

## **CHAPTER 69-05.2-04 AREAS UNSUITABLE FOR MINING**

### **Section**

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### **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Repealed effective March 1, 2004.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 appropriate 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