08-14 Permit Applications - Permit Area - Alluvial Valley Floor Resources
69-05.2-08-15 Permit Applications - Permit Area - Fish and Wildlife Resources

69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

1. Each application must include a description of the premining environmental resources of the permit and adjacent areas that may be affected by mining.

2. When the permit area contains a logical pit sequence where the coal removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal removal subareas.

3. Lands in the application must be described by metes and bounds or standard government land survey descriptions, except that government lots must be described only by metes and bounds.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-02. Permit applications - Permit area - General map requirements.

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:

   a. Land boundaries and names of present surface and subsurface owners of record in the permit area and contiguous lands extending one-fourth mile [402.23 meters] from the permit boundary.

   b. The scale, date, location, company name, legal subdivision boundaries, and legend.

   c. The exact area being considered for permit.

   d. The locations and elevations of drill holes used for collecting geologic, ground water, and overburden information.

   e. The location and current use of all buildings on and within one-half mile [804.67 meters] of the permit area.

   f. The location of surface and subsurface manmade features within, passing through, or passing over the permit area, including major electric transmission lines, pipelines, agricultural drainage tile fields, wells, roads, highways, and railroads.

   g. Each public road in or within one hundred feet [30.48 meters] of the permit area.

   h. Each public or private cemetery or native American burial ground in or within one hundred feet [30.48 meters] of the permit area.

   i. Elevations and locations of monitoring stations used to gather environmental resource data for water quality and quantity, fish and wildlife, and air quality.

   j. Location and extent of known underground mines, including openings to the surface within the permit and adjacent areas.

k. Location and extent of existing or previously surface-mined areas within the permit and adjacent area.

l. Location and dimensions of existing areas of spoil, coal and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.

m. Location, and depth if available, of gas and oil wells within the permit area.

n. The boundaries of any public park within or adjacent to the permit area.

2. The application must contain a 1:24,000 planimetric map showing:

a. The boundaries of the extended mining plan area.

b. The area being considered for permit.

c. The boundaries of previously permitted areas.

3. The application must include:

a. Five-foot [1.52-meter] contour interval topographic maps of the permit area.

b. An area slope map showing three percent intervals, unless otherwise approved by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-03. Permit applications - Permit area - Description of the cultural and historic resources. Repealed effective June 1, 1986.

69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.

1. Each application must describe the geology, hydrology, and water quality and quantity of the permit and adjacent area. The description must include information on the characteristics of all surface and ground waters within the permit and adjacent areas, and any water which will flow into or receive discharges from these areas. The permit will not be approved until this information is in the application.

2. All water quality sampling and analyses must be conducted according to the most recent edition of Standard Methods for the Examination of Water and Wastewater or those in 40 CFR parts 136 and 434 or other methods approved by the commission and the office of surface mining reclamation and enforcement.

3. Enough detailed geologic information must be included to determine:

   a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;

   b. All potentially toxic-forming strata down through the lowest coal seam to be mined; and

   c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

4. The applicant shall determine the probable hydrologic consequences of the operation on the quality and quantity of surface and ground water under seasonal flow conditions for the permit and adjacent areas. The probable hydrologic consequences determination must be based on baseline hydrologic, geologic, and other information collected for the application and, if appropriate, data statistically representative of the site. Include findings on:

   a. Whether adverse impacts occur to the hydrologic balance.

   b. Whether toxic-forming materials are present that could contaminate surface and ground water supplies.

   c. Whether the operation may contaminate, diminish, or interrupt an underground or surface water source within the permit or adjacent areas used for domestic, agricultural, industrial, or other legitimate purpose.

   d. What impact the operation will have on:

      (1) Sediment yield from the disturbed area.

      (2) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.

      (3) Flooding or streamflow alteration.

      (4) Ground water and surface water availability and other characteristics as required by the commission.

5. The applicant shall provide supplemental information to evaluate the hydrologic consequences based on drilling, aquifer tests, geohydrologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics if:

   a. Toxic-forming material is present; or

   b. The probable hydrologic consequences determination indicates adverse impacts on or off the permit area may occur to the hydrologic balance.

6. The applicant shall provide information on the availability and suitability of alternate water sources for existing premining and approved postmining land uses if the probable hydrologic consequences determination shows the mining operation may contaminate, diminish, or interrupt a water source used for domestic or other legitimate purpose in the permit or adjacent areas.

7. Modeling techniques may be used if they furnish the required information.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-15

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description must include a general statement of the geology within the permit area down through the deeper of either the stratum immediately below the deepest coal seam to be mined or any lower aquifer which may be adversely affected by mining.

2. Test borings or core samples from the permit area must be collected and analyzed down through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever possible. Laboratory analyses must be made by the methods in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information must be provided:

   a. Location of subsurface water encountered.

b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and coal seam.

c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals to identify horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal seam to be mined must include one sample from each stratum. The analyses must include:

(1) pH.

(2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).

(3) Electrical conductivity of the saturation extract.

(4) Texture (by pipette or hydrometer method). Include percentage of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.

(5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.

d. Coal seam analyses including sodium, ash, British thermal unit, and sulfur content.

e. Cross sections sufficient to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash, and other residue from coal utilization processes, the information presented in this subsection must extend to a depth determined by the commission or to the base of the next confining clay stratum beneath the lowest coal seam to be mined.

f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.

g. All coal crop lines and the strike and dip of the coal to be mined.

3. If required by the commission, the applicant shall collect and analyze test borings or core samplings to greater depths within or outside

the permit area if needed for evaluating the impact of mining on the hydrologic balance.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-06. Permit applications - Permit area - Ground water information.

1. The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area. The application must contain a description of the ground water hydrology for the permit and adjacent areas including:

   a. A general account of the ground water hydrology (the water resources of the area).

   b. Known uses of the water in the aquifers and water table and location of all water wells within the permit and adjacent areas.

   c. Sufficient information and narratives to adequately describe the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water according to the parameters and in the detail required by the commission. The narrative must discuss the aquifers and hydrologic functions that are addressed in the ground water monitoring plan required by section 69-05.2-09-12 in order to comply with sections 69-05.2-16-13 through 69-05.2-16-15.

   d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal seams) down to and including the lowest water-bearing coal seam to be mined and any lower aquifer which may be adversely affected by mining. The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density. Data points must be shown on the map to the nearest ten acres [4.05 hectares]. Accompanying data should include lithologic and geophysical (gamma ray and density) logs of the piezometer holes, piezometer construction details, and water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit and adjacent areas.

   e. Results of water samples collected from each data point, if possible, analyzed for:

(1) Total dissolved solids in milligrams per liter.

(2) Hardness in milligrams per liter.

(3) Sodium in milligrams per liter.

(4) Iron, bicarbonate, nitrate, sulfate, and chloride in milligrams per liter.

(5) pH in standard units.

(6) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).

(7) Electrical conductivity in micro mhos per centimeter.

(8) Additional parameters required by the commission on a site-specific basis.

2. If necessary, the applicant shall provide additional ground water information required by subsections 5 and 6 of section 69-05.2-08-04.

3. The applicant shall meet the alluvial valley floor ground water information and data requirements if the permit area contains or is adjacent to an identified alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-07. Permit applications - Permit area - Surface water information.

1. The applicant shall provide a map for the permit and adjacent areas showing:

   a. Names and locations of watersheds receiving mine water discharges.

   b. Ephemeral, intermittent, and perennial streams.

   c. Lakes, ponds, wetlands, springs, drains, and water discharges into surface water bodies.

   d. Water supply intakes for current surface water users.

2. The applicant shall describe surface drainage systems in sufficient detail to identify seasonal water quality and quantity variations in the permit and adjacent areas.

3. Surface water information must include:

   a. Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge stream rates sufficient to identify seasonal variations.

   b. Water quality data to identify the characteristics of surface waters related to the permit and adjacent areas, sufficient to identify seasonal variations. The data must include:

      (1) Total dissolved solids in milligrams per liter.

      (2) Total suspended solids in milligrams per liter.

      (3) pH in standard units.

      (4) Total iron in milligrams per liter.

      (5) Additional parameters the commission may require on a site-specific basis.

   c. A complete description of the monitoring procedures used including:

      (1) Site locations.

      (2) Monitoring frequency for each site.

      (3) Techniques and equipment.

4. If necessary, the applicant shall provide additional surface water information required by subsections 5 and 6 of section 69-05.2-08-04.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The application must contain the following premining vegetation information:

   a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units for different land use categories are:

      (1) For cropland, each soil mapping unit.

(2) For tame pastureland, each soil mapping unit.

(3) For native grasslands, each ecological site. The soil mapping unit in each ecological site must also be delineated.

(4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.

(5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.

(a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;

(b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971)) or other approved classification system.

(c) For grasslands (native or introduced), each soil mapping unit.

(6) For shelterbelts, the entire planting.

b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.

c. A description of each mapping unit delineated under subdivision a. This description must include:

(1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.

(2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.

(3) Natural resource conservation service similarity index in percent for native grassland.

(4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.

(5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.

(6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.

(7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.

d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.

2. When the methods selected for subdivision g of subsection 6 of section 69-05.2-09-11 require the use of reference areas:

a. The number of reference areas proposed must be sufficient to adequately represent the permit area.

b. The location, approximate size, and boundaries of all proposed reference areas must be located on a map of sufficient scale to accurately show the field location of each. The boundaries of the mapping unit in which the reference area is located must also be delineated.

c. The permittee shall demonstrate that the proposed reference areas adequately characterize the relevant mapping units which they propose to represent. This demonstration must be done according to methods approved by the commission.

3. The application must contain, in addition to materials satisfying subdivision a of subsection 2 of North Dakota Century Code section 38-14.1-14:

a. A map and supporting narrative of the uses of the land existing at the time the application is filed. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use must also be described.

b. A narrative of land capability and productivity, which analyzes the land use description under subdivision a in conjunction with other environmental resources information required under this chapter.

4. The application must contain a narrative description which includes information adequate to predict the potential for reestablishing vegetation on all areas to be disturbed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; January 1, 2009.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-08-09. Permit applications - Permit area - Prime farmland - Reconnaissance investigation.

1. All applications must include the results of a reconnaissance investigation of the proposed permit area to indicate whether prime farmland exists. The commission in consultation with the natural resource conservation service will determine the nature and extent of the required reconnaissance investigation.

2. If the reconnaissance investigation establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement must identify how the conclusion was reached.

3. If the reconnaissance investigation indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a cooperative soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no cooperative soil survey exists, the applicant shall have one made of the lands which the reconnaissance investigation indicates could be prime farmland.

   a. If the cooperative soil survey indicates that no prime farmland soil mapping units are present within the permit area, subsection 2 applies.

   b. If the cooperative soil survey indicates that prime farmland soil mapping units are present within the permit area, section 69-05.2-09-15 applies, unless the applicant presents other information which demonstrates to the satisfaction of the state conservationist of the natural resource conservation service that no prime farmland mapping units are present.

4. This section does not apply to lands which qualify for the exemption in section 69-05.2-26-06. However, the application must show that all exemption criteria are met.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; June 1, 1997.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-10. Permit applications - Permit area - Soil resources information. The applicant shall submit a soil survey for the permit area consisting of a map and report prepared by a soil classifier as defined in subsection 28 of North Dakota Century Code section 38-14.1-02.

1. The map must be at a 1:4,800 scale and show:

   a. The location and the vertical and lateral (areal) extent of the suitable plant growth material (topsoil) within the permit area that is considered best for topdressing the area to be reclaimed. Suitable plant growth material considered best for topdressing is the noncalcareous surface horizon material that is dark-colored due to organic staining, has an electrical conductivity of less than two millimhos per centimeter (EC x 10^3), a sodium adsorption ratio of less than four (exchangeable sodium percentage of less than five) and an organic matter percentage of one or more.

   b. The location and the vertical and lateral (areal) extent of the remaining suitable plant growth material (subsoil) within the permit area, based on electrical conductivity of the saturation extract of less than four millimhos per centimeter (EC x 10^3), and sodium adsorption ratios of less than ten (exchangeable sodium percentage of less than twelve).

   c. The location of any prime farmlands identified under section 69-05.2-08-09.

2. The report must contain:

   a. The results of any chemical and physical analyses made to determine the properties of the suitable plant growth material. Textural analyses must be included for all samples taken.

   b. The description, classification, and interpretation for use of the soils and suitable plant growth material in the permit area.

3. Laboratory analyses must be made by the methods and procedures in United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, United States government printing office,

Washington, D. C., or by other methods and procedures approved in writing by the commission.

4. Prior to a soil classifier beginning work on the required soil survey, a meeting of the soil classifier, the operator, if the operator so desires, and the commission staff will be held for the purpose of discussing proposed techniques, procedures for sampling and analyses, and the area to be surveyed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-11. Permit applications - Permit area - Use of other suitable strata. Where the applicant proposes to use other suitable strata as a supplement for suitable plant growth materials or where the commission determines that it is necessary to meet the revegetation requirements, the application must indicate the areal extent of other suitable strata within the proposed permit area and must, on a sampling density determined by the commission in consultation with the applicant, provide results of the analyses, trials, and tests required under subsection 5 of section 69-05.2-15-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-08-12. Permit applications - Permit area - Topographic data. Repealed effective January 1, 1993.

69-05.2-08-13. Permit applications - Permit area - Alluvial valley floor determination.

1. Before applying for a permit to conduct operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit the results of a field investigation of the permit and adjacent areas. The investigations must include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the commission, after consultation with the applicant, to enable the commission to make an evaluation regarding the existence of the probable alluvial valley floor in the permit or adjacent area and to determine which areas, if any, require more detailed study in order to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or subsequent studies required of the applicant must include an appropriate combination, adapted to site-specific conditions, of:

a. Mapping of the probable alluvial valley floor including geologic maps of unconsolidated deposits, delineating the streamlaid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, floodplains, and channels showing surface drainage patterns.

b. Mapping of all lands included in the area used for agricultural activities, showing the different types of agricultural lands and accompanied by measurements of vegetation productivity and type.

c. Topographic maps of all lands that are or were historically flood-irrigated, showing the location of each diversion structure, ditch, dam, and related reservoir.

d. Documentation that areas identified in this section are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation.

e. Documentation, based on representative sampling, that areas identified under this subdivision are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics.

f. Analysis of a series of aerial photographs, including color infrared imagery capable of showing any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

2. Based on the investigations conducted under subsection 1, the commission will determine the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration. The commission will determine that an alluvial valley floor exists if:

a. Unconsolidated streamlaid deposits holding streams are present; and

b. There is sufficient water to support agricultural activities as shown by:

(1) The existence of flood irrigation in the area or its historical use;

(2) The capability to be flood-irrigated, based on streamflow water yield, soils, water quality, and topography; or

(3) Subirrigation of the lands from the ground water system of the valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21

69-05.2-08-14. Permit applications - Permit area - Alluvial valley floor resources.

1. If land within the permit or adjacent area is identified as an alluvial valley floor and mining may affect it or waters that supply alluvial valley floors, the applicant shall submit a complete description of the alluvial valley floor resources and characteristics that allow the commission to determine:

   a. The characteristics necessary to preserve essential hydrologic functions during and after mining.

   b. The significance of the area to agricultural activities.

   c. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor.

   d. The effectiveness of proposed reclamation under North Dakota Century Code chapter 38-14.1 and this article.

   e. Specific environmental monitoring required to measure compliance with chapter 69-05.2-25 during and after mining and reclamation operations.

2. The alluvial valley floor baseline data required to make the determinations listed in subsection 1 must include:

   a. Geologic data, including structure and surficial maps, and cross sections.

   b. Soils and vegetation data, including a detailed soil survey and chemical and physical analyses, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields.

   c. Surveys and data for areas designated as alluvial valley floors because of their flood irrigation characteristics must also include

streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations, field geomorphic surveys, and other geomorphic studies.

d. Surveys and data for areas designated as alluvial valley floors because of their subirrigation characteristics, must also include geohydrologic data including observation well establishment for water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations, and of the same overburden parameters specified in section 69-05.2-08-05 to determine the effect of the operations on water quality and quantity.

e. Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and ground water systems that supply these alluvial valley floors.

f. Maps showing farms that could be affected by the mining and, if any farm encompasses all or part of an alluvial valley floor, statements of the type and quantity of agricultural activity on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis.

3. The surveys should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support essential hydrologic functions. Characteristics which must be evaluated in a complete application include:

a. Characteristics supporting the function of collecting water which include:

(1) The amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration, and ground water recharge.

(2) The relief, slope, and density of the network of drainage channels.

(3) The infiltration, permeability, porosity, and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream.

(4) Other factors that affect the interchange of water between surface streams and ground water systems, including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers.

b. Characteristics supporting the function of storing water which include:

(1) Surface roughness, slope, and vegetation of the channel, floodplain, and low terraces that retard flow.

(2) Porosity, permeability, water-holding capacity, saturated thickness, and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water-bearing zones found beneath valley floors.

(3) Moisture held in soils within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation.

c. Characteristics supporting the function of regulating the flow of water which include:

(1) The geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross section, slopes, and proportions of the channels, floodplains, and low terraces, the nature and stability of the streambanks, and the vegetation established in the channels and along the streambanks and floodplains.

(2) The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods.

(3) The nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts supplied by aquifers to the stream (i.e., baseflow).

d. Characteristics which make water available and which include the presence of land forms including floodplains and terraces suitable for agricultural activities.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21

69-05.2-08-15. Permit applications - Permit area - Fish and wildlife resources. Each application must include fish and wildlife resource information for the permit and adjacent area.

1. The applicant shall submit for commission approval a study plan for acquiring fish and wildlife information which must include the scope of work, level of detail, and timetable for completing fish and wildlife inventories. The commission, in consultation with the state and federal agencies responsible for fish and wildlife, will ensure that the study plan is sufficient to design the protection and enhancement plan required in section 69-05.2-09-17.

2. The study report must be included in the application and fish and wildlife habitats must be delineated on 1:4,800 scale aerial photographs.

3. Site-specific resource information necessary to address the respective species or habitats is required when the permit or adjacent area is likely to include:

   a. Listed or proposed endangered or threatened plant or animal species or their critical habitats listed by the secretary of the United States department of the interior under the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.];

   b. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

   c. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

4. Within ten days of the request, the commission will provide the resource information required under subsection 1 to the United States department of the interior, fish and wildlife service regional or field office for their review.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-24

CHAPTER 69-05.2-09
PERMIT APPLICATIONS - PERMIT AREA - REQUIREMENTS FOR OPERATION AND RECLAMATION PLANS

Section

69-05.2-09-01 Permit Applications - Operation Plans - General Requirements
69-05.2-09-02 Permit Applications - Operation Plans - Maps and Plans
69-05.2-09-03 Permit Applications - Operation Plans - Existing Structures
69-05.2-09-04 Permit Applications - Operation Plans - Blasting
69-05.2-09-05 Permit Applications - Operation Plans - Air Pollution Control
69-05.2-09-06 Permit Applications - Operation Plans - Transportation Facilities
69-05.2-09-07 Permit Applications - Operation Plans - Relocation or Use of Public Roads
69-05.2-09-08 Permit Applications - Operation Plans - Protection of Public Parks
69-05.2-09-09 Permit Applications - Operation Plans - Surface Water Management - Ponds, Impoundments, Banks, Dams, Embankments, and Diversions
69-05.2-09-10 Permit Applications - Operation Plans - Surface Mining Near Underground Mining
69-05.2-09-11 Permit Applications - Reclamation Plans - General Requirements
69-05.2-09-12 Permit Applications - Operation and Reclamation Plans - Surface and Ground Water Monitoring for Protection of the Hydrologic Balance
69-05.2-09-13 Permit Applications - Reclamation Plans - Postmining Land Use
69-05.2-09-14 Permit Applications - Reclamation Plans - Disposal of Initial Pit Spoil and Other Excess Spoil
69-05.2-09-15 Permit Applications - Operation and Reclamation Plans - Prime Farmlands
69-05.2-09-16 Permit Applications - Operation and Reclamation Plans - Alluvial Valley Floors
69-05.2-09-17 Permit Applications - Operation and Reclamation Plans - Fish and Wildlife Resources Protection and Enhancement Plan
69-05.2-09-18 Permit Applications - Operations and Reclamation Plans - Auger Mining
69-05.2-09-19 Permit Applications - Operations and Reclamation Plans - Coal Preparation Plants not Located Within the Permit Area of a Mine

69-05.2-09-01. Permit applications - Operation plans - General requirements. Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal production, and major equipment.

2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.

3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use, and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal handling facilities, and other structures required for implementing the plans.

4. A plan for each support facility to be constructed, used, or maintained within the permit area, including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.

5. If coal removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-18-07

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

1. Scale, date, permit boundaries, company name, legal subdivision boundaries, and legend.

2. Lands to be affected throughout the operation and any change in a facility or feature caused by the operations, if the existing facility or feature was shown under chapter 69-05.2-08.

3. The boundaries of areas to be affected during the permit term according to the sequence of mining and reclamation operations and a description of size and timing of operations for each coal removal subarea.

4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall areas to be backsloped, and areas for stockpiling suitable plant growth material or other suitable strata.

5. Location of proposed surface water management structures and identification of permanent water impoundments or stream channel alignments.

6. Location of coal processing waste dams and embankments under section 69-05.2-09-09, and fill areas for the disposal of initial cut and other excess spoil under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.

7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other support facilities.

8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section 33-20-02.1-01 and any other wastes requiring a permit from the state department of health. The location of any such disposal areas must be shown on a map of the permit area.

9. Each explosive storage and handling facility.

10. Each air pollution collection and control facility.

11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.

12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.

13. Each bond area, scheduled according to the proposed sequence of operations. Include the bond or guarantee amount for each area.

14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal mining activities prior to January 1, 1970:

    a. Detailed maps and other available information that clearly depicts the boundaries of the site that was previously affected by mining activities before January 1, 1970. This includes the identification of any sinkholes and other features that are the result of any past underground coal mining activities.

    b. The applicant must identify and describe potential environmental and safety problems related to prior mining activity at the site and those that could be reasonably anticipated to occur. This identification must be based on a due diligence investigation which includes visual observations at the site, a record review of past mining at the site, and any necessary environmental sampling tailored to the current condition of the site.

c. With regard to potential environmental and safety problems referred to in subdivision b, a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met.

Maps and plans required under subsections 5, 6, and 12 must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist with assistance from experts in related fields. However, maps, plans, and cross sections submitted according to section 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-03. Permit applications - Operation plans - Existing structures.

1. Each application must contain a description of each existing structure in the proposed permit or adjacent permit areas used to support the surface coal mining and reclamation operation. The description must include:

   a. Location.

   b. Current condition.

   c. Approximate beginning and ending construction dates.

   d. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards and design requirements of this article and North Dakota Century Code section 38-14.1-24.

2. The applicant shall modify or reconstruct a nonconforming structure to meet the design standards of this article after approval of the compliance plan required in subsection 3.

3. Each application must contain a compliance plan for each structure to be modified or reconstructed and include:

   a. Specifications to meet the design and performance standards of this article and North Dakota Century Code section 38-14.1-24.

   b. A construction schedule showing dates for beginning and completing interim steps and final reconstruction.

c. Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards are met.

d. A showing that the risk to the environment or to public health or safety is not significant during modification or reconstruction.

4. A structure which meets the performance standards of this article and North Dakota Century Code section 38-14.1-24 but does not meet the design requirements of this article may be exempted from those design requirements. The commission may grant this exemption as part of the application process after obtaining the information required by this section and making the finding required by section 69-05.2-10-04.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-04. Permit applications - Operation plans - Blasting. Each application must contain a blasting plan explaining how the applicant intends to comply with chapter 69-05.2-17 and subsection 4 of North Dakota Century Code section 38-14.1-14 and including:

1. Types and approximate amounts of explosives for each type of blasting operation. The plan must identify the maximum amount of explosives to be detonated within any eight millisecond period and the maximum allowable limit on ground vibration for all structures not listed in subsection 7 of section 69-05.2-17-05.

2. Procedures and plans for recording and retaining information on:

   a. Drilling patterns, including size, number, depths, and spacing of holes.

   b. Charge and packing of holes.

   c. Types of fuses and detonation controls.

   d. Sequence and timing of firing holes.

3. Blasting warning and site access control equipment and procedures.

4. Types, capabilities, sensitivities, and locations of blast monitoring equipment and procedures.

5. Plans for recording and reporting results of preblasting surveys, if required.

6. The public notice content, procedure for changing the public notice, and a listing of landowners, government agencies, and other interested parties that will receive the notices.

7. Unavoidable hazardous conditions needing deviations from the blasting schedule and a general procedure outlining implementation of an emergency blasting process.

8. A map showing areas in which:

   a. Blasting is prohibited under section 69-05.2-17-05.

   b. The maximum permissible weight of explosives to be detonated is established by subsection 7 of section 69-05.2-17-05. The map must show the maximum weight of explosives at intervals not exceeding four hundred feet [121.92 meters] and continue until the maximum amount specified in subsection 1.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-05. Permit applications - Operation plans - Air pollution control. The applicant shall specify the measures to comply with the air pollution control requirements of the state department of health and any other measures necessary to effectively control wind erosion and attendant air pollution.

History: Effective August 1, 1980; amended effective May 1, 1990; June 1, 1997.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-06. Permit applications - Operation plans - Transportation facilities.

1. Each application must contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained. Appropriate maps, descriptions, profiles, and cross sections must be included to show:

   a. Locations.

   b. Specifications for each road width, gradient, surfacing material, cut, fill embankment, culvert, bridge, drainage ditch, low-water crossing, and drainage structure.

   c. Plans for stabilizing road cut and fill embankments, ditches, drains, and other side slopes.

d. Specifications for each road to be located in the channel of an intermittent or perennial stream under subsection 4 of section 69-05.2-24-01.

e. Specifications for each ford of intermittent or perennial streams to be used as a temporary route under subsection 4 of section 69-05.2-24-03.

f. Measures to obtain commission approval for altering or relocating a natural drainageway under subdivision e of subsection 5 of section 69-05.2-24-03.

g. Specifications for each low-water crossing of intermittent or perennial streams to provide maximum protection of the stream under subdivision f of subsection 5 of section 69-05.2-24-03.

h. Plans to remove and reclaim each road not retained under the proposed postmining land use, and a schedule for removal and reclamation.

2. The plans and drawings of each primary road must be prepared by, or under the direction of and certified by, a qualified registered professional engineer with experience in the design and construction of roads. The certification must state that the plans and drawings meet the requirements of this article, current and prudent engineering practices, and any design criteria established by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-07. Permit applications - Operation plans - Relocation or use of public roads. Each application must describe, with appropriate maps and cross sections, measures to ensure the interests of landowners and the public are protected if the applicant plans to:

1. Conduct surface mining activities within one hundred feet [30.48 meters] of the right-of-way line of any public road, except where mine access or haul roads join that right of way; or

2. Relocate a public road.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-08. Permit applications - Operation plans - Protection of public parks. For public parks or places listed on the national register of historic

places that may be adversely affected by the proposed operations, each plan must describe the measures to be used:

1. To prevent adverse impacts; or

2. If valid existing rights exist or joint agency approval is to be obtained under section 69-05.2-04-01, to minimize adverse impacts.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:

   a. Identify and show on a map of appropriate scale the locations of proposed ponds, impoundments, and diversions, whether temporary or permanent, and include:

      (1) Each watershed boundary within the permit and adjacent areas.

      (2) Proposed disturbance boundaries within each watershed and the area of each watershed.

   b. Provide the following preliminary information for each pond or impoundment:

      (1) The purpose of the structure.

      (2) A typical cross section of the proposed structure.

      (3) The name and size in acres [hectares] of the watershed affecting the structure.

      (4) Other preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

   c. If underground mining operations occurred in the area, include a survey describing the potential effect of subsidence on the structure from the past underground mining activities.

d. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable to remove each structure.

e. Include a statement that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:

(1) Detailed design plans for structures scheduled for construction within the first year of the permit term must be submitted with the application.

(2) Detailed design plans for a structure must be approved by the commission prior to construction.

f. Identify the location of proposed temporary coal processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.

g. Identify the location of proposed coal processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:

(1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.

(3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.

(4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.

h. Include a statement that the plan has been prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor experienced in the design of impoundments. The plans must be certified as meeting the requirements of this article using current, prudent

engineering practices and any design requirements established by the commission.

2. The application must contain detailed design plans for each structure identified in paragraph 1 of subdivision e of subsection 1. These plans must:

   a. Meet all applicable requirements of sections 69-05.2-16-06, 69-05.2-16-07, 69-05.2-16-08, 69-05.2-16-09, 69-05.2-16-10, and 69-05.2-16-12.

   b. Identify by watershed each mining activity along with an estimate of the affected area associated with each disturbance type.

   c. Provide the total runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. The plan should specify baseflow, if appropriate.

   d. The estimated sediment yield of the contributing watershed, calculated according to subsection 2 of section 69-05.2-16-09, and sediment storage capacity of the structure.

   e. Provide, at an appropriate scale, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, outlets, instrument locations, and slope protection. The plans must also show the measurement of the minimum vertical distance between the top of the impounding structure and the reservoir surface at present and under design storm conditions, permanent pool level, and other pertinent information.

   f. Include graphs showing elevation - area - capacity curves to the top of the embankment.

   g. Describe the spillway features and include stage discharge curves and calculations used in their determination.

   h. If an impoundment meets the size or other criteria of subsection 17 or 18 of section 69-05.2-16-09, include a stability analysis of the structure. The stability analysis must include strength parameters, pore pressures, and long-term seepage conditions. The plan must also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

i. Demonstrate that detention time criteria of section 69-05.2-16-09 can be met, if applicable.

j. Describe any geotechnical investigations, design, and construction requirements of the structure including compaction procedures and testing, including any direct connections of the impoundment basin to ground water flow in the area.

k. If an impoundment meets the size or other criteria of subsection 17 of section 69-05.2-16-09, include a copy of the plan sent to the district manager of the United States mine safety and health administration.

l. Describe proposed structure operations, maintenance and, if appropriate, a timetable for removal and reclamation plans.

m. Provide detailed design specifications for diversions, including maps, cross sections, and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the permit area or feeding into the contributing drainage of an impoundment.

n. Include additional information as necessary to enable the commission to completely evaluate the structure.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-10. Permit applications - Operation plans - Surface mining near underground mining. The application must contain a description of measures needed to comply with section 69-05.2-13-06 if mining activities will occur within five hundred feet [152.04 meters] of an underground mine.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-11. Permit applications - Reclamation plans - General requirements. Each application must contain a reclamation plan for affected lands, showing how the applicant will comply with chapters 69-05.2-13 through 69-05.2-26. The plan must, at a minimum, include:

1. A discussion of how the scheduling of each reclamation phase meets the requirements for contemporaneous reclamation in subsection 14 of North Dakota Century Code section 38-14.1-24 and section 69-05.2-21-01.

2. A detailed reclamation cost estimate and supporting calculations.

3. Postmining topographic and area slope maps drawn to the specifications in subsection 3 of section 69-05.2-08-02, and a plan for backfilling, soil stabilization, compacting, and grading. The plan must provide cross sections and volumetric calculations or other information to show the final topography can be achieved.

4. A plan for the removal, reshaping, and final reclamation of each facility identified and discussed in this chapter.

5. A plan for the removal, storage, and redistribution of suitable plant growth material and other suitable strata to meet the requirements of chapter 69-05.2-15. This plan must provide the volumes, by ownership, of topsoil and subsoil available in all areas to be disturbed. These volumes must be determined from the soil survey required by section 69-05.2-08-10.

6. A revegetation plan to meet the requirements of chapter 69-05.2-22. The plan must include:

   a. A revegetation schedule.

   b. Seed and seedling species and amounts per acre [0.40 hectare].

   c. Planting and seeding methods.

   d. Mulching techniques.

   e. Irrigation, if appropriate, and any pest and disease control measures.

   f. General management plans until final bond release.

   g. Methods to determine the success of revegetation required in section 69-05.2-22-07.

   h. A soil testing plan for evaluating the results of suitable plant growth material handling and reclamation procedures related to revegetation.

7. Measures to ensure that all debris, toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with sections 69-05.2-19-04 and 69-05.2-21-03 and a description of the contingency plans developed to preclude their sustained combustion.

8. A description, including appropriate cross sections and maps, of measures to manage mine openings, and to plug, case, or manage

exploration holes, other boreholes, wells, and other openings within the permit area, under chapter 69-05.2-14.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-12. Permit applications - Operation and reclamation plans - Surface and ground water monitoring for protection of the hydrologic balance.

1. The description required by subdivision i of subsection 2 of North Dakota Century Code section 38-14.1-14 must cover the proposed permit, and adjacent areas and include:

   a. Appropriate maps and technical drawings.

   b. A discussion of the control of surface and ground water drainage into, through, and out of the permit area under the surface water management requirements of section 69-05.2-09-09 and its relation to the monitoring requirements of this section.

   c. A plan for the treatment, where required, of surface and ground water drainage from the disturbed area, and proposed quantitative limits on pollutants in discharges subject to section 69-05.2-16-04, according to the more stringent of:

      (1) North Dakota Century Code section 38-14.1-24 and this article; or

      (2) Other applicable state laws.

   d. A plan for restoring the approximate recharge capacity of the permit area required in section 69-05.2-16-15.

   e. A plan, based on the probable hydrologic consequences (PHC) determination, for the collection, recording, and reporting of ground and surface water quality and quantity data, according to sections 69-05.2-16-05, 69-05.2-16-13, and 69-05.2-16-14.

2. The determination required by subdivision o of subsection 1 of North Dakota Century Code section 38-14.1-14 must include a hydrologic reclamation plan that specifically addresses any potential adverse impacts identified in the probable hydrologic consequences

determination and contains preventive and remedial measures for those impacts.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-13. Permit applications - Reclamation plans - Postmining land use.

1. Each reclamation plan must contain a postmining land use map and detailed description of the postmining land use explaining:

   a. How the postmining land use will be achieved and the support activities needed.

   b. The detailed management plan for native grassland or tame pastureland during the liability period including any plans for livestock grazing prior to final bond release.

2. If land use changes are proposed, the description must be accompanied by materials needed for alternate land use approval under chapter 69-05.2-23.

3. The applicant shall submit a copy of the surface owner's preference statement and comments by the state and local authorities who would have to initiate, implement, approve, or authorize the land use following reclamation.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-14. Permit applications - Reclamation plans - Disposal of initial pit spoil and other excess spoil.

1. Each application must contain descriptions, maps, and cross-section drawings of the disposal site and spoil disposal area design according to chapter 69-05.2-18. These plans must describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

2. Each application must contain the results of a geotechnical investigation of the disposal site including:

   a. The character of bedrock and any adverse geologic conditions in the disposal area.

b. Springs, seepage, and ground water flow observed or anticipated in the disposal site during wet periods.

c. The potential effects of subsidence of the subsurface strata due to past and future mining operations.

d. A stability analysis including strength parameters, pore pressures, and long-term seepage conditions, and a description of all engineering design assumptions, calculations and alternatives considered in selecting the design specifications and methods. The commission may waive the stability analysis after analyzing the results of the geotechnical investigation if:

(1) No adverse geologic conditions exist in the disposal area.

(2) There are no springs, and there is no seepage or ground water flow in the disposal site area.

(3) There is no potential for subsidence of subsurface strata due to past and future mining operations.

(4) The slope of the disposal area does not exceed twenty percent.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-15. Permit applications - Operation and reclamation plans - Prime farmlands. If appropriate, the applicant shall submit a mining and restoration plan for prime farmland containing:

1. The cooperative soil survey that identified the prime farmland, soil mapping units, and representative soil profile descriptions. The plan must include soil horizon depths, pH, and range of soil densities for each prime farmland soil mapping unit.

2. The method and equipment for removing, storing, and respreading suitable plant growth materials.

3. Locations for separate stockpiling and plans for soil stabilization before redistribution.

4. The postmining topographic map showing the prime farmland respread areas.

5. Applicable documentation that supports the use of other suitable strata, instead of the A, B, or C soil horizon, to obtain equivalent or higher

levels of productivity as nonmined prime farmlands in the surrounding area under equivalent management levels.

6. Plans for seeding or cropping the area and conservation practices. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion when vegetation or conservation practices cannot be established or implemented.

7. Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that affirmatively demonstrate achievement of postmining productivity equal to or greater than premining productivity.

8. If a reclaimed cropland tract will contain a mixture of prime and nonprime farmlands and commission approval of a single yield standard for the entire tract is requested as allowed by subdivision l of subsection 4 of section 69-05.2-22-07, a detailed description and comparison of the soil mapping units and acreages occurring in the prime and nonprime parcels must be provided. The comparison must include the appropriate yield calculations for the prime and nonprime parcels as well as the single yield standard that is proposed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 2001.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-16. Permit applications - Operation and reclamation plans - Alluvial valley floors. Each application must contain operation and reclamation plans for lands in the permit or adjacent area identified as an alluvial valley floor. The plan must describe the mining and reclamation procedures that will protect or restore the alluvial valley floor characteristics or essential hydrologic functions identified in section 69-05.2-08-14 and meet the performance standards of chapter 69-05.2-25. The applicant shall submit an alluvial valley floor monitoring program under section 69-05.2-25-03 designed to collect sufficient information to demonstrate compliance with the approved plans.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-09-17. Permit applications - Operation and reclamation plans - Fish and wildlife resources protection and enhancement plan.

1. Each application must include a plan of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during surface coal mining and reclamation operations,

and how enhancement of these resources will be achieved where practicable. The plan must:

a. Be consistent with the requirements of section 69-05.2-13-08.

b. Apply, at a minimum, to species and habitats identified under section 69-05.2-08-15.

c. Include protective measures that will be used during active mining. The measures may include establishment of buffer zones, selective location and special design of haul roads and powerlines, and monitoring of surface water quality and quantity.

d. Include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. The measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement must be given explaining why enhancement is not practicable.

e. Include monitoring of selected indicator species to assess surface mining effects on fish and wildlife resources. The applicant shall consult with the commission and state game and fish department before selecting the indicator species.

2. Within ten days of the request, the commission will provide the plan to the United States department of the interior, fish and wildlife service regional or field office for their review.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-09-18. Permit applications - Operations and reclamation plans - Auger mining. If applicable, the applicant shall submit a plan explaining how the applicant intends to comply with section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain:

1. A description of the augering methods.

2. A map showing where augering operations will be conducted.

3. A description of how the applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ensuring that:

a. Material backfilled into the holes can be compacted to provide sufficient strength to prevent subsidence;

b. The coal remaining between the auger holes and the overlying overburden is sufficiently strong to prevent subsidence; or

c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques to eliminate future subsidence.

4. A description of how auger holes will be sealed to prevent pollution of surface and ground water.

History: Effective September 1, 1984; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-09-19. Permit applications - Operations and reclamation plans - Coal preparation plants not located within the permit area of a mine.

1. This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. A permit to operate must be obtained from the commission.

2. In addition to meeting the applicable provisions of chapters 69-05.2-05, 69-05.2-06, 69-05.2-07, 69-05.2-08, and this chapter, any application for a permit for operations covered by this section must contain an operation and reclamation plan for the construction, operation, maintenance, modification, and removal of the preparation plant and associated support facilities. The plan must demonstrate that those operations will be conducted in compliance with section 69-05.2-13-13.

3. No permit will be issued for any operation covered by this section unless the commission finds in writing that, in addition to meeting all other applicable requirements of this article, the operations will be conducted according to the requirements of section 69-05.2-13-13.

History: Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992.
General Authority: NDCC 38-14.2-03
Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-10
PERMIT APPLICATIONS - REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OR DISAPPROVAL

Section

69-05.2-10-01 Permit Applications - Public Notices of Filing and Entering Data Into the Applicant Violator System

69-05.2-10-02 Permit Applications - Informal Conferences

69-05.2-10-03 Permit Applications - Criteria for Permit Approval or Denial

69-05.2-10-04 Permit Applications - Criteria for Permit Approval or Denial - Existing Structures

69-05.2-10-05 Permit Applications - Approval or Denial Actions

69-05.2-10-06 Permit Applications - Permit Approval for Surface Disturbances Over Federal Mineral Estates

69-05.2-10-07 Permit Applications - Challenges to Ownership or Control Listings and Findings

69-05.2-10-08 Permit Applications - Commission Actions Related to Ownership and Control Information After Permit Issuance

69-05.2-10-09 Permit Applications - Ownership and Control Requirements for Permittees After Permit Issuance

69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:

   a. The applicant's name and business address.

   b. A map or description which must:

      (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.

      (2) Clearly show or describe the exact location and boundaries of the permit area.

      (3) Show the north point (if a map).

      (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the application may be submitted.

d. If an applicant seeks a permit to conduct operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration.

2. The commission will distribute appropriate portions of the application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the committee shall forward their evaluation to the commission within forty-five days of receipt.

3. If the application contains prime farmlands to be mined, the commission will furnish the state conservationist of the natural resource conservation service with the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction and suggest remedial revisions if the plan is considered inadequate.

4. The applicant shall make a copy of the complete application available for the public to inspect and copy by filing it with the county auditor in the county where the mining is proposed. The applicant shall file the copy by the first date of the newspaper advertisement and any subsequent changes at the same time they are submitted to the commission.

5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the soil conservation district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.

6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:

a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.

b. The nature and location of archaeological resources on public land and Indian land as required by the Archaeological Resources Protection Act of 1979.

7. Upon deeming an application complete, the commission will:

a. Enter into the applicant violator system maintained by the office of surface mining reclamation and enforcement the business entity information that the applicant is required to submit under section 69-05.2-06-01 and information required by section 69-05.2-06-02 pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired. The applicant violator system, or AVS, is the automated information system of applicant, permittee, operator, violation and related data that the office of surface mining reclamation and enforcement maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.].

b. Update the information referred to in subdivision a in AVS upon verifying any additional information submitted or discovered during the review of the permit application.

8. The commission will rely upon the information that the applicant submits under section 69-05.2-06-01, information from AVS, and any other available information, to review the applicant's and operator's organizational structure and ownership or control relationships. This review will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

9. The commission will rely upon the information that the applicant submits under section 69-05.2-06-01, information from AVS, and any other available information to review the applicant's and operator's permit histories and previous mining experiences. The commission will also determine if the applicant and operator have previous mining experience. If the applicant or operator does not have any previous mining experience, the commission may conduct additional reviews to determine if someone else with mining experience controls the mining operation. These reviews will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

10. The commission will rely upon the information that the applicant submits under section 69-05.2-06-02, a report from AVS, and any other available information to review histories of compliance for

the applicant, any person who owns or controls the applicant, the operator, or operations owned or controlled by the operator, in regard to violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.]. or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation. This review will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-18

69-05.2-10-02. Permit applications - Informal conferences.

1. A request for an informal conference under subsection 5 of North Dakota Century Code section 38-14.1-18 must be in writing and:

   a. Briefly summarize the issues the requester will raise.

   b. State whether the requester desires to have the conference in the locality of the operations.

2. The commission will appoint one or more hearing examiners to preside at informal conferences on applications held under this section. No commissioner may preside at such informal conference. Hearing examiners shall have the authority delegated under section 69-02-04-07.

3. Informal conferences held under this section may be used by the commission as the public hearing opportunity required under section 69-05.2-04-01 on proposed uses or relocation of public roads.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-18

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or

regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:

a. Delinquent civil penalties under North Dakota Century Code sections 38-12.1-08 and 38-14.1-32, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.

b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.

c. Delinquent abandoned mine reclamation fees.

d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.

e. Unresolved federal and state failure-to-abate cessation orders.

f. Unresolved imminent harm cessation orders.

2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:

a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or

b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.

3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.

4. The commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any state or federal program approved under the Surface Mining Control and Reclamation Act of 1977, of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules, or programs. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for hearing on the determination under North Dakota Century Code section 38-14.1-30.

5. After an application is deemed ready for approval, but before the permit is issued, the commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02. After that information is submitted, the commission will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under subsections 1 through 4. This report will be requested no more than five business days before the permit is issued by the commission. If the commission then determines that the applicant is not eligible for a permit, written notification of the decision will be sent to the applicant explaining the reasons and the appeal rights that are available under North Dakota Century Code section 38-14.1-30.

6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:

   a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section 69-05.2-04-01.1.

   b. For alluvial valley floors:

      (1) The applicant has obtained either a negative determination; or

      (2) If the permit area or adjacent area contains an alluvial valley floor:

(a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.

(b) Any change in the use of the lands covered by the permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.

(3) The significance of the impact of the operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.

(4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:

(a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.

(b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.

(c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.

(d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone that would reduce the amount of subirrigated land compared to premining conditions.

(e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.

(f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation.

(5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with boundaries based on enhancement of the farm's agricultural productivity not related to mining operations.

(6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:

(a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section; or

(b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.

c. The applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:

(1) The postmining land use will be cropland.

(2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the natural resource conservation service.

(3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by this article and North Dakota Century Code chapter 38-14.1.

(4) The permit demonstrates that the applicant has the technological capability to restore prime farmland, within a reasonable time, to equivalent or higher yields as nonmined prime farmland in the surrounding area under equivalent management practices.

(5) The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining based on the cooperative soil survey. Any postmining water bodies that are part of the reclamation must be located within the

nonprime farmland portions of the permit area. If any such water bodies reduce the amount of prime farmland that a surface owner had before mining, the affected surface owners must consent to the creation of the water bodies and the plans must be approved by the commission.

d. The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.

e. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.

f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.

7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001; January 1, 2009; April 1, 2013.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-10-04. Permit applications - Criteria for permit approval or denial - Existing structures.

1. No application which proposes to use an existing structure will be approved, unless the applicant demonstrates and the commission finds in writing that:

a. If the applicant proposes to use an existing structure under the exemption provided in subsection 4 of section 69-05.2-09-03:

(1) The structure meets the performance standards of North Dakota Century Code chapter 38-14.1 and this article.

(2) There will be no significant harm to the environment or public health or safety.

b. If the commission finds that an existing structure does not meet the performance standards, the applicant shall submit a compliance

plan for modifying or rebuilding the structure. The permit will not be issued unless the commission finds that:

(1) The modification or reconstruction will bring the structure into compliance with the design and performance standards of this article and North Dakota Century Code section 38-14.1-24 as soon as possible, but not later than six months after permit issuance;

(2) The risk to the environment or to public health or safety is not significant during modification or reconstruction; and

(3) The applicant will monitor the structure to determine compliance with this article and North Dakota Century Code section 38-14.1-24.

2. Should the commission find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant shall abandon the existing structure. The structure must not be used after the effective date of the permit. Structure abandonment must proceed on a schedule approved by the commission under section 69-05.2-13-11.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-21

69-05.2-10-05. Permit applications - Approval or denial actions. The commission will approve, require modification of, or deny all applications for permits according to the following:

1. The commission will not approve or disapprove a permit application prior to the expiration of the thirty-day period for requesting an informal conference or the filing of written comments or objections following the last publication of the public notice required by North Dakota Century Code section 38-14.1-18.

2. If no informal conference has been held under North Dakota Century Code section 38-14.1-19, the commission will approve, require modification of, or deny all permit applications within the review period specified in section 69-05.2-05-01.

3. If an application is approved, the permit will contain the following conditions:

   a. The permittee shall minimize adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition, including:

(1) Accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.

(2) Immediate implementation of compliance measures.

(3) Warning, as soon as possible after learning of noncompliance, any person whose health and safety is in imminent danger.

b. The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the treatment or control of waters or atmospheric emissions as required by North Dakota Century Code chapter 38-14.1, this article, and any other applicable law.

c. The permittee shall conduct operations:

(1) To prevent significant, imminent environmental harm to public health or safety; and

(2) Utilizing methods specified in the permit if the commission approves alternative methods of compliance with the performance standards of North Dakota Century Code section 38-14.1-24 and this article.

d. The operator shall pay all reclamation fees required by 30 CFR subchapter R for coal produced under the permit for sale, transfer, or use.

e. Within thirty days after a cessation order is issued under North Dakota Century Code section 38-14.1-28, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit the following information, current to the date the cessation order was issued, or notify the commission in writing that there has been no change since the last submittal:

(1) Any new information needed to correct or update the information previously submitted under subdivision e of subsection 1 of section 69-05.2-06-01; or

(2) If not previously submitted, the information required from a permit applicant by subdivision e of subsection 1 of section 69-05.2-06-01.

4. When the application is approved, the commission will publish notice in the official county newspapers and in daily newspapers of general circulation in the area of the proposed operations. The publication will provide a summary of the decision and notice that any person with an interest which is or may be adversely affected may request and initiate

formal hearing procedures on the decision and may request temporary relief from permit issuance within thirty days of the publication of the notice.

5. At the time of publication of the decision required by subsection 4, the commission will:

   a. Provide copies of all findings, decisions, and orders on an application to:

      (1) Each person and government official who filed a written objection or comment.

      (2) Each reclamation advisory committee member.

      (3) The office of surface mining reclamation and enforcement, together with a copy of the approved application materials.

   b. Notify the appropriate government officials in the relevant county that a permit application has been approved and describe the location of the lands.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-03, 38-14.1-21

69-05.2-10-06. Permit applications - Permit approval for surface disturbances over federal mineral estates. The commission may approve and issue permits, revisions, and renewals for operations on lands where the surface estate is nonfederal and the mineral estate is federal, if:

1. The proposed surface disturbances support operations on adjacent nonfederal lands.

2. The commission consults with the office of surface mining reclamation and enforcement, to ensure that actions are not taken which would substantially and adversely affect the federal mineral estate.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-07. Permit applications - Challenges to ownership or control listings and findings.

1. A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:

a. Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

b. Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under section 69-05.2-10-08 or 69-05.2-32-01; or

c. An applicant or permittee affected by an ownership and control listing or finding.

2. In order to challenge an ownership and control listing or finding, a written explanation must be submitted to the regulatory authority regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection 7. If the challenge concerns a pending permit application, the written explanation must be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership and control of a surface coal mining operation and the person is not currently seeking a permit, the written explanation must be submitted to the regulatory authority with jurisdiction over the surface coal mining operation.

3. When a challenge concerns a violation under the jurisdiction of a different regulatory authority, the commission will consult the regulatory authority with jurisdiction over the violation and the AVS office to obtain additional information.

4. If the commission is responsible for deciding a challenge under this section, it may request an investigation by the AVS office.

5. At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS office as to the reason it is shown in the AVS in an ownership or control capacity.

6. When a challenge is made to a listing of ownership and control, or a finding of ownership and control, the challenger shall prove by a preponderance of the evidence that the challenger either:

a. Does not own or control the entire operation or relevant portion or aspect thereof; or

b. Did not own or control the entire operation or relevant portion or aspect during the relevant time period.

7. In order to meet the burden of proof in subsection 6, the challenger shall present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. A request to hold materials submitted under this section as a trade secret may be made

to the commission following the procedures of chapter 69-02-09. Acceptable materials include:

a. Notarized affidavits containing specific facts concerning the duties that were performed for the relevant operation, the beginning and ending dates pertaining to ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question.

b. Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

c. Certified copies of documents filed with or issued by any state, municipal, or federal government agency.

d. An opinion of counsel, when supported by evidentiary materials, a statement by counsel that counsel is qualified to render the opinion, and a statement that counsel has personally and diligently investigated the facts of the matter.

8. Within sixty days of receipt of an ownership and control listing or finding challenge, the commission will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision will state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by certified mail, return receipt requested. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. Appeals of the written decision must be made by requesting a formal hearing under North Dakota Century Code section 38-14.1-30. The commission will also post all decisions in AVS.

9. Following the commission's written decision, or any formal hearing decision or court reviewing such decision, the commission will review the information in AVS to determine if it is consistent with the decision. If it is not, the commission will promptly inform the office of surface mining reclamation and enforcement and request that the AVS information be revised to reflect the decision.

History: Effective April 1, 2013.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-08. Permit applications - Commission actions related to ownership and control information after permit issuance.

1. For the purposes of future permit eligibility determinations and enforcement actions, the commission will enter the following data into AVS:

   a. Permit records will be entered within thirty days after issuing a permit or subsequent changes.

   b. Unabated or uncorrected violations will be entered within thirty days after the abatement period expires for any violation.

   c. Any changes to the information required under section 69-05.2-06-01 will be entered within thirty days after receiving notice of a change.

   d. A change in status of violations listed in AVS will be entered within thirty days after abatement, correction, or termination of a violation, or an administrative or judicial decision affecting a violation.

2. If, at any time, it is discovered that any person owns or controls an operation with an unabated or uncorrected violation, the commission will determine whether enforcement action is appropriate under North Dakota Century Code section 38-14.1-28. The commission will enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

3. The commission will serve a preliminary finding of permanent permit ineligibility under subdivision c of subsection 1 of North Dakota Century Code section 38-14.1-28 on the applicant or operator if the criteria in subdivisions a and b are met. In making a finding under this subsection, the commission will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under subsection 4 of section 69-05.2-10-03. A preliminary finding of permanent permit ineligibility will be made if it found that:

   a. The applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under subdivision c of subsection 1 of North Dakota Century Code section 38-14.1-28; and

   b. The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with North Dakota Century Code chapter 38-14.1, this chapter, or the approved permit.

4. The permittee or operator may request a hearing on a preliminary finding of permanent permit ineligibility under North Dakota Century Code section 38-14.1-30.

5. If a hearing is not requested and the time for seeking a hearing has expired, the commission will enter the finding into AVS. If a hearing is requested, the commission will enter the finding into AVS only if that finding is upheld on appeal.

6. At any time, the commission may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If such a person is identified, the commission will issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The commission's written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

7. After the commission issues a written preliminary finding under subsection 6, the commission will allow the person subject to the preliminary finding thirty days in which to submit any information tending to demonstrate the lack of ownership or control. If after reviewing any information that is submitted, the commission is persuaded that the person is not an owner or controller, a written notice will be served to that effect. If, after reviewing any information that is submitted, the commission still finds that the person is an owner or controller, or no information is submitted within the thirty-day period, the commission will issue a written finding and enter that finding into AVS.

8. If the commission identifies a person as an owner or controller under subsection 7, that finding may be challenged using the provisions under section 69-05.2-10-07.

History: Effective April 1, 2013.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-09. Permit applications - Ownership and control requirements for permittees after permit issuance.

1. Within thirty days of being issued a cessation order under subdivision b of subsection 1 of North Dakota Century Code section 38-14.1-28, the permittee must provide or update all the information required under section 69-05.2-06-01.

2. A permittee does not have to submit information under subsection 1 if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

3. Within sixty days of any addition, departure, or change in position of any person identified in subdivision e of subsection 1 of section 69-05.2-06-01, the permittee must provide:

a. The date of any departure; and

b. The following for that person;

1. The person's name, address, and phone number.

2. The person's position title and relationship to the permittee, including percentage of ownership and location in the organizational structure.

3. The date the person began functioning in that position.

History: Effective April 1, 2013; amended effective April 1, 2015.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

CHAPTER 69-05.2-13
PERFORMANCE STANDARDS - GENERAL REQUIREMENTS

Section

69-05.2-13-01 Performance Standards - General Requirements - Coal Production and Reclamation Fee Report [Repealed]

69-05.2-13-02 Performance Standards - General Requirements - Annual Map

69-05.2-13-03 Performance Standards - General Requirements - Authorizations to Operate

69-05.2-13-04 Performance Standards - General Requirements - Signs and Markers

69-05.2-13-05 Performance Standards - General Requirements - Minimize Disturbances - Best Technology Currently Available

69-05.2-13-06 Performance Standards - General Requirements - Avoidance of Underground Mine Areas

69-05.2-13-07 Performance Standards - General Requirements - Air Resources Protection

69-05.2-13-08 Performance Standards - General Requirements - Protection of Fish, Wildlife, and Related Environmental Values

69-05.2-13-09 Performance Standards - General Requirements - Slides and Other Damage

69-05.2-13-10 Performance Standards - General Requirements - Cessation of Operations - Temporary

69-05.2-13-11 Performance Standards - General Requirements - Cessation of Operations - Permanent

69-05.2-13-12 Performance Standards - General Requirements - Auger Mining

69-05.2-13-13 Performance Standards - General Requirements - Coal Preparation Plants not Located Within the Permit Area of a Mine

69-05.2-13-01. Performance standards - General requirements - Coal production and reclamation fee report. Repealed effective May 1, 1999.

69-05.2-13-02. Performance standards - General requirements - Annual map. The permittee shall submit two copies of an annual map to the commission for all permit areas by each March fifteenth. The scale must be 1:4,800 or other scale approved by the commission. The information must be reported for each calendar year until all bond has been released. The map, or maps if necessary, must clearly show the following and include a legend specifying the number of acres [hectares] in each category:

1. Each permit area and section line.

2. Activities during the year for each permit, including:

   a. Acreage [hectarage] affected.

b. Acreage [hectarage] where suitable plant growth material removal operations have been completed.

c. Acreage [hectarage] where coal mining operations are completed and the contemporaneous reclamation requirement of subsection 14 of North Dakota Century Code section 38-14.1-24 has been initiated.

d. Acreage [hectarage] where grade approval has been obtained.

e. Acreage [hectarage] where suitable plant growth material redistribution operations have been completed.

f. Acreage [hectarage] planted where the ten-year revegetation period has been initiated.

g. Acreage [hectarage] where bond has been partially released and the stage of release.

h. Acreage [hectarage] where bond has been totally released.

3. Location of suitable plant growth material stockpiles. Supporting information must include ownership, date seeded, type of material in each stockpile (topsoil or subsoil), and estimated cubic yards [meters] for each stockpile.

4. Cumulative information on the mining and reclamation activities that have occurred within each permit area which include:

a. Affected acreage where topsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.

b. Affected acreage where subsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.

c. Acreage [hectarage] planted where the ten-year revegetation period has been initiated and the year of initiation.

d. Acreage [hectarage] where bond has been partially released and the stage of release.

e. A tabular listing of acreage [hectarage] where bond has been totally released.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1,1990; June 1, 1994; June 1, 1997; May 1, 1999.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-27

69-05.2-13-03. Performance standards - General requirements - Authorizations to operate. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine must be available for inspection at or near the minesite.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-27

69-05.2-13-04. Performance standards - General requirements - Signs and markers. The permittee shall, at a minimum, comply with the following requirements for areas within a permit where a performance bond has been posted.

1. **Specifications.** Signs and markers must:

   a. Be posted and maintained by the operator.

   b. Be of a uniform design throughout the operation that can be easily seen and read.

   c. Be made of durable material.

   d. Conform to local ordinances and codes.

2. **Duration of maintenance.** Signs and markers must be maintained during all pertinent activities.

3. **Mine and permit identification signs.**

   a. Identification signs must be displayed at access to the permit area from public roads.

   b. Signs must show the name, business address, and telephone number of the operator and the identification number of the current permit authorizing surface mining activities.

   c. Signs must be maintained until bond is released.

4. **Perimeter markers.** The perimeter of a permit area must be clearly marked before the beginning of surface mining activities.

5. **Buffer zone markers.** Buffer zones must be marked along their boundaries as required by section 69-05.2-16-20.

6. **Blasting signs.** If blasting is conducted, the person who conducts these activities shall:

   a. Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty feet [15.24 meters] of any road within the permit area or within one hundred feet [30.48 meters] of any public road right of way.

   b. Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by section 69-05.2-17-05.

   c. Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning Explosives in Use!", which clearly explain the blast warning and all-clear signals and the marking of blast areas and charged holes.

7. **Suitable plant growth material markers.** Stockpiled suitable plant growth material must be clearly marked.

8. **Sedimentation pond markers.** The operator shall clearly mark the pool elevation that must be maintained for the pond to have sufficient storage capacity to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event).

History: Effective August 1, 1980; amended effective May 1, 1988; May 1,1990.
General Authority: NDCC 38-14.1-03, 38-14.1-24
Law Implemented: NDCC 38-14.1-24, 38-14.1-27

69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available. All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal is not removed and utilize the best technology currently available.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-13-06. Performance standards - General requirements - Avoidance of underground mine areas. Surface coal mining activities may not be conducted closer than five hundred feet [152.40 meters] of an underground

mine, unless the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to public health and safety.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1,1993.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-07. Performance standards - General requirements - Air resources protection. The permittee shall comply with all applicable air pollution control laws and rules of the state department of health and stabilize and protect all surface areas.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1,1990; June 1, 1997.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

1. The permittee shall affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved where practicable on the basis of information gathered and management plans developed under sections 69-05.2-08-15 and 69-05.2-09-17. The permittee shall submit a report to the commission with management plan results and data derived from the monitoring plan for the two previous calendar years by March fifteenth in even-numbered years.

2. No surface mining activity may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the United States department of the interior or which is likely to result in the destruction or adverse modification of designated critical habitats of those species in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.]. The permittee shall promptly report to the commission the presence in the permit area of any state-listed or federally listed endangered or threatened species of which the permittee becomes aware. Upon notification, the commission will consult the United States fish and wildlife service, the state game and fish department, and the operator, and then decide whether, and under what conditions, the operator may proceed.

3. No surface mining activity may be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the commission the presence in the permit area of any bald or golden eagle, or bald or golden eagle nest or eggs, of which the permittee becomes aware.

Upon notification, the commission will perform the consultation and decision process specified in subsection 2.

4. Nothing in this article authorizes the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.] or the Bald Eagle Protection Act, as amended [16 U.S.C. 668 et seq.].

5. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to activities on the permit area follow the guidelines in Environmental Criteria for Electric Transmission Systems (United States department of the interior, United States department of agriculture (1970)), or in alternative guidance manuals approved by the commission. Design and construction of distribution lines must follow REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.

6. The permittee shall, to the extent possible using the best technology currently available:

   a. Locate and operate haul and access roads, sedimentation ponds, diversions, stockpiles, and other structures to avoid or minimize impacts to important fish and wildlife species and their habitats and to other species protected by state or federal law.

   b. Create no new barrier in known and important wildlife migration routes.

   c. Fence, cover, or use other appropriate methods to exclude wildlife from pondscontaining hazardous concentrations of toxic-forming materials.

   d. Reclaim, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.

   e. Reclaim, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.

   f. Afford protection to aquatic communities by avoiding stream channels as required in section 69-05.2-16-20 or reclaiming stream channels as required in section 69-05.2-16-07.

   g. Not use pesticides in the area during surface mining and reclamation activities, unless specified in the operation and reclamation plan or approved by the commission on a case-by-case basis.

h. To the extent possible prevent, control, and suppress range, forest, and coal fires not approved by the commission as part of a management plan.

i. If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of chapter 69-05.2-22:

(1) Select plant species to be used on reclaimed areas, based on the following criteria:

(a) Their proven nutritional value for fish and wildlife.

(b) Their uses as cover for fish and wildlife.

(c) Their ability to support and enhance fish and wildlife habitat after bond release.

(2) Distribute plant groupings to maximize benefits to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.

j. Where cropland is to be the postmining land use and where appropriate for wildlife and surface owner crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands must be preserved when feasible or recreated consistent with the reclamation plan and the postmining land use.

k. Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1,1990; May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-09. Performance standards - General requirements - Slides and other damage. The operator shall promptly notify the commission and comply

with required remedial measures whenever a slide occurs which may potentially adversely affect public property, health, safety, or the environment.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-10. Performance standards - General requirements - Cessation of operations - Temporary.

1. Each permittee shall effectively secure surface facilities in temporarily inactive areas. Temporary abandonment does not affect a permittee's obligation to comply with permit provisions.

2. Before temporarily ceasing or abandoning operations, the permittee shall submit for approval a notice of intention to that effect. The notice must include the exact number of acres [hectares] which will have been affected prior to cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identify the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the cessation.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-11. Performance standards - General requirements - Cessation of operations - Permanent. The permittee shall:

1. Close, backfill, or otherwise permanently reclaim all affected areas where mining has permanently ceased in accordance with this article and the permit.

2. Remove equipment, structures, or other facilities not required for monitoring, unless approved by the commission as suitable for the postmining land use or environmental monitoring, and reclaim the affected land.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-12. Performance standards - General requirements - Auger mining. The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal.

2. Conduct augering operations to:

a. Prevent subsidence to the extent technologically and economically feasible by one of the following:

(1) Backfilling the auger holes to assure the long-term stability of the site.

(2) Utilizing known technology to assure the long-term structural stability of the augered area; or

b. Provide for planned subsidence in a predictable and controlled manner.

3. Correct material damage caused to surface lands.

4. Either correct material damage resulting from subsidence caused to structures or facilities by repairing the damage, or compensate the owner of the structures or facilities in the full amount of the diminution in value. Repair includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancelable premium-prepaid insurance policy.

5. Seal auger holes with an impervious noncombustible material as soon as practicable.

6. Contain and treat auger hole drainage to meet water quality standards and effluent limitations of section 69-05.2-16-04.

7. Not auger within five hundred feet [152.4 meters] of any underground mine workings, except as approved under section 69-05.2-13-06.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1,1990; May 1, 1992.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-13. Performance standards - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water treatment facilities must comply with section 69-05.2-13-04.

2. Stream channel diversions must comply with section 69-05.2-16-07.

3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.

4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.

5. Disposal of coal processing waste, noncoal mine waste, and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.

6. Fish, wildlife, and related environmental values must be protected in accordance with section 69-05.2-13-08.

7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.

8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.

9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.

10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.

11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.

12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22, and 69-05.2-23, respectively.

History: Effective January 1, 1987; amended effective May 1, 1990; May 1,1992.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

ARTICLE 89-02

DRAINAGE OF WATER

Chapter

89-02-01 Drainage of Ponds, Sloughs, Lakes, Sheetwater, or Any Series Thereof
89-02-02 Drainage of Wetlands [Repealed]
89-02-03 Wetlands Bank [Repealed]
89-02-04 Drainage Complaint Appeals
89-02-05 Licenses for Emergency Drainage [Repealed]
89-02-05.1 Emergency Drain Permits

CHAPTER 89-02-01
DRAINAGE OF PONDS, SLOUGHS, LAKES, SHEETWATER, OR ANY SERIES THEREOF

Section

89-02-01-01 Intent [Repealed]
89-02-01-02 Definitions
89-02-01-03 Permit Required
89-02-01-04 Permits for Assessment Drains [Repealed]
89-02-01-05 Exceptions to the Need for a Permit
89-02-01-06 Determination of Watershed Area
89-02-01-07 Filing Application
89-02-01-08 Referral of Applications to Appropriate District
89-02-01-09 Criteria for Determining Whether Drainage Is of Statewide or Interdistrict Significance
89-02-01-09.1 Board Procedure for Processing Applications to Drain
89-02-01-09.2 Evaluation of Applications - Factors Considered
89-02-01-09.3 Time for Determination by Board
89-02-01-09.4 Evaluation of Applications by the State Engineer of Statewide or Interdistrict Significance - Information to Be Used
89-02-01-09.5 Procedure, Availability, and Contents of Notice of State Engineer's Decision to Grant or Deny Application of Statewide or Interdistrict Significance
89-02-01-09.6 Request for State Engineer's Hearing
89-02-01-09.7 Notice of State Engineer's Hearing
89-02-01-09.8 Evidence at the State Engineer's Hearing
89-02-01-09.9 Time for Determination by the State Engineer - Copies of Decision
89-02-01-09.10 Consideration of Evidence Not Contained in the State Engineer's Record
89-02-01-09.11 Conditions to Permits
89-02-01-09.12 Extending Time to Complete Construction of Drain
89-02-01-10 District Hearing on Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-11 Emergency Drainage [Repealed]
89-02-01-12 Notice of District Hearing [Repealed]

89-02-01-13 Content of Notice of Hearing [Repealed]
89-02-01-14 Affidavit of Mailing and Affidavit of Notice [Repealed]
89-02-01-15 Time for Determination by Board of Managers [Repealed]
89-02-01-16 Consideration by the State Engineer and Districts [Repealed]
89-02-01-17 Approval of Drainage Permit Applications by District [Repealed]
89-02-01-18 Denial of Application by the District [Repealed]
89-02-01-18.1 Notice by State Engineer of Public Hearing on Application of Statewide or Interdistrict Significance [Repealed]
89-02-01-18.2 Evidence Presented at the State Engineer's Public Hearing [Repealed]
89-02-01-19 Consideration by State Engineer of Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-20 Criteria to Determine Whether Drainage Will Adversely Affect Lands of Lower Landowners [Repealed]
89-02-01-20.1 Time for Determination by the State Engineer [Repealed]
89-02-01-20.2 Consideration of Evidence Not Contained in the Record [Repealed]
89-02-01-21 Conditions to Permits [Repealed]
89-02-01-22 Requirements for a Valid Permit to Drain [Repealed]
89-02-01-23 Procedure Upon Complaint of Violation [Repealed]
89-02-01-24 Enforcement Action Without Receipt of Complaint [Repealed]
89-02-01-25 Criminal Complaint [Repealed]
89-02-01-26 Ditches or Drains Existing for Ten Years or More [Repealed]
89-02-01-27 Notice of Drainage Application Denials to Commissioner of Agriculture [Repealed]
89-02-01-28 Landowner Assessment Appeal to State Engineer

89-02-01-01. Intent. Repealed effective January 1, 2015.

89-02-01-02. Definitions. Unless the context otherwise requires, the following definitions apply to this article:

1. "Assessment drain" is defined in North Dakota Century Code section 61-16.1-02.

2. "Board" is defined in North Dakota Century Code section 61-21-01.

3. "District" means water resource district.

4. "Drain" is defined in North Dakota Century Code section 61-21-01.

5. "Emergency" means a situation that will cause significant damage to people or property if not addressed immediately and that would not occur under normal circumstances. An emergency may exist because of an extremely wet hydrologic cycle. Damages caused by deliberate acts may not constitute an emergency.

6. "Lake" means a well-defined basin that characteristically holds water throughout the year. Lakes go dry only after successive years of below normal runoff and precipitation.

7. "Lateral drain" is defined in North Dakota Century Code section 61-21-01.

8. "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.

9. "Parties of record" means each person named or admitted as a party or properly seeking and entitled to be admitted as a party.

10. "Pond" means a well-defined land depression or basin that holds water in normal years throughout the summer. Ponds generally go dry only in years of below normal runoff and precipitation.

11. "Pond, slough, lake, sheetwater, or any series thereof" means ponds, sloughs, lakes, or sheetwater that are hydrologically linked.

12. "Sheetwater" is defined in North Dakota Century Code section 61-32-03.

13. "Slough" includes two types:

    a. Seasonal slough: a depression that holds water in normal years from spring runoff until approximately mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled, but can be used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly reflood with frequent or heavy summer or fall rains.

    b. Temporary slough: a shallow depression that holds water from spring runoff until approximately early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled, but may be used for hayland or pasture. A temporary slough frequently refloods during heavy summer or fall rains.

14. "Supplemental hearing" means a hearing held to review evidence not contained in the record of the state engineer’s public hearing.

15. "Watercourse" is defined in North Dakota Century Code section 61-01-06.

16. "Watershed" means the area that drains into a pond, slough, lake, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-03. Permit required.

In addition to North Dakota Century Code section 61-32-03, a permit is required for:

1. An assessment drain.

2. Construction of a lateral drain.

3. Modification of a previous permit, which includes deepening, widening, or extending a drain.

4. Pumping, gravity, or placement of fill.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-04. Permits for assessment drains. Repealed effective February 1, 1997.

89-02-01-05. Exceptions to the need for a permit.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.

2. The provisions of section 89-02-01-03 do not apply to any drain constructed under the direct and comprehensive supervision of the following federal or state agencies:

   a. The state water commission;

   b. The army corps of engineers;

   c. The natural resources conservation service for projects constructed under the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001];

   d. The bureau of reclamation for projects that are part of the originally (1965) authorized Garrison diversion unit;

e. The state department of transportation for federal aid projects; and

f. The public service commission for surface mining projects.

However, these agencies must notify the state engineer of any proposed drainage projects under their direct supervision during the planning stages.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-06. Determination of watershed area. The determination of the watershed area must be made using the best available maps or surveys. LiDAR information or a survey conducted under the supervision of a registered land surveyor are preferred. Published seven and one-half minute topographic maps may also be utilized. This information may be supplemented by aerial photographs of the watershed or by an onsite investigation requested by the applicant or board or if the state engineer determines it is necessary.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-07. Filing application. Any person desiring a drainage permit must file an application with the state engineer on a form provided by the state engineer. If requested by the state engineer or the board, the applicant must provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis may need to include a determination of the drain's and receiving watercourse's capacities and a volume and timing comparison of predrainage and postdrainage flows. If the application is incomplete or the information is insufficient to enable the state engineer or board to make an informed decision on the application, it will be returned to the applicant for correction.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-08. Referral of applications to appropriate district. Upon receipt of a properly completed application, the state engineer must determine whether the application involves drainage of statewide or interdistrict significance under section 89-02-01-09. The state engineer must attach to the application any comments, recommendations, and engineering data that may assist the district in making a determination on the application. The application must then be referred

to the district within which a majority of the watershed of the pond, slough, lake, sheetwater, or any series thereof is found.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance. In determining whether the proposed drainage is of statewide or interdistrict significance, the state engineer must consider:

1. Drainage affecting property owned by the state or its political subdivisions.

2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.

3. Drainage having a substantial effect on another district.

4. Drainage converting previously noncontributing areas (based on the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year event - four percent chance) into permanently contributing areas.

5. For good cause, the state engineer may classify or refuse to classify any proposed drainage as having statewide or interdistrict significance.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.1. Board procedure for processing applications to drain.

1. The board must use the following procedure to process a drainage permit application of statewide or interdistrict significance:

   a. Upon receipt of an application to drain, the board must set the date, time, and place for a meeting at which it will receive testimony pertinent to the application. At the applicant's expense, the board must give notice by mail at least twenty days before the date set for the meeting to:

      (1) The applicant.

      (2) All record title owners and holders of a contract for deed whose property the proposed drain would cross.

(3) All downstream riparian landowners who the board determines have the potential to be adversely impacted.

(4) Any board whose district would be substantially affected.

(5) The state game and fish department.

(6) The state department of health.

(7) The department of transportation, county commissioners, or board of township supervisors if the proposed drain will affect or cross the right of way of any public highway, street, or road within their jurisdictions.

(8) The state engineer.

(9) The natural resources conservation service.

(10) Any person who has made a written request for notification of the project and has advanced the cost of providing that notification.

b. Notice must be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published between five and fifteen days before the date set for the meeting.

c. The notice must give the essential facts of the proposed drain including:

(1) Name and address of applicant;

(2) Legal description of the area to be drained;

(3) Drain purpose;

(4) Watercourse into which the water will be drained;

(5) Legal description of the drain's confluence with the watercourse into which the water will be drained;

(6) The time, date, and place of the meeting; and

(7) The location and date of availability of information regarding the project.

d. At least fourteen days before the meeting, the applicant must submit to the board all documentary information the applicant intends to present at the meeting. The board must immediately

place the information in the board's office if the office is open for public access at least twenty hours each week. If the board's office is not open to the public at least twenty hours each week, the information must be immediately placed with the county auditor of the county in which the majority of the watershed of the drain will be built. The information must be available for public review. The board must notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor must return the information to the board one working day before the meeting.

e. The board must allow submission of all relevant oral or written evidence.

f. In evaluating applications, the board must consider the factors in section 89-02-01-09.2.

g. The board must stenographically or electronically record the meeting at which it receives information concerning the application. If the board approves the permit application, the record and all documentary information the board received must be transferred to the state engineer. The board must provide a meeting transcript at the request of the state engineer. The cost of providing a transcript must be borne by the applicant.

h. At the meeting's conclusion, the board must announce that:

(1) The board's permit denial constitutes final denial. Appeals must be taken to the district court within thirty days.

(2) A board-approved application will be forwarded to the state engineer.

(3) Those who wish to be notified of the board's decision must provide their names and addresses in writing to the board at the end of the meeting.

(4) The board must send notice and a copy of the board's determination and rationale to all parties of record, anyone who has requested in writing to be notified, and the state engineer.

i. If the board denies the application, it must return the application to the applicant, along with a copy of the board's determination and rationale. A copy of the board's determination and rationale must also be sent to all parties of record, anyone who has requested in writing to be notified, and the state engineer.

j. If the board approves the application, the approval must be noted on the application and a copy of the determination and rationale sent to the applicant. The board must send notice and a copy of the board's determination and rationale to all parties of record and anyone who has requested in writing to be notified. The application, a copy of the determination and rationale, and all information reviewed by the board in considering the application must be forwarded to the state engineer for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and surface acre size of ponds, sloughs, and lakes to be drained by the proposed drain.

k. The board's notice to an applicant must state that the application approval is not a permit to drain until the state engineer approves the application.

2. The board must use the procedure in this subsection to process a drainage permit application that is not of statewide or interdistrict significance:

a. The board must review the permit application and any supporting documentation and determine whether public and private interests would be better served by a specific public meeting to consider the project.

b. If a specific public meeting is necessary, the board must process the permit application under procedures established by the board.

c. If a specific public meeting is unnecessary, the board must consider the project under the criteria in section 89-02-01-09.2 and must deny or grant the application and any modifications or conditions based upon those criteria. Written notice of the board's decision must be provided to all parties of record, anyone who has requested in writing to be notified, and the state engineer.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.2. Evaluation of applications - Factors considered. All applications to drain must consider the following factors:

1. The water volume proposed to be drained and its impact upon the watercourse into which it will be drained.

2. Adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion,

flood duration, sustained flows impacts, and downstream water control device operation impacts.

3. The engineering design and other physical aspects of the drain.

4. The project's impact on flooding problems in the project watershed.

5. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.

6. The project's impact on agricultural lands.

7. Whether easements are required.

8. Other factors unique to the project.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-01-26, 61-16.1-10(3), 61-32-03

89-02-01-09.3. Time for determination by board. The board must make a determination on the application within one hundred twenty days of receipt. This time limit may be extended only with the written consent of the state engineer. A request for a time extension must be in writing to the state engineer and must set forth the reason for the request. If no determination has been made and no extension has been requested, unless the state engineer determines that a unique or complex situation exists, the application is void.

For applications involving assessment drains, the one hundred twenty-day time period does not begin until the date the assessments are established by the board and no longer subject to appeal.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.4. Evaluation of applications by the state engineer of statewide or interdistrict significance - Information to be used. In the state engineer's evaluation of statewide or interdistrict significance applications, the state engineer must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff.

The state engineer may also request information or comment from independent sources, but is not required to delay the decision for more than thirty

days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.5. Procedure, availability, and contents of notice of state engineer's decision to grant or deny application of statewide or interdistrict significance.

1. The state engineer must provide a copy of the determination to the parties of record. Other members of the public may view the record at the office of the state engineer, 900 east boulevard, Bismarck, during normal business hours.

2. Upon written request, one copy of the determination may be provided to any person not provided a copy under subsection 1.

3. The notice of decision must include:

   a. The name of the drain;

   b. The applicant's name;

   c. Whether the application was granted or denied;

   d. The date of the decision;

   e. The availability of the full text of the decision;

   f. That a hearing may be requested on the project within thirty days of the date of service of the state engineer's decision; and

   g. The request for a hearing must be in writing, specifically state facts from which the person requesting the hearing is factually aggrieved by the state engineer's decision, and what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-22, 61-32-03

89-02-01-09.6. Request for state engineer's hearing. All requests for a formal hearing on a project must be made in writing to the state engineer within thirty days of the date of service of the state engineer's decision. The request must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the state engineer's decision and must state which material

facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.7. Notice of state engineer's hearing. If the state engineer determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the state engineer must set a date for a hearing and publish notice in the official newspaper of the county where a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. One of the publications must be published at least twenty days before the hearing. The person requesting the hearing must give notice by certified mail to the state department of health, the state game and fish department, the state department of transportation, and all parties of record to the board's hearing at least twenty-one days before the hearing. If such notice is not provided, the hearing will not be held. The notice must give essential information about the proposed drainage application, including the date, time, and location of the hearing. All hearings will be held in Bismarck.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 28-32-05

89-02-01-09.8. Evidence at the state engineer's hearing. Evidence at the state engineer's hearing may be confined to the matters raised by any request of hearing described in section 89-02-01-09.6.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.9. Time for determination by the state engineer - Copies of decision. Unless the state engineer determines the hearing raises complex or unique issues, the state engineer must render a decision within thirty days of the close of the hearing. A copy of the decision must be served on all parties of record either personally, or by certified mail, regular mail, or email. The state engineer will retain a certificate of service indicating upon whom a copy of the decision was served.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 28-32-13, 61-03-13
Law Implemented: NDCC 28-32-13

89-02-01-09.10. Consideration of evidence not contained in the state engineer's record. The record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence not contained in the record. However,

before considering any evidence not contained in the record, the state engineer must provide notice to the parties of record where the evidence may be obtained for their examination and comment. Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by personal service, certified mail, or email must be given to the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective February 1, 1997; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 28-32-07

89-02-01-09.11. Conditions to permits. Unless otherwise specifically stated:

1. All permits must include the following conditions:

   a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.

   b. Construction must be completed within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.

2. All permits of statewide or interdistrict significance must include the following conditions:

   a. All highly erodible drainage channels must be seeded to a sod-forming grass.

   b. Vegetative cover must be adequately maintained for the life of the project or control structures must be installed.

   c. Receipt of a permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

The state engineer or board may attach other conditions to the permit if necessary.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03

89-02-01-09.12. Extending time to complete construction of drain.

If the two-year period expires before construction is complete, the permit recipient may make a written request to the board for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the expiration date and must specifically state why construction has not been completed. If the request is for an extension relating to a permit of statewide or interdistrict significance, the extension must be submitted to and approved by both the state engineer and the board.

History: Effective February 1, 1997; amended effective April 1, 2004; January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-13, 61-32-03

89-02-01-10. District hearing on applications of statewide or interdistrict significance. Repealed effective February 1, 1997.

89-02-01-11. Emergency drainage. Repealed effective February 1, 1997.

89-02-01-12. Notice of district hearing. Repealed effective February 1, 1997.

89-02-01-13. Content of notice of hearing. Repealed effective February 1, 1997.

89-02-01-14. Affidavit of mailing and affidavit of notice. Repealed effective December 1, 1979.

89-02-01-15. Time for determination by board of managers. Repealed effective February 1, 1997.

89-02-01-16. Consideration by the state engineer and districts. Repealed effective February 1, 1997.

89-02-01-17. Approval of drainage permit applications by district. Repealed effective February 1, 1997.

89-02-01-18. Denial of application by the district. Repealed effective February 1, 1997.

89-02-01-18.1. Notice by state engineer of public hearing on application of statewide or interdistrict significance. Repealed effective February 1, 1997.

89-02-01-18.2. Evidence presented at the state engineer's public hearing. Repealed effective February 1, 1997.

89-02-01-19. Consideration by state engineer of applications of statewide or interdistrict significance. Repealed effective February 1, 1997.

89-02-01-20. Criteria to determine whether drainage will adversely affect lands of lower landowners. Repealed effective February 1, 1997.

89-02-01-20.1. Time for determination by the state engineer. Repealed effective February 1, 1997.

89-02-01-20.2. Consideration of evidence not contained in the record. Repealed effective February 1, 1997.

89-02-01-21. Conditions to permits. Repealed effective February 1, 1997.

89-02-01-22. Requirements for a valid permit to drain. Repealed effective December 1, 1979.

89-02-01-23. Procedure upon complaint of violation. Repealed effective February 1, 1997.

89-02-01-24. Enforcement action without receipt of complaint. Repealed effective October 1, 1982.

89-02-01-25. Criminal complaint. Repealed effective October 1, 1982.

89-02-01-26. Ditches or drains existing for ten years or more. Repealed effective December 1, 1979.

89-02-01-27. Notice of drainage application denials to commissioner of agriculture. Repealed effective August 1, 1994.

89-02-01-28. Landowner assessment appeal to state engineer. A landowner's appeal to the state engineer claiming that the landowner will receive no benefit from the construction of a new drain must be made within ten days after the assessments hearing. The appeal must be in writing and must specifically state the facts upon which the claim is based.

History: Effective April 1, 2000; amended effective January 1, 2015.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-21-22

ARTICLE 89-10

SOVEREIGN LANDS

Chapter
89-10-01 Sovereign Lands

CHAPTER 89-10-01
SOVEREIGN LANDS

Section
89-10-01-01 Authority
89-10-01-02 Prohibition on Permanent Relinquishment
89-10-01-03 Definitions
89-10-01-04 Authorization
89-10-01-05 Application for Permit, Easement, Lease, or Management Agreement
89-10-01-06 Application Review
89-10-01-06.1 Record - Official Notice
89-10-01-07 Public Meeting
89-10-01-08 General Permit Standards
89-10-01-09 Specific Project Requirements [Repealed]
89-10-01-10 Projects Not Requiring a Permit
89-10-01-10.1 Boat Docks and Water Intakes
89-10-01-10.2 Boat Dock Registration
89-10-01-11 Structures
89-10-01-12 Public Recreational Use
89-10-01-13 Vehicular Access
89-10-01-14 Cancellation by the State Engineer
89-10-01-15 Termination by Applicant
89-10-01-16 Assignments
89-10-01-17 Inspections
89-10-01-18 Reclamation
89-10-01-19 Maintenance and Repair
89-10-01-20 Areas of Special Interest
89-10-01-21 Organized Group Activities
89-10-01-22 Pets
89-10-01-23 Camping
89-10-01-24 Hunting, Fishing, and Trapping
89-10-01-25 Unattended Watercraft
89-10-01-26 Removal of Public Property
89-10-01-27 Cultural or Historical Resources
89-10-01-28 Disposal of Waste
89-10-01-29 Glass Containers
89-10-01-30 Abandoned Property
89-10-01-31 Firearms
89-10-01-32 Tree Stands
89-10-01-33 Baiting
89-10-01-34 Dredging or Filling

89-10-01-01. Authority. These rules are adopted and promulgated by the state engineer under North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of sovereign lands. These rules do not apply to the state of North Dakota's interests in oil, gas, and related hydrocarbons on sovereign lands.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished, but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

History: Effective November 1, 1989; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.

2. "Boardwalk" means a walk constructed of planking.

3. "Domestic use" means the use of water as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.

4. "Grantee" means the person, including that person's assigns, successors, and agents who has authorization.

5. "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.

6. "Navigable waters" means any waters that were in fact navigable at the time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

7. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands

in navigable waters are considered to be below the ordinary high watermark in their entirety.

8. "Project" means any activity that occurs either partially or wholly on sovereign lands.

9. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.

10. "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.

11. "Structure" means something that is formed from parts, including equipment, boat docks, boat ramps, and water intakes.

12. "Watercraft" means any device capable of being used as a means of transportation on waters.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-04. Authorization. Each project requires an authorization from the state engineer before construction or operation, except as otherwise provided by these rules.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-05. Application for permit, easement, lease, or management agreement. Applications for authorization must be on forms prescribed by the state engineer and contain the information required by the state engineer. Applications must be submitted to the North Dakota State Engineer, State Office Building, 900 East Boulevard, Bismarck, North Dakota 58505-0850.

History: Effective November 1, 1989; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-06. Application review. Upon receipt of a completed application, the state engineer must initiate a review as follows:

1. Comments must be requested from the following entities:

   a. The state game and fish department;

b. The state department of health;

c. The state historical society;

d. The state department of trust lands;

e. The state parks and recreation department;

f. The United States fish and wildlife service;

g. The park district and planning commission of any city or county where the proposed project will be located;

h. Any water resource district where the proposed project will be located; and

i. Other agencies, private entities, or landowner associations as appropriate or required by law.

2. Each entity must submit all comments in writing to the state engineer. The state engineer is not bound by any comment submitted. The state engineer must receive comments within thirty days of the date requests for comments were mailed.

3. Upon completion of the review and any public meeting held under section 89-10-01-07, the state engineer may grant, deny, or condition the application.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-06.1. Record - Official notice. Unless specifically excluded by the state engineer or the hearing officer, the record in each sovereign land permit application proceeding or adjudicative proceeding under North Dakota Century Code chapter 28-32 includes the following:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.

2. United States geological survey and state water commission streamflow records.

3. National oceanic and atmospheric administration climatological data.

4. Topographic maps.

5. State engineer sovereign land permit files.

6. Information in state engineer and state water commission files, records, and other published reports.

7. North Dakota sovereign land management plan.

8. Ordinary high watermark delineation guidelines.

9. Aerial photos.

History: Effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-07. Public meeting. An information-gathering public meeting may be held by the state engineer before final action on a project. The procedure for notice and meeting must be as follows:

1. The state engineer must publish a notice of meeting in the official newspaper for each county where the project is located. The notice must be published once each week for two consecutive weeks.

2. The meeting date must be at least twenty days after the date of last publication.

3. The meeting must be conducted by the state engineer and the meeting may be held in Bismarck.

4. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-08. General permit standards. The state engineer may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the state engineer must consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;

2. Recreation;

3. Navigation;

4. Aesthetics;

5. Environment;

6. Erosion;

7. Maintenance of existing water flows;

8. Fish and wildlife;

9. Water quality;

10. Cultural and historical resources; and

11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-09. Specific project requirements. Repealed effective July 1, 2014.

89-10-01-10. Projects not requiring a permit. The following projects do not require a permit:

1. Boat docks, if all of the following conditions are satisfied:

   a. They are constructed, operated, and maintained by the riparian owner for personal use;

   b. The dock is used only for embarkation, debarkation, moorage of watercraft, water intakes, or recreation;

   c. Only clean, nonpolluting materials are used;

   d. The total length of the dock over the surface of the water does not exceed twenty-five feet [7.6 meters] on a river or fifty feet [15.24 meters] on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;

   e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length and is removed from below the ordinary high watermark each fall; and

   f. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

2. Water intakes if all of the following conditions are satisfied:

a. They are constructed, operated, and maintained by the riparian owner for domestic use; and

b. The intake is removed from below the ordinary high watermark each fall.

3. Watercraft that are temporarily moored.

4. Snagging and clearing, when performed by a federal or state entity or political subdivision.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; April 1, 2010; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10.1. Boat docks and water intakes. Boat docks and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per day. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2009; amended effective April 1, 2010; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10.2. Boat dock registration. Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) must be registered with the state engineer before placement of any such dock. The state engineer must provide registration forms. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-11. Structures. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is prohibited, the state engineer must:

1. Issue an order to the structure owner identifying the action required to modify or remove the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.

2. If the ordered action is not taken by the date specified in the order, the state engineer may modify or remove the structure at the structure owner's expense.

3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies or removes the structure, the state engineer may assess the costs of such action against any property of the structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the costs against property of the structure's owner and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. A person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The state engineer must receive the request within ten days of the date the order issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer must set a hearing date without undue delay.

5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33

89-10-01-12. Public recreational use. The public may use sovereign lands for recreational purposes except as otherwise provided by these rules or by signage posted by the state engineer.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-13. Vehicular access. The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the state engineer;

2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;

3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that has been submitted to the state engineer, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;

4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;

5. To launch or load watercraft in the most direct manner possible;

6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;

7. To access private land that has no other reasonable access point, provided that access across sovereign lands is in the most direct manner possible;

8. By disabled people who possess a mobility-impaired parking permit under North Dakota Century Code section 39-01-15 or shoot from a stationary motor vehicle permit under subsection 10 of North Dakota Century Code section 20.1-02-05;

9. When operation is necessary as part of a permitted activity or project;

10. By the riparian owner on sovereign lands that are adjacent to the riparian owner's property when moving or tending to livestock; installing or maintaining a livestock fence; installing, maintaining, or moving an authorized agricultural irrigation structure; or when engaged in other ordinary agricultural practices, provided the listed activities do not negatively affect public use or values; or

11. When being used by government personnel in the performance of their duties.

Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-14. Cancellation by the state engineer. The state engineer may cancel any authorization granted under these rules. Cancellation does not release the grantee from any liability. If an applicant is named in an active enforcement action ordered by the state engineer, the state engineer may hold any application submitted by the applicant in abeyance until the order has been satisfied.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-15. Termination by applicant. The grantee may terminate any authorization by notifying the state engineer in writing, paying all fees or other money owed to the state, and reclaiming the site under section 89-10-01-18.

History: Effective November 1, 1989; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-16. Assignments. Any authorization granted under these regulations may only be assigned with the written consent of the state engineer.

History: Effective November 1, 1989; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-17. Inspections. The state engineer may inspect all projects on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-18. Reclamation. After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location within one hundred twenty days. If the permit is for mining, reclamation must be within sixty days after the lease expires or the mining is complete. Upon written request, the state engineer may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required

timeframe, the state engineer may enter and restore the project location. The grantee is liable for all reclamation costs.

History: Effective November 1, 1989; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-19. Maintenance and repair. Maintenance or repair of authorized projects does not require additional authorization provided the work is in conformance with the original authorization, standards, and specifications provided in this article and the work does not alter the use or size of the project.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-20. Areas of special interest. The state engineer may enter agreements for management of areas of high public value. Examples include parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

History: Effective November 1, 1989; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-21. Organized group activities. Organized group activities that are publicly advertised or are attended by more than twenty-five people are prohibited on sovereign lands without a permit. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-22. Pets. Pets are not allowed to run unattended on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-23. Camping. Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. Any person who

violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-24. Hunting, fishing, and trapping. All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules, regulations, or laws or as posted at public entry points. Posting sovereign lands with signage by anyone other than the state engineer is prohibited without a sovereign lands permit. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-25. Unattended watercraft. Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

1. When moored to authorized docks; or

2. When moored to private property above the ordinary high watermark with a restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark.

Any person who violates this section is guilty of a noncriminal offense and must pay a fifty dollar fee per day.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-26. Removal of public property. Public property, including trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, firewood, posts, or poles, may not be removed from sovereign lands without a permit. Firewood may be removed under certain stated conditions from designated firewood cutting plots. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the state engineer. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or

defaced. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-27. Cultural or historical resources. Artifacts or any other cultural or historical resources found on sovereign lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the state engineer.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-28. Disposal of waste. The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or watercraft may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-29. Glass containers. Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-30. Abandoned property. Abandonment of vehicles or other personal property is prohibited on sovereign lands.

History: Effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-31. Firearms. Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner or as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-32. Tree stands. Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands, portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth and must be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the state engineer. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-33. Baiting. Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities conducted by the state engineer. Bait may be used to lure and take furbearers when engaged in lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective Apirl 1, 2009; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-34. Dredging or filling. Unless permitted by the state engineer, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the state engineer must:

1. Issue an order to the violator identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.

2. If the ordered action is not taken by the date specified in the order, the state engineer may take any action to restore the sovereign lands at the violator's expense.

3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer takes action to restore sovereign lands, the state engineer may assess the costs of

such action against the riparian owner's property where the dredging or filling occurred or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the costs against the riparian owner's property where the dredging or filling occurred and the property is insufficient to pay for the costs incurred, or if the riparian owner was not the party responsible for the dredging or filling, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. A person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The state engineer must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer must set a hearing date without undue delay.

5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective April 1, 2010; amended effective July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33

Index

A

abandon 41, 115, 409
abstract 80
accession 2, 148, 154
accessory 44, 164, 165
accretion 219
accretions 155, 183
appurtenances 146, 150, 206, 272, 273, 275, 311, 312, 341
appurtenant 146, 201
arc 116
avulsion 155

B

bearing 20, 115, 124, 126, 127, 140, 164, 165, 212, 413
boundary 17, 20, 21, 47, 65, 112, 116, 117, 121, 147, 164, 168, 186, 199, 209, 236, 254, 295, 319-321, 337-340, 344, 347, 364, 389

C

cap 165, 274, 275, 285, 288
cemeteries 1, 35, 67
cemetery 35, 36, 109, 133, 344, 345, 364condemnation 45-47, 71-73, 112, 181, 182, 185, 201, 203, 205, 210
condemned 71, 72, 74, 182, 203, 204
condemnor 67, 69, 70
controlling 164, 165, 182, 187, 199, 338
coordinate 17, 48, 49, 167-169
corner 2, 20, 22, 103, 164-167
correction 12, 94, 117, 118, 205, 206, 402, 414, 431

D

degrees 150, 155, 168, 229, 231, 292, 299, 300, 320, 323, 341
drain 55-57, 59, 201-218, 279, 427-430, 432-437, 439, 441

Index

drainage 2, 3, 25-27, 29, 30, 42, 43, 49, 57, 60, 66, 135, 199, 201-203, 205-213, 215-218, 273, 283, 288, 315, 322, 364, 370, 377, 379, 387, 391, 392, 394, 425-428, 430-433, 435, 438-441
drainages 322
drainageway 388
drained 202, 203, 433, 435
drains 55, 57, 97, 201, 205-212, 214, 217, 370, 387, 427, 428, 430, 436, 441

E

easement 13, 33, 34, 38, 66, 68, 116, 121, 148, 150-152, 157, 185, 186, 188, 199, 254, 349, 351, 442-444
easements 27, 33, 43, 44, 46, 107, 119, 120, 134, 135, 148, 150-152, 156, 157, 185, 188, 199, 219, 254, 436
elevation 30, 117, 165, 188, 273, 275, 276, 280, 283, 285, 296, 297, 313, 391, 420
eminent 1, 10, 43, 45, 49, 66, 67, 71, 72, 74, 107, 181, 205, 217
extinct 19, 20

F

field 19-21, 167, 293, 321, 328, 331

I

instruments 12-17, 45, 117, 134, 140, 153, 219

L

landmark 117
landmarks 76, 164, 400

M

meander 164
meandered 3, 20, 199
minimum 165, 246, 266-268, 271, 276
mining 1, 3, 23, 84, 102-104, 294, 295, 343-352, 354-363, 365-369, 378, 379, 382-385, 388, 389, 391, 392, 396-398, 401-408, 411-414, 417-422, 424, 425, 431, 451

Index

monumented 164-167
monuments 19, 60, 116-118, 147, 149, 164, 165, 254

P

plat 12, 13, 17, 18, 27-31, 35, 45, 107, 113, 116-119, 129-131, 149, 165, 195, 196, 253, 254, 294, 313, 322, 325, 326, 329, 332, 333, 340, 341
presumptive 19, 22, 187

R

radii 116
radius 116, 276, 328, 329, 333
railroads 43, 63, 64, 67, 68, 207, 364
railway 38, 43, 59, 84, 85, 100, 146, 149
railways 2, 48, 67, 149, 384
reference 60, 117, 119, 121, 149, 157, 164, 165, 167, 209, 215, 233, 252, 262, 264, 282, 294, 306, 313, 323, 351, 358, 373
relicted 155
reliction 219
relictions 155
right 2, 10, 13, 20, 37, 39, 40, 42-51, 57, 58, 60, 64, 66, 68, 69, 71-73, 75, 78, 83, 84, 87, 88, 91, 96, 97, 99-101, 103, 104, 107, 108, 114, 120, 121, 128, 130, 146, 147, 149, 150, 152-155, 157, 158, 172, 174, 181, 182, 185, 187, 196, 197, 199, 204, 205, 207, 210, 213, 214, 240, 256, 346, 348, 349, 351, 356, 388, 401, 420, 433
right-of-way 39, 42, 47, 344, 345, 388
riparian 155, 219, 381, 422, 433, 444, 446-448, 450, 453

S

seal 14, 17, 109, 122, 123, 126, 129-131, 156, 165, 241-244, 252, 253, 257, 259, 263, 274, 275, 278, 280, 283, 287-291, 425