

ENTERING PRIVATE LAND FOR PRECONDEMNATION EXAMINATIONS

This memorandum describes the ability of a potential condemner to enter and examine private land for future condemnation. North Dakota Century Code Section 32-15-06 permits a person entitled to exercise eminent domain to enter and examine private land to determine the appropriate location to be condemned. The statute does not require the person to obtain the landowner's permission for entry or to obtain a court order before entry. However, there have been a handful of cases on this issue in North Dakota, and it appears at least some condemners seek court orders before entering land under Section 32-15-06 when the landowners have not consented to the entry. Additionally, the landowner could file a court action seeking to prevent the entry. The North Dakota Supreme Court has said district courts may hear such cases.

The North Dakota Supreme Court also has ruled entry and examination under Section 32-15-06 is a preliminary process and not part of an eminent domain proceeding. The person entering the land is not required to file an eminent domain summons and complaint or prove eminent domain of the land to be examined is proper or necessary at this stage of the proceedings.

To prevent the entry and examination of the land under Section 32-15-06, the landowner must show the person seeking to enter the land does not fit within any category of persons entitled to seek eminent domain. The landowner is entitled to compensation for the entry and examination of the land only when there is negligence, wantonness, or malice that results in damage to the landowner's property. However, a landowner could ask a trial court for an order imposing certain restrictions (e.g., no buildings may be entered, no trees may be cut) on the examinations to be conducted. In at least one North Dakota Supreme Court case, *In re 2015 Application for Permit to Enter Land for Surveys and Examination Associated with a Proposed North Dakota Diversion and Associated Structures*, 883 N.W.2d 844 (2016), the court allowed the examination to include soil borings if the entity conducting the borings paid the landowner \$250 per boring, returned the property as nearly as practicable to its original condition, and complied with other conditions.

The original version of Section 32-15-06 existed in Section 5960 of the Revised Codes of North Dakota 1895. It was amended in 1899, 1905, 1913, 1943, and 1985. The 1985 amendments were technical corrections to update language and did not substantively change the statute.