

## **CHAPTER 85-04-04 ENCUMBRANCES OF TRUST LANDS**

### Section

85-04-04-01	Application
85-04-04-02	Surveying and Planning Permit Requirements
85-04-04-03	General Standards for an Encumbrance
85-04-04-04	Issuance of an Encumbrance
85-04-04-05	Right of Entry
85-04-04-06	Expiration of an Encumbrance

### **85-04-04-01. Application.**

An applicant shall submit a request for an encumbrance, amendment, assignment, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension, or renewal. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. An application must be made as follows:

1. Encumbrance. An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Amendment. An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. An assignment must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign an encumbrance for good cause. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor is responsible for compliance with all terms of the encumbrance and this chapter until the department is notified of the assignment. Upon approval or notification, the assignee shall be responsible for compliance with all terms of the encumbrance and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.
4. Extension or renewal. An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department shall notify the applicant.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-05-01

### **85-04-04-02. Surveying and planning permit requirements.**

1. Prior to accessing trust lands to conduct surveys, including metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and wetland delineations, an applicant shall obtain a surveying and planning permit from the department. The applicant shall complete an electronic application available on the department's website or a paper

application provided upon request. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.

2. Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third-party applicant has filed an application for an encumbrance. The surface tenant must be notified by the third-party applicant of the required access to trust lands at least one calendar week prior to the date of access.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-05-01

#### **85-04-04-03. General standards for an encumbrance.**

In reviewing an application for an encumbrance, the following may be considered:

1. Financial benefit to the trusts;
2. Availability of alternate encumbrance site or route;
3. The least environmentally damaging site or route regardless of property ownership;
4. Physical stability of the landscape;
5. Other potential future uses for the trust lands, including urban development;
6. Potential mineral and other material 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;
13. Applicant's past encumbrances on trust lands;
14. Applicant's financial stability; and
15. Any other information relevant to the application which would assist in the determination.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

#### **85-04-04-04. Issuance of an encumbrance.**

1. The commissioner may approve and issue an encumbrance on the board's behalf in accordance with this chapter.

2. If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.
3. The commissioner may impose such terms as the commissioner deems necessary. An encumbrance must be issued prior to site preparation or construction.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

#### **85-04-04-05. Right of entry.**

The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

#### **85-04-04-06. Expiration of an encumbrance.**

Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction. Prior to the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01