

CHAPTER 89-08-02 CONSTRUCTION PERMITS

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89-08-02-01. Determining if a permit is required.

1. The impounding capacity of a dam is calculated based upon the elevation at the top of dam. Storage below the existing adjacent ground surface is generally excluded from the capacity of a holding pond, lagoon, or dugout.
2. The area protected by a dike is calculated based upon the area protected as measured from the effective top of dike.
3. The diverting capacity of a diversion is calculated based upon the runoff from the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year, twenty-four hour, precipitation event.
4. No construction can begin until a construction permit is obtained.

History: Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015; January 1, 2023; July 1, 2024.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-01.1. Exceptions to the need for a permit.

The provisions of North Dakota Century Code section 61-16.1-38 do not apply to the following works with the sole intent to provide an opening to permit water flow:

1. Highway, street, or road stream-crossings;
2. Private driveway culverts;
3. Approach-crossing culverts or bridges; and
4. Railroad-crossing culverts or bridges.

History: Effective July 1, 2024.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02. Initial review - Contents of application.

1. The department has up to forty-five days to complete an initial review of the application and its contents. The initial review must determine what type of construction permit is required and if the application is complete.
2. The following information is required by the department in order for a construction permit application to be deemed complete:
 - a. A completed application form;
 - b. Plans and specifications as stipulated by the department;
 - c. Evidence establishing a property right or easement for the properties that will be affected by the construction of the dam, dike, or other device; and
 - d. Any additional information required by the department.
3. If the application is deemed complete, the department shall forward the application to the water resource district's board within which the contemplated project is located within the forty-five day initial review period. If the water resource district is the applicant, the application must be processed under section 89-08-02-02.1 without soliciting water resource board changes, conditions, or modifications. If the applicant submits a statement of support of the project design from the board to the department with its application, the requirement to receive approval from the water resource board is considered met, and the department shall begin its review under section 89-08-02-02.1.
4. If the application is deemed incomplete, the department shall notify the applicant in writing that the application is deemed incomplete and detail what information is missing. Applicants are not restricted from submitting a new application for department consideration under this section.
5. Applications are subject to department requirements at the time the application is submitted to the department.

History: Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004; January 1, 2015; January 1, 2023; July 1, 2024; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02.1. Department review.

1. The department shall begin its department review upon receipt of the board's suggested changes, conditions, or modifications to the application. If the board fails to send suggested changes, conditions, or modifications to the department within forty-five days, the board is deemed to have no changes, conditions, or modifications to make, and the department shall begin its department review.
2. The department has up to ninety days to review and approve or deny the application from the time the most recent application amendment detailed under section 89-08-02-02.2 is received and subject to department and applicant coordination detailed in section 89-08-02-02.3.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02.2. Application amendments.

1. If an applicant wishes to make a change to the applicant's application after the application has been submitted to the department and without an identified deficiency by the department, the applicant shall withdraw the application and submit a new application.
2. The applicant may amend the application to address deficiencies identified by the department as a part of the department review under section 89-08-02-02.1. The department shall notify the applicant of the deficiency in writing, and the department shall cease its review of the application upon notification to the applicant that a deficiency has been identified. The applicant has up to ninety days from the notification to make any necessary amendments to the application to address the deficiency. This timeline may be extended in consultation with the department. If the department does not receive an application amendment or extension request within ninety days, the application is denied. The department has up to ninety days to review and approve or deny the application from the receipt of the most recent amendment. All amended applications are subject to department review under section 89-08-02-02.1.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02.3. Department and applicant coordination.

1. If the department needs further information or support materials from the applicant during the department review, the department review shall cease and the applicant must be notified in writing of the department's need for information or additional support materials.
2. The applicant has up to ninety days from the notification by the department to provide the requested information or materials. This timeline may be extended in consultation with the department.
3. If the department does not receive the requested information, materials, or extension request within ninety days, the application is denied.
4. The department has up to ninety days to review and approve or deny the application from the receipt of the most recently requested information or materials from the applicant.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02.4. Extension of department review.

In unique or complex situations, the department and applicant may agree to suspend the ninety-day timeline requirements detailed in this chapter.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03. Permit does not absolve liability for damages.

The receipt of a permit, including a permit for emergency construction, does not relieve an applicant from liability resulting from any activity conducted under the permit.

History: Effective June 1, 1998; amended effective January 1, 2015.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.1. Time to complete construction of structure.

Construction may not begin until a construction permit is obtained. Construction must be completed and the department must be notified of completion in writing within the period specified by the department on the permit, beginning from the date of final permit approval. The completion period does not begin until any appeal is complete.

History: Effective January 1, 2015, amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.2. Extending time to complete construction of structure.

If the completion period expires before construction is complete, the permit recipient may make a written request to the department for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the permit expiration date and must specifically state why construction has not been completed.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-04. Emergency construction permits.

A completed application for an emergency construction permit must be submitted to the department along with any additional information required by the department. If the director determines an emergency exists, the director may issue an emergency construction permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet [61674 cubic meters] of water. An emergency construction permit will expire in twelve months unless extended by the director under section 89-08-02-05.

History: Effective April 1, 2004; amended effective January 1, 2015; January 1, 2023; July 1, 2024.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-05. Extension of emergency construction permits.

The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency construction permit. If it is determined that an emergency still exists, the director may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under section 89-08-02-04 for a new emergency construction permit.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-06. Removal of emergency structures.

Once the emergency has ended or upon permit expiration, whichever occurs first, all structures constructed under section 89-08-02-04 must be removed in their entirety and the disturbed area restored to preproject conditions. The applicant must notify the department in writing when the emergency structure has been completely removed.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-07. As built plans.

As a condition on all construction permits, the owner of the dam, dike, or other device will provide the department with "as built" plans within six months after the dam, dike, or other device has been constructed to provide details of the modifications that occurred during construction.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-08. Operation and maintenance manual.

A medium-hazard or high-hazard dam owner shall submit an operation and maintenance manual for the dam and the appurtenant works to the department. The manual must be maintained and updated on a regular basis, and copies of all updates must be submitted to the department. Dam owners shall maintain their structures in an adequate manner.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-03-21.2