

**CHAPTER 85-04-03
PERMANENT IMPROVEMENTS**

Section

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85-04-03-01. Permanent and nonpermanent improvements.

1. Permanent improvements may not be placed on, removed from, or applied to any surface land leased premises without the written consent of the commissioner.
2. Permanent improvements placed on or implemented on any surface land leased premises are the property of the state of North Dakota.
3. A lessee may place nonpermanent improvements on any surface land leased premises without written consent of the commissioner.
4. Upon expiration or termination of the surface land lease, the lessee may remove the nonpermanent improvements within one hundred twenty days after the surface land lease expires or is terminated. The commissioner may, upon written request from the lessee before the end of the one-hundred-twenty-day period and for good cause, extend the period of time for removing nonpermanent improvements.
5. Any nonpermanent improvements not removed within one hundred twenty days become the property of the next lessee unless the commissioner deems the nonpermanent improvements to be a hindrance to the surface land leased premises.
6. Any nonpermanent improvements deemed to be a hindrance must be removed by the responsible party within one hundred twenty days after delivery of written notification from the department. If hindrances are not removed within one hundred twenty days, the department may remove the hindrance and require the responsible party to pay for the cost.
7. A lessee is responsible for any damage or improvements that remain on the leased premises and are deemed a hindrance by the commissioner.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-08-26

85-04-03-02. Application.

A lessee shall submit a request for a permanent improvement, using the electronic application available on the department's website or a paper application provided upon request. The lessee shall provide all information specifically required by the application and any supplemental information requested by the department.

History: Effective January 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

85-04-03-03. Rent credit, cost-share, and depreciation.

1. Rent credits, cost-share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.
2. Rent credits or cost-share may not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from nondepartment sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from nondepartment sources and rent credits or cost-share from the department for a period not to exceed ten years.
4. Any unexpired depreciation amount must be available from the department before the surface land lease auction and must be announced at the surface land lease auction.
5. If the former lessee is not the successful bidder at auction, the new lessee is required to compensate the former lessee for the undepreciated amount. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the surface land lease.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-04-24, 15-08-26

85-04-03-04. General standards for a permit for a permanent improvement.

In reviewing an application for a permit for a permanent improvement, the commissioner may consider the following:

1. Financial benefit to the trusts;
2. Availability of alternate site or route;
3. The least environmentally damaging site or route;
4. Physical stability of the landscape;
5. Whether technical assistance was sought in planning the proposed permanent improvement;
6. Potential for mineral development, including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and waterflows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts; and
13. Any other information relevant to the application which would assist in the commissioner's determination.

History: Effective January 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

85-04-03-05. Issuance of a permit for permanent improvement.

The commissioner may determine whether to issue a permit for the construction of a permanent improvement and the maximum project cost, rent credit, cost-share, and depreciation amounts. The commissioner may impose such terms on a permit as the commissioner deems necessary. A permit must be issued prior to site preparation or construction.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-08-26