

2021 (last revised August 17, 2023, to include the 68<sup>th</sup> ND Legislative updates)

# North Dakota County Road & Bridge Handbook

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# IMPORTANT NOTICE

The material and information contained in this Handbook are a source of information for county engineers, highway supervisors, county commissioners, and local officials to assist in carrying out the duties, authorities, and responsibilities for the management of North Dakota's County infrastructure system of roads and bridges.

**This Handbook is not to be used as a substitution for your own private attorney when legal questions arise. Nor are these materials to be construed as a legal interpretation of the law for specific problems that county highway engineers may encounter. Each specific problem has individual circumstances which must be considered. Therefore, if you need legal advice concerning a particular problem, contact your attorney.**

**The most current version of this Handbook can be found at:**

<https://www.ndltap.org/resources/downloads/nd-county-road-bridge-handbook.pdf>

**The 2004 edition of the handbook can be found at:**

<https://www.ndltap.org/resources/downloads/handbook-for-nd-county-eng-and-highway-supervisors.pdf>

Additional information on local roads and bridges may be found in the North Dakota Township Officers Handbook at:

<http://www.ndtoa.com/officershandbook.htm>



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# **General Information**

## 1. Preface

We are pleased to bring to you this updated version of the North Dakota County Road and Bridge Handbook (formerly the North Dakota County Engineers and Supervisors Handbook). This update includes references to the most current North Dakota Century Code and will be updated to reflect changes in the law every two years or sooner. This new version includes some references to case law records to help you better understand some of the issues faced by county engineers and road supervisors. It also includes sample policies on snow and ice control, township road maintenance agreements, culvert replacement, road ditch cleaning, road dust control, roadside mowing, noxious weed control and more in the appendices. Special thanks to all the people and agencies involved in this update including the Grand Forks County State's Attorney, University of North Dakota Law School, ND Association of County Engineers, ND Association of Counties, ND Local Technical Assistance Program, North Dakota State University Upper Great Plains Transportation Institute, ND Department of Transportation, ND Township Officers Association and the ND Insurance Reserve Fund.

We hope that you will find the materials contained in this Handbook helpful. This update includes a clickable table of contents which will help you navigate directly to the chapter of choice. There are more than 200 footnotes beginning with number 1 in Chapter 1 under State Highway System. Each footnote is a live link to reference a specific section of the ND Century Code which is pertinent to the chapter and section in this Handbook.

You may view the entire Century Code at: <https://www.legis.nd.gov/general-information/north-dakota-century-code>



## **CHAPTER 1 - GENERAL**

### 1. The State Highway System

The board of commissioners of any county may enter into a written agreement with the director of the state's Department of Transportation for the construction of a roadway or structure of greater width or capacity than would be necessary to accommodate the normal state highway traffic and may appropriate from any funds available, and pay into the state highway fund, such sum or sums of money as may be agreed upon.<sup>1</sup>

### 2. The County Road System

The boards of county commissioners in their respective counties have the sole authority and responsibility to acquire land for, construct, maintain, and operate the county road system as designated and selected by them.<sup>2</sup>

Each board of county commissioners throughout the state is responsible for designating that county's local highway system. The miles of county roads that are part of the federal aid system are determined for each county based on input from ND DOT, FHWA and the County. The NDDOT Director must be informed of the system so designated. Any changes of the original designation which can be justified and based on new developments must be made by the board of county commissioners and the NDDOT Director must be notified of such changes. In designating and selecting roads on the county road system, the boards of county commissioners of the several counties involved shall consider such factors as the actual or potential traffic volumes, the

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<sup>1</sup> N.D.C.C. § 24-01-10. Local jurisdictions may provide additional capacity to state highway.

<sup>2</sup> N.D.C.C. § 24-05-17. Responsibility for county road system.

conservation and development of the county's natural resources, the general economy of the communities, and the desirability of integrating such county roads into the general scheme of statewide network of county roads.<sup>3</sup>

**Cross-Reference: See Chapter 4 (Funding), Sections 1(A)(2), County Road Tax; (1)(C)(1), Federal Leasing Profits, and (1)(C)(2), Federal Revenue Sharing**

3. State and County Cooperation

No mileage on the state highway system may be placed on the county road system without the consent of the board of county commissioners of the county in which the road lies. The NDDOT director may enter into an agreement with the board of county commissioners of any county providing for the transfer of highways from the state highway system to the county road system of such county.<sup>4</sup>

**Cross-Reference: Chapter 3, Section 1- Basic Authority of County Commissioners**

Whenever any board of county commissioners of any county decides that any county road or roads in such county must be improved or constructed in cooperation with the state department of transportation, such board shall make written application to the NDDOT director for the improvement and construction thereof. If the director approves the application, the director, in writing, shall notify the board of such approval, and at the same time shall submit to the board an estimate of the cost of such improvement, including the cost of engineering, the purchase or acquirement of right of way, and all other expenses, and the share or portion thereof which such county shall bear.

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<sup>3</sup> N.D.C.C. § 24-05-16. County road system – designation.

<sup>4</sup> N.D.C.C. § 24-01-05. Designation of county system – removal from state highway system.

However, the director may not require any county to pay for the cost or expense of acquiring right of way for the state highway system.

If the board of county commissioners elects to proceed with such improvement, the board shall adopt a resolution signifying the election and, in such resolution, must set aside, out of funds which are or may become available, the amount necessary to pay the county's share of the cost of such improvement. Upon written demand of the director, the board of county commissioners shall instruct and direct the county auditor by resolution to draw a warrant or warrants on the county treasurer in favor of the contractor, or of the department, for the county's share of such amount or amounts as may become due during the progress of such improvement. The county shall also draw additional warrants in favor of the department as may be necessary to reimburse it for the county's share of the cost of engineering and the acquisition of right of way. Such warrants must be drawn by the county treasurer upon the certificate of the director.<sup>5</sup>

The election to proceed with an improvement by the board of county commissioners constitutes an agreement and contract with the state's director, and the board of county commissioners shall provide sufficient funds in accordance with law to defray its share of the cost of such improvement or shall levy sufficient taxes therefor. Construction on such improvement must commence within one (1) year.<sup>6</sup>

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<sup>5</sup> N.D.C.C. § 24-05-08 Counties may cooperate with department – procedure.

<sup>6</sup> N.D.C.C. § 24-05-19. County bound to provide its share of cost.

#### 4. Highways on State Lines

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of the county to open and improve a highway on the state line, it may negotiate with the proper officials of the adjoining county or state and may make contracts or agreements pertaining to the opening of such state line and the construction of a highway upon it.

If the board of county commissioners deems it proper, it may agree with the officials of the adjoining county or state for the allotment of the highway on said state line and may assume the obligation of construction and maintenance of certain parts of the said highway in return for the assumption of like obligations by the officials of the adjoining county or state as to a like portion of the state line forming the boundary of the county.<sup>7</sup>

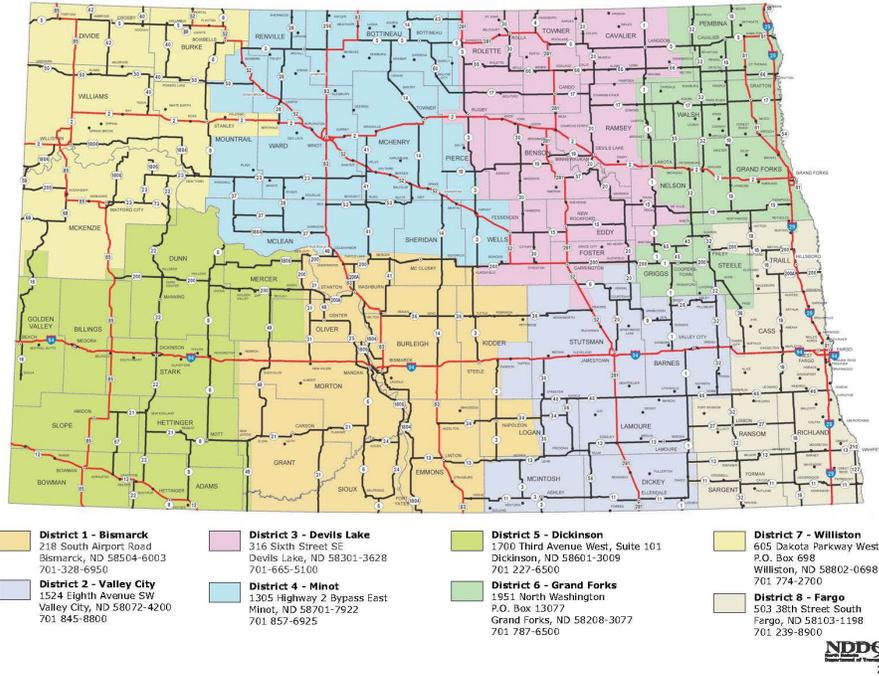
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<sup>7</sup> [N.D.C.C. § 24-05-08. Highways on state lines.](#)

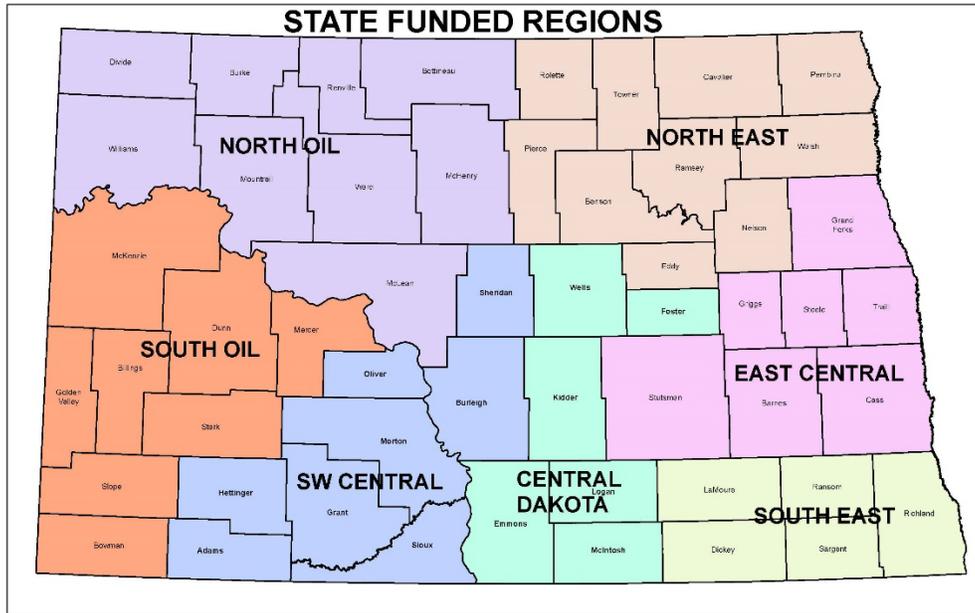
# Chapter 1 Supplemental information

## North Dakota Department of Transportation Districts

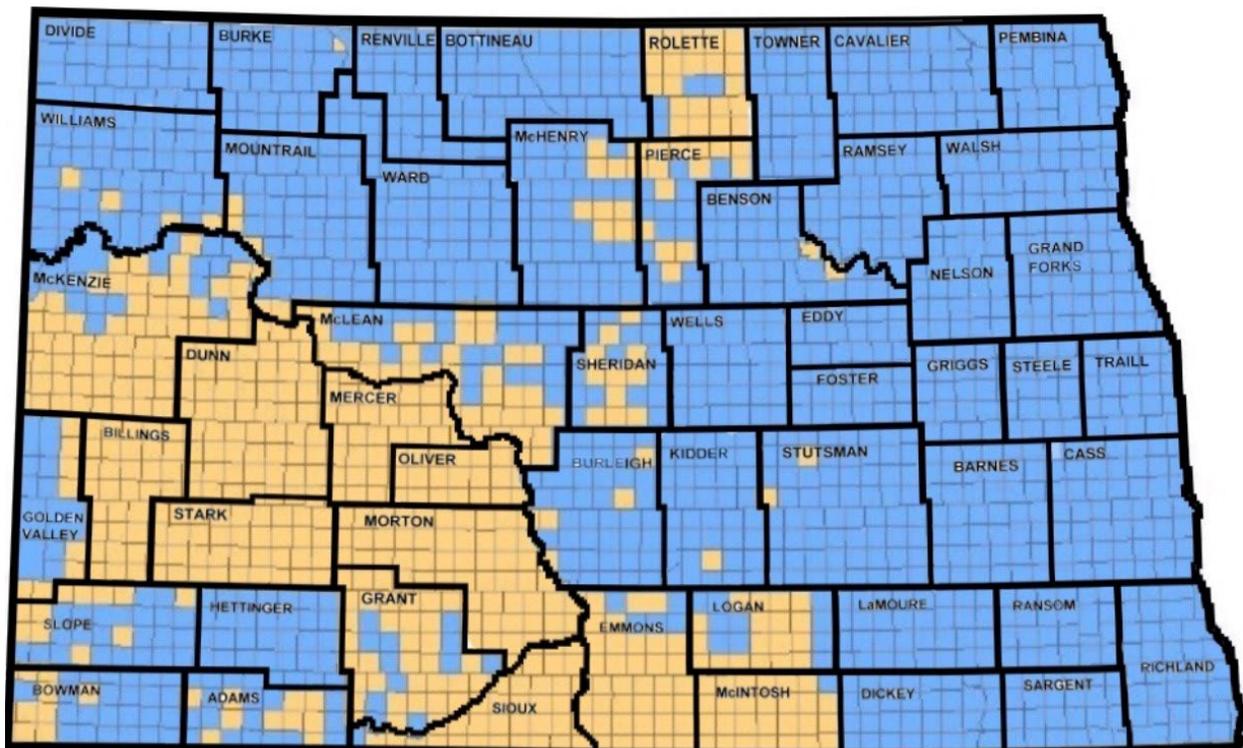
North Dakota Department of Transportation Districts



## State Funded Regions



North Dakota Counties and Townships



2021 Common Local Government Transportation Acronyms

<b>AADT</b>	Annual Average Daily Traffic
<b>AASHTO</b>	American Association of State Highway & Transportation Officials
<b>ADA</b>	Americans with Disabilities Act
<b>ADT</b>	Average Daily Traffic
<b>ARTBA</b>	American Road & Transportation Builders Association
<b>ASCE</b>	American Society of Civil Engineers
<b>ATAC</b>	Advanced Traffic Analysis Center at UGPTI
<b>ATSSA</b>	American Traffic Safety Services Association
<b>BIA</b>	Bureau of Indian Affairs
<b>CFR</b>	Code of Federal Regulations
<b>CLAS</b>	Center for Local Aid Support
<b>CMP</b>	Corrugated metal pipe (culvert)
<b>CVSC</b>	Commercial Vehicle Safety Center
<b>DA</b>	Drainage Area
<b>DOT</b>	Department of Transportation
<b>DOTSC</b>	DOT Support Center at UGPTI
<b>DPW</b>	Department of Public Works
<b>EC</b>	Executive Committee
<b>FAHP</b>	Federal-Aid Highway Program
<b>FAPG</b>	Federal-Aid Policy Guide
<b>FARS</b>	Fatality Analysis Report System
<b>FAST Act</b>	Fixing America's Surface Transportation Act
<b>FHWA</b>	Federal Highway Administration
<b>FY</b>	Fiscal Year
<b>GRIT</b>	Geographic Road Inventory Tool (includes bridge layers & dashboards)
<b>GRS-IBS</b>	Geosynthetic Reinforced Soil-Integrated Bridge System (EDC-3)
<b>HFST</b>	High Friction Surface Treatment (EDC-2)
<b>HIVE</b>	Hydraulic Inspection Vehicle Explorer (robot with camera)
<b>LPis</b>	Leading Pedestrian Intervals (EDC-5)
<b>LRRB</b>	Local Road Research Board (Minnesota)
<b>LRSP</b>	Local Road Safety Plan
<b>LTAP</b>	Local Technical Assistance Program
<b>MOA</b>	Memorandum of Agreement
<b>MOU</b>	Memorandum of Understanding
<b>MPC</b>	Mountain Plains Consortium (Consortium of eight universities led by UGPTI at NDSU)
<b>MPO</b>	Metropolitan Planning Organization
<b>MUTCD</b>	Manual on Uniform Traffic Control Devices
<b>NACE</b>	National Association of County Engineers
<b>NACo</b>	National Association of Counties
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NDCC</b>	North Dakota Century Code (state laws)
<b>NDDOT</b>	North Dakota Department of Transportation
<b>NEPA</b>	National Environmental Policy Act
<b>NHI</b>	National Highway Institute

<b>NHTSA</b>	National Highway Traffic Safety Administration
<b>NLC</b>	National League of Cities
<b>NLTAPA</b>	National Local Technical Assistance Program Association
<b>NTTD</b>	National Transportation Training Directors
<b>OSHA</b>	Occupational Safety & Health Administration
<b>PHBs</b>	Pedestrian Hybrid Beacons
<b>R&amp;I</b>	Research and Innovation (AASHTO)
<b>RAC</b>	Research Advisory Committee (AASHTO)
<b>RCP</b>	Reinforced Concrete Pipe (culvert)
<b>R/W</b>	Right-of-Way
<b>RPO</b>	Regional Planning Organization
<b>RRFB</b>	Rectangular Rapid Flash Beacon
<b>RSA</b>	Road Safety Audit/Assessment
<b>RTSSC</b>	Rural Transportation Safety and Security Center at UGPTI
<b>RWIS</b>	Road Weather Information System
<b>SHRP 2</b>	Strategic Highway Research Program 2
<b>SHSP</b>	Strategic Highway Safety Plan
<b>SP&amp;R</b>	State Planning and Research
<b>SPC</b>	Strategic Planning Committee
<b>STEP</b>	Safe Transportation for Every Pedestrian (EDC-4 &5 )
<b>STIC</b>	State Transportation Innovation Councils
<b>STIP</b>	Statewide Transportation Improvement Program
<b>SURCOM</b>	Small Urban & Rural Center on Mobility at UGPTI
<b>T<sup>2</sup> or T<sup>3</sup></b>	Transportation Technology Transfer (Some LTAP Centers use T <sup>2</sup> or T <sup>3</sup> instead of LTAP)
<b>TC3</b>	Transportation Curriculum Coordinating Council (AASHTO)
<b>TIM</b>	Traffic Incident Management
<b>TLN</b>	Transportation Learning Network at UGPTI
<b>TMC</b>	Traffic Management Center
<b>TRB</b>	Transportation Research Board
<b>TTAP</b>	Tribal Technical Assistance Program
<b>TZD</b>	Toward Zero Deaths
<b>UAS</b>	Unmanned Aerial Systems (EDC- 5 )
<b>UGPTI</b>	Upper Great Plains Transportation Institute (@ NDSU)
<b>USACOE</b>	US Army Corp of Engineers
<b>U.S. DOT</b>	United States Department of Transportation
<b>UTC</b>	University Transportation Center
<b>WZ</b>	Work Zone

## North Dakota Insurance Reserve Fund Member Services

The ND Insurance Reserve Fund (NDRIF) provides liability, automobile, and public assets coverage to North Dakota political subdivisions. The NDRIF also administers the ND State Fire and Tornado Fund, which provides property coverage to North Dakota state agencies and political subdivisions, and the ND State Bonding Fund, which provides employee fidelity risk coverage to state agencies and political subdivisions.

Coverage is available to your County Highway Department through your county's NDRIF membership unless otherwise specified.

### Submitting a Claim

Any time your County Highway Department has a question related claims reporting or processing, please contact your local agent or the employee within your organization who works with your local agent for more information.

The NDRIF's in-house claims department has experienced, knowledgeable employees who can answer your questions before, during, or after claims processing. These employees are proud to serve as your trusted resource for all claims-related questions.

#### NDRIF Claims

To submit a liability, automobile, or public assets claim, follow the instructions below:

1. Contact your local agent to complete a loss report. *To help ensure prompt initiation of your claim, be sure the report is thoroughly completed and a Claim Contact is provided.*

Loss reports are available at [www.NDIRF.com](http://www.NDIRF.com)>Claims>Reporting a Claim.

2. Provide your local agent with all documentation related to the claim (pictures, receipts, reports, etc.).
3. Your local agent sends completed the loss report and documentation to the NDRIF at [NDIRFClaims@ndirf.com](mailto:NDIRFClaims@ndirf.com).

When the NDRIF receives a claim, an adjuster from its in-house Claims Department will reach out to your County Highway Department's Claim Contact to review and discuss the claim. The adjuster will provide you with information regarding next steps or reasoning for dismissal.

#### ND State Fire and Tornado Fund Claims

To submit a property (building, garage, etc.) claim, follow the instructions below:

1. Contact your local agent to complete a Property Loss Report. *To help ensure prompt initiation of your claim, be sure the report is thoroughly completed and a Claim Contact is provided.*

Loss reports are available at [www.NDIRF.com](http://www.NDIRF.com)>Claims>Reporting a Claim.

2. Provide your local agent with all documentation related to the claim (pictures, receipts, reports, etc.).

3. Your local agent sends completed the loss report and documentation to the NDIRF at NDFTClaims@ndirf.com.

When the NDIRF receives a claim, an adjuster from its in-house Claims Department will reach out to your County Highway Department's Claim Contact to review and discuss the claim. The adjuster will provide you with information regarding next steps or reasoning for dismissal.

## **Member Services**

The NDIRF provides and supports various local government training and educational initiatives throughout the year, including defensive driving and road maintenance and safety courses. These courses are often offered at no- or reduced-cost to members.

Training and education are powerful tools your County Highway Department can provide your employees to help ensure their safety, as well as the safety of others, which is a foundational aspect to running efficient and effective departments.

### **Defensive Driving Courses**

If you would like to schedule in-person or online defensive driving course for your County Highway Department, contact Director of Member Services Corey Olson at (701) 751-9107 or Corey.Olson@ndirf.com.

### **NDLTAP**

The NDIRF sponsors training offered by the North Dakota Local Technical Assistance Program (NDLTAP), an organization that strives to *foster safe, efficient, environmentally sound, and cost-effective North Dakota highway, road, and street systems by exchanging transportation technology with North Dakota's local units of government and transportation community through training, technical assistance, and information services.*

Specific training sessions offered by NDLTAP include Motor-Grader Operator Training, Local Road Corrugated Metal Pipe Training, Bridge 201, Signing 201, Gravel Quality 3 Ps, and Silica Awareness/Trenching & Excavating.

To view upcoming training events, visit [www.NDLTAP.org](http://www.NDLTAP.org)>Training Calendar.

### **LocalGovU**

The NDIRF offers over 2,500 self-paced online training courses for local government entities at no cost to its members. All courses are available to your County Highway Department; however, specific courses of interest include Equipment Safety, Fire Safety, General Safety, and Roadway and Highway.

To register, visit [www.NDIRF.com](http://www.NDIRF.com)>Training.

## **CHAPTER 2 – DEFINITIONS**

This chapter contains the North Dakota Century Code definitions of words and phrases commonly used throughout this Handbook. The definitions are intended to be applied in the context of this Handbook.

### **DEFINITIONS**<sup>8</sup>

**Abandonment** — Cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes.

**Acquisition** — The process of obtaining right of way.

#### **Cross-Reference: See Chapter 6 – Acquiring Right of Way**

**Arterial highway** — A general term denoting a highway primarily for through traffic, usually on a continuous route.

**Belt highway** — An arterial highway for carrying traffic partially or entirely around an urban area or portion thereof.

**Capacity** — The ability of a roadway to accommodate traffic.

**Commission** — The Public Service Commission of the state of North Dakota.

**Consequential damages** — The loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

**Controlled-access facility** — A highway or street especially designed for through traffic, and over, from, or to which owners or occupants of

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<sup>8</sup> Unless otherwise indicated, all definitions come from N.D.C.C. § 24-01-01.1. Definition of words and phrases.

abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason.

**County Road System** — The system of secondary highways designated by the county officials, the responsibility for which resides with the counties.

**Cross-Reference: See Chapter 1, Section 2 – The County Road System**

**Department** — The Department of Transportation of the State of North Dakota.

**Direct compensation** — Payment for land or interest in land and improvements acquired for highway purposes.

**Cross-Reference: See Chapter 6 – Acquiring Right of way**

**Director** — The director of the Department of Transportation of the State of North Dakota, acting directly or through authorized agents.

**Divided highway** — A highway with separate roadways for traffic in opposite directions.

**Easement** — A right acquired by public authority to use or control property for a designated highway purpose.

**Eminent domain** — the right of the government to take property from a private owner for public use.

**Expressway** — A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.

**Fee simple** — An absolute estate or ownership of property including unlimited power of alienation, except as to all lands acquired or taken for highway, road, or street purposes. Where lands are taken for such purposes, “fee simple” shall not be deemed to include any oil, gas, or fluid mineral rights.

**Freeway** — An expressway with full control of access.

**Frontage street or road** — A local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

**Grade crossing** — The intersection of a public highway and of the track or tracks of any railroad, however operated, on the same plane or level, other than a street railway within the limits of a city.

**Highway, street, or road** — A general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a road, while a highway in an urban area may be called a street.

**Intersection** — A general term denoting the area where two or more highways join or cross.

**Interstate System (also known as: Interstate Highway System)** —

That part of the state highway system designated as the North Dakota

portion of the national system of interstate and defense highways.

**Joint powers agreement** — See Chapter 3, Section 6 – Joint Powers Agreement

**Local street or local road** — A street or road primarily for access to residence, business, or other abutting property.

**Major street or major highway** — An arterial highway with intersections at grade and direct access to abutting property, and on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

**Market value** — The highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.

**Median** — The portion of a divided highway separating the traveled ways for traffic in opposite directions.

**Municipal corporation or municipality** — All cities are organized under the laws of North Dakota, but do not include any other political subdivisions.

**Outer separation** — The portion of an arterial highway between the traveled ways of a roadway for through traffic and a frontage street or road.

**Partial taking** — the taking of part of a property under power of eminent domain for public use.

**Cross-reference: See Chapter 6 – Acquiring Right of Way**

**Person** — Any person, firm, partnership, association, corporation, limited liability company, organization, or business trust.

**Radial highway** — An arterial highway leading to or from an urban center.

**Remainder** — The portion of a parcel retained by the owner after a part of such parcel has been acquired.

**Reasonable means of access** — In situations where restrictions and regulations have been imposed upon the access of abutting owners, the question becomes one of whether, under the existing facts and circumstances, a reasonable means of access remains. If the abutter has free and convenient access to his property, and his means of ingress and egress are not substantially interfered with, he has no cause of complaint. Loss of traffic, loss of business, and circuity of travel are factors to be considered in determining the reasonableness of the remaining access to and from an abutting roadway.<sup>9</sup>

**Remnant** — A remainder so small or irregular that it usually has little or no economic value to the owner.

**Right of access** — The right of ingress to a highway from abutting land and egress from a highway to abutting land. Also, a private right which entitles the abutting landowner just compensation if that right is impaired or destroyed.<sup>10</sup>

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<sup>9</sup> *Cady v. North Dakota Department of Transportation*, 472 N.W.2d 467, 469 (N.D.1991).

<sup>10</sup> *Cady v. North Dakota Department of Transportation*, 472 N.W.2d 467, 473 (N.D.1991).

**Right of survey entry** — The right to enter property temporarily to do surveys and investigations for proposed highway improvements.

**Right of way** — A general term denoting land, property, or interest therein, acquired for or devoted to highway purposes and shall include, but not be limited to publicly owned and controlled rest and recreation areas, sanitary facilities reasonably necessary to accommodate the traveling public, and tracts of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system.

**Cross-Reference: See Chapter 6 – Acquiring Right of Way**

**Right of way appraisal** — A determination of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

**Right-of-way estimate** — An approximation of the market value of property including damages, if any, in advance of an appraisal.

**Road** — See “Highway, street, or road” above.

**Roadside** — A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

**Roadway** — In general, the portion of a highway, including shoulders, for vehicular use. In construction specifications, the portion of a highway within limits of construction.

**Severance damages** — Loss in value of the remainder of a parcel resulting from an acquisition.

**Shoulder** — The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, emergency use, and lateral support of base and surface courses.

**State Highway System** — The system of state principal roads designated by the director of the department, the responsibility for which is lodged in the department.

**Cross-Reference: See Chapter 1, Section 1 – The State Highway System**

**Street** — See “Highway, street, or road” above.

**Taking** — See “*eminent domain*” above.

**Through street or through highway** — Every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highways and in obedience to either a stop sign or yield sign, when such signs are erected by law.

**Township road** — A public road which is an improved road, constructed, maintained, graded, and drained by the township, or by the county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. For a section line to be a township road, it must be graded and drained and be an

improved, maintained road. A township road is a public road which is not designated as part of a county, state, or federal-aid road system and is not located in an incorporated city.<sup>11</sup>

**Cross-reference: See Chapter X – Section Lines**

**Traffic lane** — The portion of the traveled way for the movement of a single line of vehicles.

**Traveled way** — The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

**Width of public highways** — The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Public highways are not limited in width to the actual travelled surface of the roadway.<sup>12</sup>

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<sup>11</sup> N.D.A.C. § 84-03-01. Township road defined; See also, N.D.C.C. § 4.1-47-01 (7). Definitions.

<sup>12</sup> Keidel v. Rask, 290 N.W.2d 255, 1980 N.D. LEXIS 201 (N.D. 1980).

**CHAPTER 3 - POWERS OF COUNTY ENGINEERS,  
HIGHWAY SUPERVISORS, AND COUNTY  
COMMISSIONERS**

1. Basic Authority of County Commissioners

In a Letter Opinion dated September 21, 2006, the North Dakota Attorney General states that “a political subdivision possesses only those powers expressly granted to it by the Legislature or those necessarily implied from the powers expressly granted.”<sup>13</sup> The North Dakota Legislature intended to place a high degree of trust in the hands of those officials whose duty it is to design the highway systems of North Dakota. These officials, namely county engineers, highway supervisors, county commissioners, and local officials are given much discretion, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state, for present as well as future use.<sup>14</sup>

Thus, the board of county commissioners has broad general power to erect, maintain, and oversee the roads selected and designated as the county road system.

2. Responsibility for County Road System

The boards of county commissioners in their respective counties have the sole authority and responsibility to acquire land for, construct, maintain, and operate the county road system as designated and selected by them.<sup>15</sup>

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<sup>13</sup> [2006 N.D. Op. Atty. Gen. L-32.](#)

<sup>14</sup> [N.D.C.C. § 24-01-01. Declaration of Legislative Intent.](#)

<sup>15</sup> [N.D.C.C. § 24-05-17. Responsibility for county road system.](#)

### 3. Supervision by County Commissioner

Whenever the board of county commissioners of any county is required by law to lay out, oversee, and supervise the building or repairing of roads and bridges, including the appointment of a district overseer of highways' duties in unorganized territory, or the building or repairing of any property owned by the county, the board may appoint or designate one or more members of the board personally to lay out, oversee, or supervise the building or repairing of any such roads, bridges, or property. Each commissioner is entitled to receive as compensation for services the sum of \$5 per day and the mileage provided by law for members of the board of county commissioners.<sup>16</sup>

### 4. County Highway Engineer

#### Creation of Position

The board of county commissioners of any county in this state may, at its discretion, employ a qualified county highway engineer at any time or the office of county highway engineer may be created in any county in this state by an election duly held.<sup>17</sup>

#### Election for Creation or Termination of Office of County Highway Engineer

Upon the filing with the county auditor of a petition signed by not less than 5% of the qualified electors of the county, as determined by the total number of votes cast in the last election, and representing not less than 7% of the voting precincts of the county,

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<sup>16</sup> N.D.C.C. § 11-11-17. Board of county commissioners may supervise the building or repairing of roads, bridges, and property of the county – compensation.

<sup>17</sup> N.D.C.C. § 11-31-01. County highway engineer.

asking that an election be held on the question of the creation of the office of county highway engineer, the board of county commissioners shall submit the question at the next regular primary or general election. Notice of the election shall be given in the manner prescribed by law for the submission of questions to the qualified electors of a county under the general election law. If a majority of the votes cast on the question are in favor thereof, the office of county highway engineer shall be established, and the board of county commissioners shall fill such office by appointment. The office so created shall not be terminated except upon the instruction of a majority of the qualified electors voting on the question in an election similarly held but any engineer appointed to fill such office may be removed from office by action of the board.<sup>18</sup>

#### Qualification and Employment Basis

The person employed or appointed as county highway engineer must be a duly qualified highway engineer. The compensation and other terms of service of such engineer shall be determined by the board of county commissioners and may be on a monthly or a per diem basis. Several counties may employ or appoint the same engineer.<sup>19</sup>

#### Powers and Duties

Under the direction and supervision of the board of county commissioners, the county engineer shall:

1. Design and make plans for county and township highways.
2. Set up a comprehensive plan of county highways, showing using maps, existing

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<sup>18</sup> [N.D.C.C. § 11-31-01.1. Election for creation or termination of office of county highway engineer.](#)

<sup>19</sup> [N.D.C.C. § 11-31-02. Qualification and employment basis.](#)

roads, operations in progress, and future plans.

3. Superintend County construction and maintenance operations pertaining to highways and bridges.

4. Keep a complete record of costs and expenditures.

5. Check all accounts, claims, and demands for expenditures in connection with all matters supervised by the county engineer and indicate the county engineer's recommendation prior to the submission of such accounts, claims, and demands to the board of county commissioners.

6. Keep a complete inventory of all equipment, repairs, gasoline and oil, and miscellaneous items.

7. Supervise the use and disposition of all county-owned road equipment and materials.

8. Employ and supervise all other personnel engaged in county road operations, terminating such employment when required in the best interest of the county.

9. Prepare and submit to the board of county commissioners a complete yearly report and such additional reports as may be required by the board of county commissioners at any time.

10. Cooperate with the federal highway administration or successors, the state department of transportation, and the townships of the county.

11. Perform such other duties as may be designated by the board of county commissioners.

When so directed by the board of county commissioners, the county engineers shall also, under the direction and supervision of the board of county commissioners or the

drainage board prepare plans and specifications and supervise the construction and repair of drainage ditches.<sup>20</sup>

**Cross-Reference: See Chapter 9, Section 4 – Grading and Drainage –  
Ditches**

Manner of Payment of Compensation

Payment for the work performed by the county engineer may be made from the county road and bridge fund or the general funds of the county upon certified vouchers showing the time actually expended and the contract price agreed upon. Such vouchers shall be filed with the county auditor and approved by the board of county commissioners, in the manner now provided by law for the filing and approval of other claims against the counties.<sup>21</sup>

**Cross-Reference: See Chapter 4, Section 2 – Expenditure of Funds**

5. County Surveyor

The county surveyor of each county shall, upon request by a landowner, district court, board of county commissioners, or board of township supervisors, survey all lands within the county, both public and private. The surveys of the county surveyor are official and are presumed to be correct.<sup>22</sup> The presumption of the accuracy of surveys by the county surveyor refers to measurements and computations and not to disputes regarding the starting points of boundaries.<sup>23</sup> The presumption of correctness of a survey is overcome by the failure of the survey to describe a highway as originally

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<sup>20</sup> N.D.C.C. § 11-31-03. Powers and duties.

<sup>21</sup> N.D.C.C. § 11-31-04. Manner of payment of compensation.

<sup>22</sup> N.D.C.C. § 11-20-01. Duties of county surveyor – surveys presumptively correct.

<sup>23</sup> Radford v. Johnson, 8 N.D. 182, 77 N.W. 601, 1898 N.D. LEXIS 35 (N.D. 1898) (LexisNexis account required for hyperlink).

established.<sup>24</sup>

## 6. Joint Powers Agreements

Any county may enter into an agreement with any other political subdivision in this state for the purpose of jointly administering any function that is authorized by law to at least one of them. As such, only one of the parties to the agreement needs to have the statutory authority to take the action that is subject to the joint powers agreement. A joint powers agreement does not have to be in writing, but it does have to be approved by the county's board of commissioners.<sup>25</sup>

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<sup>24</sup> [Dunstan v. Jamestown, 7 N.D. 1, 72N.W. 899, 1897 N.D. LEXIS 38 \(N.D. 1897\) \(LexisNexis account required for hyperlink\).](#)

<sup>25</sup> [2004 N.D. Op. Atty. Gen. L-26.](#)

## Chapter 3 – Supplemental Information

### Sample Emergency Declarations



**GRAND FORKS COUNTY  
DROUGHT EMERGENCY DECLARATION**

WHEREAS, Grand Forks County, North Dakota is currently in Severe Drought and has experienced high winds, low humidity and continued forecasted dry weather conditions;

WHEREAS, North Dakota is currently experiencing the worst drought on record since the year 2000;

WHEREAS, drought conditions have the potential to adversely impact farmers who face a continued lack of rainfall and longer dry days that may result in poor crop production;

WHEREAS, Grand Forks County was included in the Secretarial disaster designation issued by the United States Department of Agriculture on April 19<sup>th</sup>, 2021 due to the drought;

WHEREAS, numerous wildland fires in rural Grand Forks County have occurred due to these conditions;

WHEREAS, the impact of these potential fires may threaten the health, well-being and public safety of citizens in Grand Forks County; and

Now, THEREFORE, BE IT RESOLVED that Grand Forks County, a political subdivision of the State of North Dakota, by and through the Board of County Commissioners, Grand Forks County, North Dakota, declares Grand Forks County, its cities, its public and private areas, to be in a Fire Emergency.

DATED at Grand Forks, North Dakota, this 18th day of May, 2021.

ATTEST:

\_\_\_\_\_  
Debbie Nelson, County Auditor  
Grand Forks County

\_\_\_\_\_  
Cynthia Pic, Chair  
Grand Forks County Commission

**GRAND FORKS COUNTY  
EMERGENCY DECLARATION**

WHEREAS, Grand Forks County experienced extreme weather conditions including excessive rainfall of 8 -10" and high winds in parts of Grand Forks County during the overnight of June 30<sup>th</sup> into the morning of July 1<sup>st</sup>, 2020 resulting in significant overland flooding and above average runoff;

WHEREAS, Grand Forks County has the potential for further damage to roads, bridges, culverts, farmlands, homes, businesses and other public infrastructure facilities from overland flooding and the flooding of streams, coulees and tributaries;

WHEREAS, the impact of these potential damages may threaten the health, well-being and public safety of citizens in Grand Forks County; and

WHEREAS, the cost of response, cleanup, repair and replacement of such damaged facilities may exceed available County resources.

Now, THEREFORE, BE IT RESOLVED that Grand Forks County, a municipal corporation by and through the Board of County Commissioners, Grand Forks County, North Dakota, declares Grand Forks County, its cities, its public and private areas, to be an emergency area and orders the activation and utilization of the Emergency Operations Plan, its procedures, attachments and appendices to monitor the situation, develop a detailed damage assessment, alleviate hardship and initiate appropriate relief actions and mitigation measures by departments and agencies of local government to limit the hardships and impact of the emergency upon the citizens of Grand Forks County.

DATED at Grand Forks, North Dakota, this 2<sup>nd</sup> day of July, 2020.

ATTEST:

\_\_\_\_\_  
Debbie Nelson, County Auditor  
Grand Forks County

\_\_\_\_\_  
Diane Knauf, Chair  
Grand Forks County Commission

**GRAND FORKS COUNTY  
FIRE EMERGENCY DECLARATION**

WHEREAS, Grand Forks County, North Dakota is currently in Severe Drought and has experienced high winds, low humidity and continued forecasted dry weather conditions;

WHEREAS, numerous wildland fires in rural Grand Forks County have occurred due to these conditions;

WHEREAS, the impact of these potential fires may threaten the health, well-being and public safety of citizens in Grand Forks County; and

WHEREAS, the cost of emergency response and inordinate wear on fire-fighting equipment may exceed available County resources;

Now, THEREFORE, BE IT RESOLVED that Grand Forks County, a political subdivision of the State of North Dakota, by and through the Board of County Commissioners, Grand Forks County, North Dakota, declares Grand Forks County, its cities, its public and private areas, to be in a Fire Emergency.

DATED at Grand Forks, North Dakota, this 20th day of April, 2021.

ATTEST:

\_\_\_\_\_  
Debbie Nelson, County Auditor  
Grand Forks County

\_\_\_\_\_  
Cynthia Pic, Chair  
Grand Forks County Commission

## **CHAPTER 4 – FUNDING & PLANNING**

### **1. Obtaining Funding**

Highway tax distribution fund

State gasoline, motor fuel, license, and registration taxes

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes (except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft), after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.<sup>26</sup>

The state treasurer is to make allocations to state, counties, and cities from the highway tax distribution fund, which is a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes.<sup>27</sup>

The state treasurer shall transfer the first \$5,500,000 per biennium from the highway tax distribution fund to the state highway fund for the purpose of providing administrative assistance to other transferees. Any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows: 61.3% of such

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<sup>26</sup> N.D. Const. art. 10, § 11.

<sup>27</sup> N.D.C.C. § 57-43.2-19. Transfer, deposit, and distribution of funds; N.D.C.C. § 54-27-19. Highway tax distribution fund – state treasurer to make allocation to state, counties, and cities.

moneys must be transferred monthly to the state department of transportation and placed in a state highway fund; 2.7% must be transferred monthly to the township highway fund; 1.5% must be transferred monthly to the public transportation fund; 34.5% of such money must be allocated to the counties of this state in proportion to the number of motor vehicle registrations credited to each county. Each county must be credited with the certificates of title of all motor vehicles registered by residents of such county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with Article 10, section 11 of the North Dakota Constitution. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formulas below as determined by the last official regular or special federal census

- For counties having no cities with a population of 10,000 or more, 27% of the total county allocation must be distributed to all the incorporated cities within the county on a countywide per capita basis.
- For each county having a city with a population of 10,000 or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities according to the following formula:

(1) A statewide per capita average as determined by calculating 27% of the amount

allocated to all the counties under this subsection divided by the total population of all the incorporated cities in the state.

(2) The share distributed to each city in the county having a population of less than 1,000 must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.

(3) The share distributed to each city in the county having a population of 1,000 to 4,999, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.

(4) The share to each city in the county having a population of 5,000 or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities.

#### County road tax

A tax may be levied for county roads if a majority of the qualified electoral voters in the county approve the tax. Likewise, the same tax may be discontinued with a majority vote. Twenty percent of any county property tax shall be turned over to the city in which the taxed property is located.<sup>28</sup>

The county road levy may be discontinued at the discretion of the county commissioners or, upon petition of 5% of the qualified electors of such county, the question of discontinuance of the levy must be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote of a majority of the

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<sup>28</sup> [N.D.C.C. § 57-15-06.7\(14\). Additional levies – exception to tax levy limitations in counties.](#)

qualified electors voting, such levy must be discontinued.

Of the proceeds of the tax collected on account of property situated within any city, by the county treasurer of the county in which the city is located, 20% must be turned over by the treasurer to the auditor of the city.<sup>29</sup>

## Loans

When the board of county commissioners of a county deems that all taxes authorized to be levied are insufficient, the county may borrow money to carry out primary governmental functions, including for the construction or maintenance of county highways. The county must repay the loan within five years.<sup>30</sup>

The board of county commissioners shall levy a general tax from year to year upon all the general taxable property of the county for the purpose of providing funds sufficient to repay the amount of the loan, with interest, at the time of maturity.<sup>31</sup> The board of county commissioners authorizing the levying of such tax shall establish a special fund in the county treasury designated as the county loan fund and all moneys collected from the general tax levied for the purpose of repaying any loans, with interest, must be deposited to the credit of this special fund and may be used only for the purpose of repaying the principal, with accrued interest, due upon loans made by the county as the same matures. The balance, if any, remaining in the special fund, after the amount of the loan, with accrued interest, has been paid in full, may be transferred by the county

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<sup>29</sup> N.D.C.C. § 24-05-01. County road system and construction plan – county road and bridge tax levy – allocation of use of funds.

<sup>30</sup> N.D.C.C. § 57-47-02. County authorized to borrow—term—interest rate.

<sup>31</sup> N.D.C.C. § 57-47-04. Levy of tax to repay loan – limitation.

commissioners to the general fund of the county.<sup>32</sup>

## Federal aid

See supplemental information at the end of this chapter.

## Federal revenue sharing

A county may expend federal revenue-sharing moneys for any purpose for which general or special fund moneys of the county may be expended, regardless of whether a tax levy by a vote of the political subdivision electorate has been made or is required for such purpose.<sup>33</sup>

## Operation Prairie Dog

Operation Prairie Dog is the name of House Bill 1015 approved by the North Dakota Legislature in 2021.<sup>34</sup> Operation Prairie Dog reallocates up to \$250 million of North Dakota's oil and gas extraction tax to non-oil producing counties, townships, and municipalities. Municipal and county/township buckets will receive funds after state budgetary buckets are filled to statutory limits. If there is not enough revenue to fill the bucket, the funds will be distributed on a pro-rated basis at the end of the biennium.<sup>35</sup> Each county that receives a disbursement from Operation Prairie Dog is required to

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<sup>32</sup> N.D.C.C. § 57-47-05. County loan fund established.

<sup>33</sup> N.D.C.C. § 21-06-10(3). Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads.

<sup>34</sup> H.B. 1015, 2021 Leg., 67th Sess. (N.D. 2021); See also, S.B. 2249, 2021 Leg., 67th Sess. (N.D. 2021) (increasing the amount allocated into the state disaster relief fund from fifteen million dollars to twenty million dollars).

<sup>35</sup> ND Counties, *'Prairie Dog' Infrastructure Funds on Pace for 2021 Construction Season for Counties*, NDACo Legislative Blog, (Mar. 9, 2020, 11:10 AM) (<https://ndcounties.blogspot.com/2020/03/prairie-dog-infrastructure-funds-on.html>).

provide a report to the Office of the State Treasurer on the use of funds received.<sup>36</sup> The bill allocates up to \$250,000,000 of oil and gas tax revenue per biennium to infrastructure funds as follows:

- Municipal Infrastructure Fund - \$115,000,000
- County and Township Infrastructure Fund - \$115,000,000
- Airport Infrastructure Fund - \$20,000,000<sup>37</sup>

**Cross-Reference: See, Chapter 4 Supplemental Information - Operation Prairie Dog Status of “General Fund Share” Buckets 2019-2021 Biennium**

Municipal Infrastructure Fund - \$115,000,000

#### Amounts

Operation Prairie Dog allocates up to \$115,000,000 per biennium to cities in non-oil producing counties for “essential infrastructure projects.” The total distribution amount will be allocated to cities in non-oil producing counties based on several factors. These factors include population, percentage increase in population, and percentage increase in taxable property valuation. For cities with a population of 1,000 or more, there will also be a set amount included as a density factor.<sup>38</sup>

#### Eligible Projects

“Essential infrastructure projects” means capital construction projects to construct new infrastructure or to replace existing infrastructure, which provide the fixed installations

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<sup>36</sup> N.D.C.C. § 57-51.1-07.7. Municipal infrastructure fund – continuing appropriation – state treasurer – reports.

<sup>37</sup> N.D.C.C. § 57-51.1-07.5. State share of oil and gas taxes - Deposits

<sup>38</sup> N.D.C.C. § 57-51.1-07.7(3). Municipal infrastructure fund – continuing appropriation – state treasurer – Reports.

necessary for the function of a city. Capital construction projects exclude debt repayments and routine maintenance and repair projects, but include the following:

- (1) Water treatment plants.
- (2) Wastewater treatment plants.
- (3) Sewer lines and water lines, including lift stations and pumping systems.
- (4) Water storage systems, including dams, water tanks, and water towers.
- (5) Storm water infrastructure, including curb and gutter construction.
- (6) Road and bridge infrastructure, including paved and unpaved roads and bridges.<sup>39</sup>
- (7) Airport infrastructure.
- (8) Electricity transmission infrastructure.
- (9) Natural gas transmission infrastructure; and
- (10) Communications infrastructure, excluding fiber optic infrastructure.<sup>40</sup>

County and Township Infrastructure Fund - \$115,000,000

#### Amounts

Prairie Dog allocates up to \$115,000,000 per biennium to non-oil producing counties and the townships within these non-oil producing counties for “road and bridge infrastructure projects.” The \$115,000,000 is to be divided between the counties and townships as follows:

- 13%, or \$16,100,000, the lesser of the two, among the townships in

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<sup>39</sup> Emphasis added.

<sup>40</sup> [N.D.C.C. § 57-51.1-07.7\(4\)\(a\). Municipal Infrastructure fund – continuing appropriation – state treasurer - reports](#)

non-oil producing counties,

- The remaining fund money (87%, or \$98,900,000) among the non-oil producing counties.

## Eligible Projects

Prairie Dog defines “road and bridge infrastructure projects” as “the projects associated with the construction of new unpaved and paved road and bridge infrastructure or associated with the maintenance, repair, or replacement of existing unpaved and paved road and bridge infrastructure.”<sup>41</sup>

## 2. Expenditure of Funds

The county road and bridge fund may be expended only for road machinery and for grading, ditching, and surfacing, and implementation of the proposed county construction program of roads on the county road system.<sup>42</sup>

**Cross-Reference: See Chapter 3, Section 4(E) – Manner of Payment of Compensation of County Highway Engineer; See Chapter 14, Section 3 – Overseer of Highways to Fill Wells on State Land**

There are additional layers for construction history, planning, emergency closures, load restrictions, pavement age. Counties are strongly encouraged to keep their layers up to date for construction, load restrictions, ownership, bridges, and structures and more.

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<sup>41</sup> N.D.C.C. § 57-51.1-07.8(6)(c). County and township infrastructure fund – continuing appropriation – state treasurer – reports.

<sup>42</sup> N.D.C.C. § 24-05-02. County road tax – allocation and use of funds.

**Cross-Reference: See Chapter 4 Supplemental Information – Geographic Roadway Inventory Tool (GRIT)**

**GRIT has recently been updated to include dashboards that will analyze crashes, bridges and minor structures and pavement surface ratings. These options are powerful tools to help counties manage their road and bridge infrastructure and provide a safe and reliable transportation system for the traveling public and the farm to-market-system. Links to the dashboards are shown here or on the UGPTI website under WebMap Viewers.**

**Crashes:**

**<https://www.ugpti.org/r/crashdb/>**

**Bridges:**

**<https://www.arcgis.com/apps/dashboards/223e24e31a854467bad78226ac977b13>**

**Pavement:**

**<https://www.arcgis.com/apps/dashboards/81e8ba10320b480a9e935236f81a4515>**

**For more, see Chapter 4 Supplemental Information**

## **Chapter 4 – Supplemental Information**

### Federal Aid

NDDOT's County Program works with all the counties in ND to program and allocate funds to improve transportation infrastructure on federal aid routes or bridges that are greater than 20' (span length) within those counties.

- County Roads
  - Each County has roads designated as federal aid routes which are eligible for funding and are owned by the county. The Counties allocated funds based on a formula and each county prioritizes the improvements on their federal aid system. Local Government and the Counties work together to program the available funds for improvements to their roadways.
- Bridges
  - Funding is available to assist the counties with replacement or rehabilitation of bridges that are >20' (span length). To receive funding, each county needs to contact Local Government and submit bridges they would like considered for funding.

NDDOT's Local Government (LG) Division administers, coordinates, and allocates funds for all Local Public Agencies (LPA's), transportation alternatives, and transit federal aid programs and projects.

Local Government is the liaison between the Federal Highway Administration, LPA officials, and NDDOT divisions and districts during project development; assists local entities in getting their projects ready for the bid openings; and coordinates the Emergency Relief program on a statewide basis on behalf of the NDDOT.<sup>43</sup>

Provided below are the main program areas that Local Government is responsible for:

- MPO Coordination and Planning activities
- Interstate (Urban areas)
- Urban Roads (LPA owned federal aid roads and Regional System)
- County Roads (LPA owned federal aid routes)
- Bridges (LPA owned ≥20'(span length))
- Historic Bridge's
- Federal Lands Access Program (FLAP)
- Safety (LPA owned roadways)
- Transportation Alternatives (TA)
- Special Road Fund (SRF)
- Small Rural Economic Development (SRED)
- Transit
- Emergency Relief (ER) – Statewide on state owned roadways and LPA federal aid routes

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<sup>43</sup> [NDDOT Local Government Manual](#)

- LPA Long Range Transportation Planning
- Title VI Subrecipient monitoring and Audits (LPA's, MPO's, and Transit Providers)

### Geographic Roadway Inventory Tool (GRIT)

The Geographic Roadway Inventory Tool (GRIT) is an easy-to-use asset management program developed for county road managers. The development of GRIT was a team effort led by the Upper Great Plains Transportation Institute.<sup>44</sup> Data layers can be selected to show age of pavements, pavement quality and ride, gravel road locations and maintenance costs. There are additional layers for construction history, planning, emergency closures, load restrictions, pavement age. Counties are strongly encouraged to keep their layers up to date for construction, load restrictions, ownership, bridges, and structures and more.

For more information on GRIT, visit: [www.ugpti.org/grit/](http://www.ugpti.org/grit/). Following are screenshots of GRIT pages.

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<sup>44</sup> For more information on GRIT, see, <https://www.ugpti.org/resources/asset-inventory/>.

## RESOURCES

Research Reports

**Geographic Roadway  
Inventory Tool (GRIT)**

Event Proceedings

Staff Presentations

Other Resources (*Surface  
Selection Tool, Grain Industry  
Data, etc.*)

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## Geographic Roadway Inventory Tool (GRIT)

The Geographic Roadway Inventory Tool is an easy-to-use asset management program developed for county road managers. The development of GRIT was a team effort, led by UGPTI. To ensure the needs of county road managers were met, a steering committee comprised of 10 county transportation leaders and representatives from the ND Department of Transportation, the ND Association of Counties and UGPTI provided feedback and guidance throughout the process. GRIT continues to be enhanced with new and improved features and expanded to other states including Minnesota, South Dakota, and Montana.

### GRIT Links

- [GRIT Editor](#)
- [Map Viewers](#)
- [Like us on Facebook](#)
- [Help](#)
- [Steering Committee](#)

### Presentations

- [Aug. 12, 2021 Webinar: GRIT Updates & New Features](#)
- [Apr. 7, 2020 Webinar: GRIT Emergency Events, Updating Construction History and Planning](#)
- [May 16, 2018 Webinar: GRIT 2.0 New Layout](#)
- [Jan. 11, 2018 Webinar: GRIT Photo Logging](#)
- [Oct. 11, 2017 Webinar: GRIT Highlights and Enhancements](#)
- [Aug. 8, 2016 Webinar: GRIT Construction Layer](#)
- [Mar. 21, 2016 Webinar: GRIT Viewer Release](#)
- [Dec. 9, 2015 Statewide Rollout Webinar: GRIT 1.0](#)
- [Nov. 18, 2015 Webinar: GRIT 1.0](#)
- [Aug. 26, 2015 Webinar](#)
- [Aug. 12, 2015 Kickoff Webinar](#)

RESOURCES
<a href="#">Research Reports</a>
<a href="#">Geographic Roadway Inventory Tool (GRIT)</a>
<a href="#">Event Proceedings</a>
<a href="#">Staff Presentations</a>
<a href="#">Other Resources</a> ( <i>Surface Selection Tool, Grain Industry Data, etc.</i> )

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## Geographic Roadway Inventory Tool (GRIT) WebMap Viewers

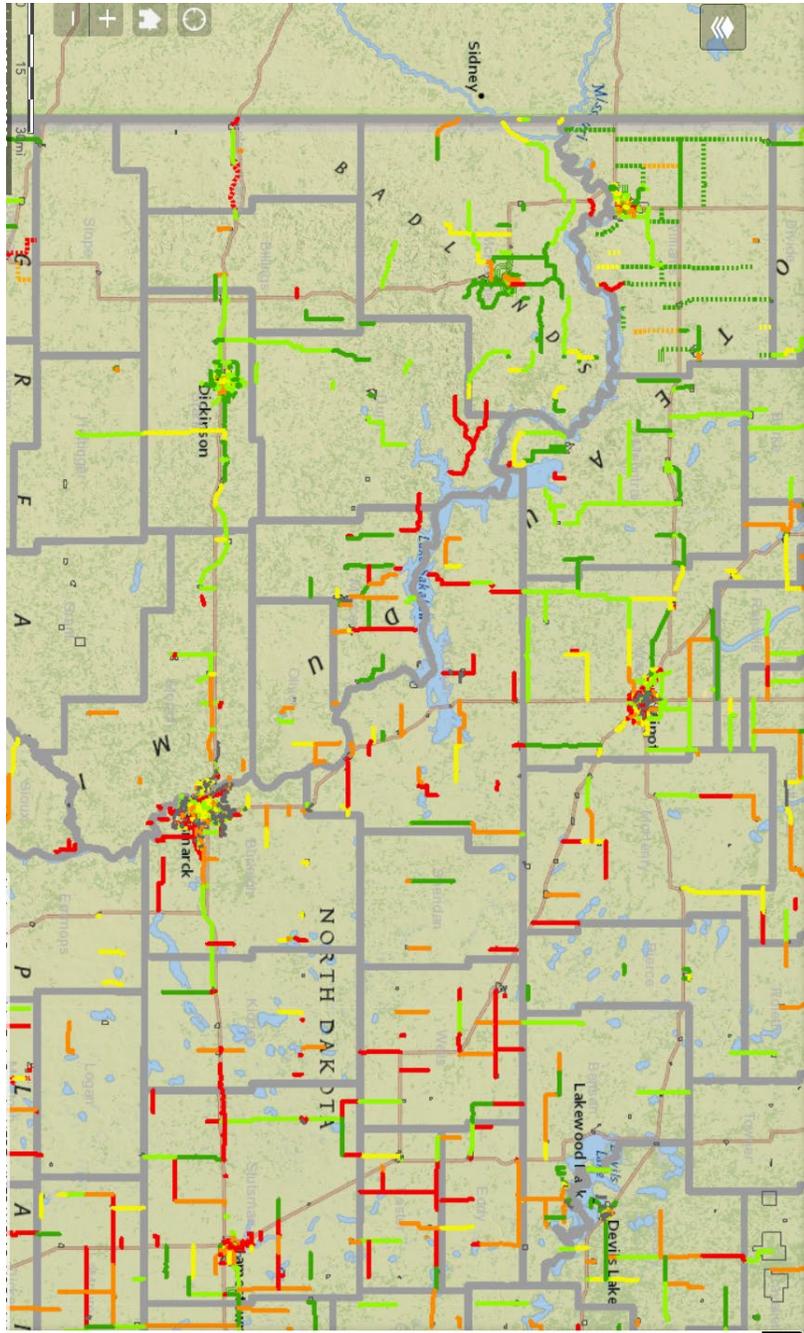
The following webmap links were created to view various information as entered into the GRIT database. These webmap viewers will be updated and changed based on feedback from the Counties using them. Additional viewers will also be added to this list based on feedback. All data shown in these viewers is entered and maintained by the responsible County or City through the GRIT Editor Program. The Upper Great Plains Transportation Institute and North Dakota State University make no representation or warranty, expressed or implied, regarding the accuracy or reliability of the data displayed.

### Web Maps

- [GRIT Viewer – All Layers – ND](#)
- [GRIT Viewer – All Layers – MN](#)
- [Load Restrictions – All Roads](#)
- [Construction-Maintenance-Emergency Travel Impacts](#)
- [Pavement Condition Forecasting](#)

### GRIT Dashboards

- [ND County Crash Dashboard](#)
- [Pavement Performance Forecasting](#)
- [Minor Structures Dashboard](#)



**Legend**

**\*\*CONSTRUCTION HISTORY ALL\*\***

Pavement Age (Bituminous)

- 0 - 5
- 6 - 10
- 11 - 15
- 16 - 25
- 26 - 150
- Not Available

Pavement Age (Concrete)

- 1 - 10
- 11 - 20
- 21 - 25
- 26 - 35
- 36 - 150
- Not Available

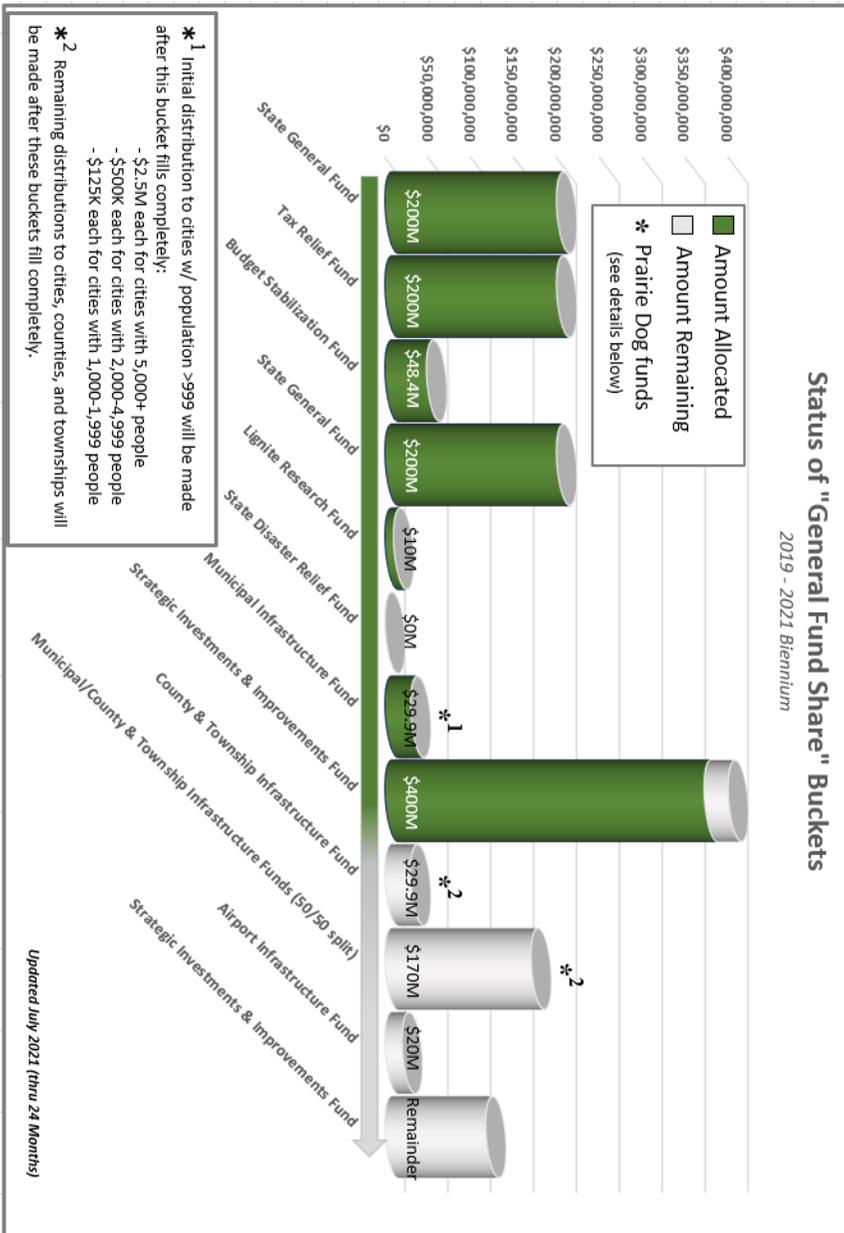
Pavement Age (AST)

- 0 to 2
- 3 - 4
- 5 - 6
- 7 - 8
- 9 and older
- Not Available

**STATE BASE MAP**

- County
- Municipal Boundary

Operation Prairie Dog – Status of “General Fund Share” Buckets 2019-2021 Biennium



<sup>45</sup> Operation Prairie Dog/House Bill 1066, North Dakota Office of State Treasurer (nd.gov).

## Comprehensive Highway Plan Example

For an example of a Comprehensive Highway Plan, visit:

<https://www.casscountynd.gov/home/showpublisheddocument/6196/637438883869400000>

# CASS COUNTY COMPREHENSIVE HIGHWAY PLAN



2021-2025

Cass County Highway Department  
Cass County, North Dakota

This document was prepared pursuant to NDCC 11-31-03(2) and is intended to be used for internal planning purposes. Data used herein is deemed to be accurate, however, is not all-encompassing. Maps within are graphical displays of conditions at the time of preparation and are not to be used as a substitute for an accurate field survey.



## **CHAPTER 5 – CONSTRUCTION CONTRACTS**

### **1. Advertising Requirement for Highway Improvements and Equipment Rental**

Any purchase or rental for county road machinery or any contract for highway improvement of more than \$100,000 must be advertised. A county cannot rent road machinery for a length of time greater than 12 months or for an amount greater than 20% of the purchase value of the machinery. However, a county can contract for a lease-purchase so long as the annual payments do not exceed \$20,000 and the contract is not for more than seven years.

If a contract for a highway improvement exceeds one \$200,000, the board of county commissioners shall seek bids by publishing an advertisement at least once each week for two consecutive weeks in the official newspaper of the county and in other newspapers as the board deems advisable. The first publication must be made at least 15 days before the day set for the opening of the bids. For any contract for a highway improvement that exceeds \$50,000 but does not exceed \$100,000, the county, when possible, shall seek quotes from at least two contractors.<sup>46</sup>

Excluding cooperative purchasing agreements,<sup>47</sup> a purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles, except necessary repairs for road machinery, which exceeds the sum of \$100,000 must be advertised by publishing an advertisement for bids at least once each week for two consecutive weeks in the official newspaper of the county and in any other newspapers

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<sup>46</sup> [N.D.C.C. § 24-05-04\(1\). Contracts to be advertised – road construction – requirements for rental contracts.](#)

<sup>47</sup> [See, N.D.C.C § 54-44.4-13. Cooperative purchasing.](#) Revised under SB 2370 in 68<sup>th</sup> Legislative Assembly, 2020. See new section to chapter 11-11 under NDCC sub section 52 of section 40-05-01.

as the board deems advisable. The first publication must be made at least 15 days before the day set for the opening of the bids. The board of county commissioners may not enter a rental contract or agreement for the use of road machinery and other articles for a longer period than 12 months from the date of the rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of 20% per year of the cash sale price of the road machinery or other articles.<sup>48</sup>

Cooperative purchasing - Authorized.

With the approval of the board of county commissioners, a county may participate in cooperative purchasing agreements with the state, or another political subdivision of this state or any other state, by executing a joint-powers agreement under chapter 54-40.3.

**SECTION 3. AMENDMENT.** Subsection 52 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

52. Supplies. To provide that supplies needed for the use of the city be furnished by contract let to the lowest responsible bidder, except the city may contract for cooperative purchases pursuant to a joint-powers agreement under chapter 54-40.3.

This section does not apply to construction of public improvement as defined in chapter 48-01.2.

**SECTION 4.** A new section to chapter 40-05 of the North Dakota Century Code is

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<sup>48</sup> [N.D.C.C. § 24-05-04\(2\). Contracts to be advertised – road construction – requirements for rental contracts.](#)

created and enacted as follows:

Cooperative purchasing - Authorized.

With the approval of the board of city commissioners or the city council, a city may participate in cooperative purchasing agreements with the state, or another political subdivision of this state or any other state, by executing a joint-powers agreement under chapter 54-40.3. This section does not apply to construction of a public improvement as defined in chapter 48-01.2.

**Exception: See Section 3 Below**

**Cross-Reference: See Chapter 8, Section 1- Construction of Bridges by Board of County Commissioners**

**2. County Not to Lease its Equipment for Less than Current Equipment Rental Rates**

No county may lease, rent, or enter into a contract or agreement for the use of any road construction or maintenance equipment belonging to that or any other county or political subdivision at a rate which is less than the current equipment rental rates adopted by the North Dakota Department of Transportation as shown in its Standard Specifications for Road and Bridge Construction manual.<sup>49</sup>

**3. Contracting with the Federal Government**

A county may enter into any contract with the United States of America or with any

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<sup>49</sup> [N.D.C.C. § 24-05-04.1. County not to lease its equipment for less than cost of operation.](#)

agency thereof for the purchase or lease of any equipment, supplies, materials, or other property without regard to provisions of law which require:

- A. The posting of notices or public advertising for bids or of expenditures.
- B. The inviting or receiving of competitive bids.
- C. The delivery of purchases before payment.
- D. The payment of the cost of the contract out of funds included in the budget of appropriations for the year; provided, however, that the county may designate by appropriate resolution or order any official or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, materials, or other property owned by the United States of America or any agency thereof, and may authorize that person to make any down payment, or payment in full, required in connection with such bidding.<sup>50</sup>

#### **4. Contracting with Other County and State Governments**

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of the county to open and improve a highway on the state line, it may negotiate with the proper officials of the adjoining county or state and may

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<sup>50</sup> [N.D.C.C. § 21-06-08. Authority to contract with the federal government – delegation of authority.](#)

make contracts or agreements pertaining to the opening of such state line and the construction of a highway upon it.

If the board of county commissioners deems it proper, it may agree with the officials of the adjoining county or state for the allotment of the highway on said state line and may assume the obligation of construction and maintenance of certain parts of the said highway in return for the assumption of like obligations by the officials of the adjoining county or state as to a like portion of the state line forming the boundary of the county.<sup>51</sup>

**Cross-reference: See Chapter 1, Section 4 – Highways on State Lines**

**5. Payment of Construction Contracts**

The board of county commissioners, in case of each improvement ordered by it, shall designate the place of beginning and the direction in which the work must proceed, and shall require the same to be completed mile by mile or in parts of miles continuously, as ordered, and no payment may be made except for work so completed.

It also may require the supervision of the work by the county surveyor, so far as deemed necessary, and shall require him to compute and estimate the amount of completed work and to certify the same to the county auditor at the end of each month.<sup>52</sup>

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<sup>51</sup> N.D.C.C. § 24-05-08. Highways on state lines.

<sup>52</sup> N.D.C.C. § 24-05-03. Payments made for completed work only.

A county cannot escape liability for the reasonable value of services and goods obtained and retained by it through transactions coming within the general powers of the county and the county commissioners merely because of procedural defects in the methods by which the goods and services were furnished to the county.<sup>53</sup>

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<sup>53</sup> [Schoonover v. Morton County, 267 N.W.2d 819, 824 \(N.D. 1978\)](#) (“To escape liability ... it is necessary for the county to show fraud, bad faith, collusion, or some other factor which would make it inequitable or unjust to require the county to pay for the reasonable value of the services or goods”).



## **CHAPTER 6 – ACQUIRING RIGHT OF WAY**

### **1. Acquiring Land**

#### **a. Purchase or condemnation of right of way**

The board of county commissioners, by resolution or order, as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining, any highway, may purchase, acquire, take over, or condemn,<sup>54</sup> under the right and power of eminent domain, all lands which it deems necessary for the present use, either temporary or permanent, and to provide adequate drainage in the improvement, constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining of any highways.

#### **Cross-Reference: See Chapter 3, Section 2 – Responsibilities of Counties for County Road System**

Whenever the board of county commissioners determines, by resolution or order, that the public necessity requires the taking of land as described previously, it shall survey the lands and describe, plat, record the land in the office of the recorder of the county. The board of county commissioners, or its duly authorized agents and employees, may enter upon any land for the purpose of making such survey, examination, or test, but in case of damages to the premises the board of county commissioners shall pay to the owner of said premises the amount of such damages.<sup>55</sup>

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<sup>54</sup> See, N.D.C.C. § 32-15-01. Eminent domain defined – how exercised – condemner defined – exceptions (defining condemner as, “a person empowered to take property under the power of eminent domain.).

<sup>55</sup> N.D.C.C. § 24-05-09. Purchase or condemnation of right of way.

**Cross-Reference: See Chapter 12, Public Utilities, Sections 3 – Construction of Utility Facility; 4 – Removal of Utility Facility; and 5 – Right of Way for Relocation of Utility Facility; See Chapter 13, Billboards and Advertising, Sections 2 – Limitations of Outdoor Advertising Within 660 Feet of Right of Way, 3- Limitations of Outdoor Advertising Beyond 660 Feet of Right of Way, and 4 – Compensation for Removal of Signs**

b. Acquisition of property and property rights

The board of county commissioners may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view, lights, and such advertising rights outside of the right of way as may be determined to be in the public interest, by gift, devise, purchase, or condemnation. All property rights acquired must be in fee simple, provided, however, as to all lands acquired or taken for highway, road, or street purposes, they may not obtain any rights or interest in or to the oil, gas, or fluid minerals underlying said lands.

In connection with the acquisition of property or property rights for any controlled-access facility or service road, the county may, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing so, the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for the right of way proper.<sup>56</sup>

**Cross-References: See Chapter 7, Section 4 – Acquisition of Property and Property Rights for Controlled access Facilities; See Chapter 12, Public Utilities, Sections 3 – Construction of Utility Facility; 4 – Removal of Utility**

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<sup>56</sup> N.D.C.C. § 24-01-32. Acquisition of property and property rights.

## **Facility; and 5 – Right of Way for Relocation of Utility Facility**

### c. County may deviate from section lines

Whenever the expense of constructing a highway, or any part thereof, is the responsibility of the county, the board of county commissioners has the power to deviate from section and township lines and to condemn and purchase right of way for such highway, if in its opinion the cost of constructing and maintaining such highway must be decreased materially. The cost of obtaining such a right of way is the responsibility of the county.<sup>57</sup>

### d. Highways on state lines

Whenever the board of county commissioners of any county bordered by a state line deems it for the best interests of the county to open and improve a highway on the state line, it may negotiate with the proper officials of the adjoining county or state and may make contracts or agreements pertaining to the opening of such state line and the construction of a highway upon it.

If the board of county commissioners deems it proper, it may agree with the officials of the adjoining county or state for the allotment of the highway on said state line and may assume the obligation of construction and maintenance of certain parts of the said highway in return for the assumption of like obligations by the officials of the adjoining

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<sup>57</sup> N.D.C.C. § 24-05-07. Counties may deviate from section lines – condemn or purchase right or way.

county or state as to a like portion of the state line forming the boundary of the county.<sup>58</sup>

## 2. Damages for Acquisition of Land

### a. Damages for governmental taking

If the board of county commissioners is unable to purchase the lands required for a price which such board deems reasonable, the board by order or resolution shall declare the necessity for the taking of such lands and shall direct a special board consisting of the county auditor, the county treasurer, and the recorder of such county to fix the damages for such taking.<sup>59</sup> Within 15 days, the special board shall fix a time and place not later than 30 days from and after the passage of the order or resolution for hearing all persons or parties interested by such taking, and it shall give notice of the hearing to all parties interested either by registered or certified mail or by publication, once each week for two successive weeks prior to the date of hearing, stating the time and place where the hearing must be held, together with a description of the property to be appraised.<sup>60</sup>

### b. Board of county commissioners may determine damages

Upon the taking of lands for highway purposes, the board of county commissioners, on petition of the director, shall proceed to determine the damages and make awards for the lands taken. Within 15 days after the filing of the petition with the county auditor, the board of county commissioners shall fix a time and place, not later than 60 days from and after the filing of such petition, for a hearing of all persons interested or aggrieved

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<sup>58</sup> [N.D.C.C. § 24-05-08. Highways on state lines.](#)

<sup>59</sup> [N.D.C.C. § 24-05-10. Damages – How ascertained – special board.](#)

<sup>60</sup> [N.D.C.C. § 24-05-11. Hearing before special board – notice.](#)

by such taking, and shall cause to be published in the official newspaper of the county, at least once a week, for three successive weeks, prior to such hearing, a notice of the hearing, stating its the time and place, together with a description of the property to be taken. A copy of the published notice must be served personally upon all known owners residing or found within the state, and upon the occupantof the land, not less than 15 days prior to the hearing.<sup>61</sup>

c. Payment of damages for acquisition of land

When damages have been awarded by the special board, the board of county commissioners shall pay the clerk of the district court, for the benefit of the persons interested, the sum awarded by the board in cash. Every owner entitled to an award, before receiving the award, shall execute a receipt, to be received by the clerk of the district court, containing a description of the premises covered by the award and an acknowledgment of full and complete satisfaction for all damages sustained.

In case the owner fails or refuses to accept such award and execute such receipt within 10 days after being notified of the amount awarded to him, the clerk of the court shall execute a receipt reciting a deposit of such award and a description of the premises.<sup>62</sup>

If no appeal is made within 30 days from the deposit of the amount awarded, the receipt of the owner of the premises or of the clerk of the district court must be recorded in the office of the recorder of the county and the title of the land be vested in the county.<sup>63</sup>

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<sup>61</sup> N.D.C.C. § 24-01-19. Board of county commissioners may determine damages.

<sup>62</sup> N.D.C.C. § 24-05-12. Payment or deposit of damages – receipt.

<sup>63</sup> N.D.C.C. § 24-05-13. Receipt for payment to be recorded if no appeal taken.

### 3. Appeals Pertaining to Acquisition of Land

Appeals from decision of board of county commissioners

Any party aggrieved by the taking of land or materials, or by the estimate of damages and the award of the board of county commissioners, has the remedy of appeal from any determination of a board of county commissioners in the taking of land for highway purposes.

Service of a written or printed notice of such appeal must be made upon the chairman of the board of county commissioners and the director. An appeal from the award by the board of county commissioners, without filing a cost bond, may be taken by the director, by service of notice of appeal upon the chairman of the board of county commissioners and the owner of the property. Upon any appeal, the director, on application to the judge of the district court, must be granted a special term of court.<sup>64</sup>

Appeal to jury for governmental taking

Any party aggrieved by the award may appeal from the determination of the board of county commissioners in the taking of lands by a county for highway purposes. The issues involved in the appeal must be tried and determined at the next term of the district court. The damages must be assessed by a jury, unless a trial by jury is waived, and no fees may be collected by the clerk of the district court for the filing of the appeal.<sup>65</sup>

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<sup>64</sup> [N.D.C.C. § 24-01-23. Appeals from decision of board of county commissioners – procedure – special term of court.](#)

<sup>65</sup> [N.D.C.C. § 24-05-14. Appeal – how taken – jury trial.](#)

Appeal does not stay acquisition of land

Notwithstanding the taking of an appeal, the board of county commissioners may proceed with the use of the property so condemned and is liable for any additional amount awarded to the appellant upon such appeal.<sup>66</sup>

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<sup>66</sup> N.D.C.C. § 24-05-15. Appeal does not stay proceedings.

# Chapter 6 – Supplemental Information

## IMPORTANT FACTS ABOUT LAND DESCRIPTIONS

*Land Measurements, Townships, Sections, Meandered Water, Government Lots, Etc.*

### What is a Land Description?

A land description is a description of a tract of land in legally acceptable terms, so as to show exactly where it is located and how many acres it contains.

### Table of Land Measurements

LINEAR MEASURE			SQUARE MEASURE				
1 inch	0.0833 foot	16 1/2 feet	1 rod	144 sq. in.	1 sq. ft.	43560 sq. ft.	1 acre
7.92 inches	1 link	5 1/2 yards	1 rod	9 sq. ft.	1 sq. yd.	640 acres	1 sq. mile
12 inches	1 foot	4 rods	100 links	30 1/4 sq. yds.	1 sq. rod	1 sq. mile	1 section
1 vara	33 inches	66 feet	1 chain	16 sq. rods	1 sq. chain	36 sq. miles	1 township
2 1/4 feet	1 vara	80 chains	1 mile	1 sq. rod	272 1/4 sq. ft.	6 miles sq.	1 township
3 feet	1 yard	320 rods	1 mile	1 sq. chain	4356 sq. ft.	208 ft. 8 in. sq.	1 acre
25 links	16 1/2 feet	8000 links	1 mile	10 sq. chains	1 acre	80 rods sq.	40 acres
25 links	1 rod	5280 feet	1 mile	160 sq. rods	1 acre	160 rods sq.	160 acres
100 links	1 chain	1760 yards	1 mile	4840 sq. yds.	1 acre		

In non-rectangular land descriptions, distance is usually described in terms of either feet or rods (this is especially true in surveying today), and square measure in terms of acres. Such descriptions are called Metes and Bounds descriptions and will be explained in detail later.

In rectangular land descriptions, square measure is again in terms of acres, and the location of the land in such terms as N 1/4 (north one-half), SE 1/4 (south east one-fourth or quarter), etc. as shown in figures 2, 3, 4 and 5.

### Meandered Water & Government Lots

A meandered lake or stream is water, next to which the adjoining landowner pays taxes on the land only. Such land is divided into divisions of land called government lots. The location, acreage and lot number of each such a tract of land, was determined, surveyed and platted by the original government surveyors.

The original survey of your county (complete maps of each township, meandered lakes, government lots, etc.) is in your courthouse, and this original survey is the basis for all land descriptions in your county (see figure 1).

**IMPORTANT:**  
THE GOVERNMENT LOT NUMBER GIVEN TO A PIECE OF LAND, IS THE LEGAL DESCRIPTION OF THAT TRACT OF LAND.

### HOW CAN YOU TELL WHETHER WATER IS MEANDERED OR PRIVATELY OWNED?

On our township maps, if you find government lots adjoining a body of water or stream, those waters are meandered. If there are no government lots surrounding water, that water is privately owned, the owner is paying taxes on the land under the water, and the owner controls the hunting, fishing, trapping rights, etc., on that water, within the regulations of the State and Federal laws, EXCEPT where such water is deemed navigable, other rulings may sometimes pertain.

As a generality (but not always), meandered water is public water which the public may use for recreational purposes, fishing, hunting, trapping, etc., provided that there is legal access to the water, or in other words, if the public can get to such waters without trespassing. There still is much litigation concerning the same to be decided by the courts.

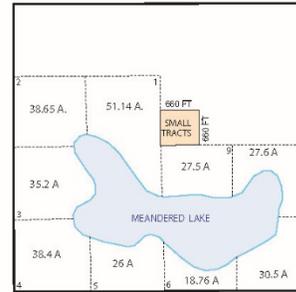


FIGURE 1

### Sample Sections Showing Rectangular Land Descriptions, Acreages and Distances

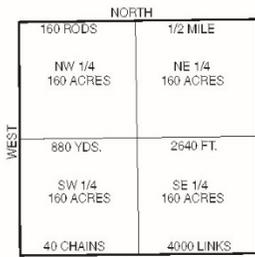


FIGURE 2



FIGURE 3

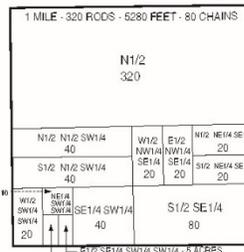


FIGURE 4

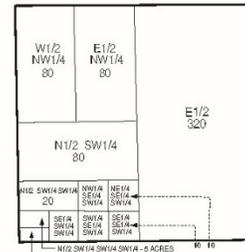


FIGURE 5

### The Best Way To Read Land Descriptions Is From The Rear Or Backwards

Descriptions of land always read FIRST from either the North or the South. In figures 2, 3, 4 and 5, notice that they all start with N (north), S (south), such as NW, SE, etc. They are never WN (west north), ES (east south) etc. IMPORTANT: It is comparatively simple for anyone to understand a description, that is, determine where a tract of land is located, from even a long description. The SECRET is to read or analyze the description from the rear or backwards.

EXAMPLE: Under figure 4, the first description read E 1/2, SE 1/4, SW 1/4, SW 1/4. The last part of the description reads SW 1/4, which means that the tract of land we are looking for is somewhere in that quarter (as shown in figure 2). Next back we find SW 1/4, which means the tract we are after is somewhere in the SW 1/4 SW 1/4 (as shown in figure 3). Next back, we find the SE 1/4, which means that the tract is in the SE 1/4 SW 1/4 SW 1/4 (as shown in figure 5). Next back and our last part to look up, is the E 1/2 of the above, which is the location of the tract described by the whole description (as shown in figure 4).

### To Interpret A Land Description - Locate The Area On Your Township Plat, Then Analyze The Description & Follow It On The Plat Map.

Important Facts about Land Descriptions (Reproduced with permission of Rockford Map Publishers, Inc. Rockford, Illinois)

# IMPORTANT FACTS ABOUT LAND DESCRIPTIONS

## Township Survey Information

**A Congressional Township  
Contains 36 Sections Of Land  
1 Mile Square**

**A Civil Or Political Township  
May Be Larger Or Smaller Than A  
Congressional Township.**

### Townships

Theoretically, a township is a square tract of land with sides of six miles each, and containing 36 sections of land. Actually this is not the case. Years ago, when the original survey of this state was made by the government engineers, they knew that it was impossible to keep a true north and south direction of township lines, and still keep getting township squares of 36 square miles. As they surveyed toward the north pole, they were constantly running out of land, because the township lines were converging toward the north pole.

DIAGRAM SHOWING HOW SECTIONS ARE NUMBERED IN A TOWNSHIP

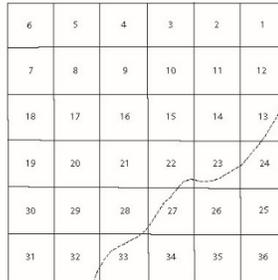


FIGURE 6

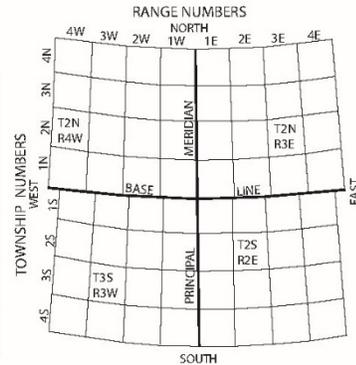


FIGURE 7

If you will turn to one of the township maps in this plat book, you will notice that on the north and on the west of each township, there are divisions of land which show odd acreages. In some townships, these odd acreages are called government lots (because they were given a lot number), and at other times left as FRACTIONAL FORTIES OR EIGHTIES. It was at the option of the original government surveyors as to whether they would call these odd acreages government lots, or fractional forties and eighties.

The reason for these odd acreages is that the government surveyors adjusted for shortages of land which developed as they went north, by making fractional forties, eighties or government lots out of the land on the west side of a township, and the same for the land on the north side of a township to keep east and west lines running parallel. In other words it was impossible to fit full squares into a circle.

Townships sometimes vary in size from the regularly laid-out township (see figure 6). Suppose that the dotted line in figure 6 is a river separating two counties. The land north and west of the river could be a township in one county, the land south

and east could be a township in another county. Whichever county the land is in, it still retains the same section, township and range numbers for purposes of land descriptions.

Each township has a township number and also a range number (sometimes more than one of each if the township is oversized, or a combination of more than one township and range).

Government surveying of townships is run from starting lines called base lines and principal meridians. Each township has a township number. This number is the number of rows or tiers of townships that a township is either north or south of the base line. Also each township has a range number. This number is the number of rows or tiers of townships that a township is either east or west of the principal meridian (see figure 7). EVERY DESCRIPTION OF LAND SHOULD SHOW THE SECTION, TOWNSHIP AND RANGE IT IS LOCATED IN.

**Townships May Be Either North Or South Of The Base Line  
Ranges May Be Either East Or West Of The Principal Meridian.**

### Metes And Bounds Descriptions And Explanation Of Direction In Terms Of Degrees

**WHAT IS A METES AND BOUNDS DESCRIPTION?** It is a description of a tract of land by starting at a given point, running so many feet a certain direction, so many feet another direction etc., back to the point of beginning. EXAMPLE: In figure 1 notice the small tract of land outlined. The following would be a typical metes and bounds description of that tract of land. "Begin at the center of the section, thence north 660 feet, thence east 660 feet, thence south 660 feet, thence west 660 feet, back to the point of beginning, and containing 10 acres, being a part of Sec. No. etc."

**IMPORTANT: To locate a tract of land from a metes and bounds description, start from the point of beginning, and follow it out (do not read it backwards as in the case of a rectangular description).**

The small tract of land just located by the above metes and bounds description could also be described as the SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of the section. In most cases, the same tract of land may be described in different ways. The rectangular system of

### How To Read Descriptions Which Show Directions In Terms Of Degrees

In figure 8, the north-south line, and the east-west line divide the circle into 4 equal parts, which means that each part contains 90 degrees as shown. Several different direction lines are shown in this diagram, with the number of degrees each varies east or west from the north and south starting points (remember again that all descriptions read from the north or south).

We all know what north-west is. It is a direction which is half-way between North and West. In terms of degrees the direction north-west would read, north 45 degrees west (see figure 8).

### Example Of A Land Description In Terms Of Degrees

At this time, study figure 8 for a minute or two. In figure 8, notice the small tract. The following metes and bounds description will locate this small tract. "Begin at the beginning point, thence N 20 degrees west — 200 feet, thence N 75 degrees east — 1190 feet, thence S 30 degrees east — 240 feet, thence S 45 degrees west — 420 feet, thence west — 900 feet back to the point of beginning, containing so many acres, etc."

describing and locating land as shown in figure 2, 3, 4 and 5 is the most simple and almost always used when possible.

A circle contains 360 degrees. Explanation: If you start at the center of a circle and run 360 straight lines an equal angle apart to the edge of the circle, so as to divide the circle in 360 equal parts, THE DIFFERENCE OF DIRECTION BETWEEN EACH LINE IS ONE DEGREE.

In land descriptions, degree readings are not a measure of distance. They are combined with either North or South, to show the direction a line runs from a given point.

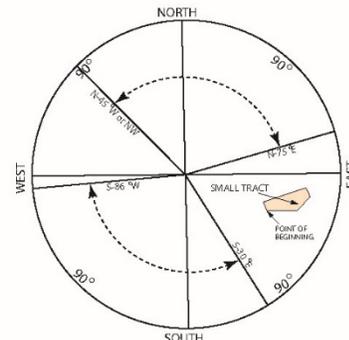


FIGURE 8

## Sample Ordinance: Walsh County Right-of-Way Ordinance

### PURPOSE

The purpose of this policy is to prohibit encroachments, obstructions, signs, and hay within the right of way. These encroachments and obstructions have negative impacts on the safety and function of roads, ditches, and right of way. In addition, a majority of the Walsh County roads are on the Federal Aid System. Walsh County is responsible for preventing right of way encroachments regarding county road projects funded through the Federal Aid program, pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

### GENERAL PROVISIONS

The NDDOT is, according to Title 23 United States Code and 23 CFR 1.27, required to maintain, or cause to maintain, all federally funded highway projects. Title 23 United States Code 101 defines maintenance as: "...the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway."

Title 23 further requires the State transportation department to maintain each project constructed with Federal-aid funds until such time that it no longer constitutes a part of the Federal-aid system. It is the Federal Highway Administration's (FHWA) role to see that maintenance of Federal-aid projects is adequate and to provide technical assistance in disseminating information on successful maintenance techniques.

It is the policy of the NDDOT to require all county and city projects receiving federal dollars to enter into an agreement with the Department to ensure that as recipients of federal money the counties and cities agree to abide by the terms and conditions required. The agreement will require counties receiving federal funds to provide an annual certification that all federally funded highway projects constructed are being maintained as required.

In addition, the North Dakota Century Code (N.D.C.C.) has several sections that refer to right of way encroachments, obstructions, signs and hay. This policy consolidates these codes and outlines their enforcement. The following sections of the N.D.C.C. are references for this policy:

**N.D.C.C. 24-01-12** Regulation of advertising signs on highways.

**N.D.C.C. 24-01-12.2** Hay disposal

**N.D.C.C. 24-05-23** Encroachment upon county roads, ditches, approaches - Liability for damages.

**N.D.C.C. 24-05-24** County and township road rights of way - Removal of obstructions.

**N.D.C.C. 24-06-29** Removal of permanent obstructions - Removal of obstructions and traffic safety hazards - Cost.

**N.D.C.C. 24-12-01** Injuries to highways.

**N.D.C.C. 39-10-07.2** Display of unauthorized signs, signals, or markings

**N.D.C.C. 63-05-01** Landowners or operators along county and township highways to cut weeds and grasses.

## **ADMINISTRATION**

**Marking the Right of Way**: Right of way boundaries will be marked with right of way markers. Markers will be installed on roadways as part of the next road project or if there are encroachments. When installing right of way markers in a previously unmarked area, the Walsh County Highway Superintendent will send out a notice to the adjacent landowner regarding the placement of markers and the encroachment policy. Those landowners damaging or removing highway right of way markers will be held responsible for the repair or replacement of the markers as discussed below.

**Inspecting the Right of Way**: The County will perform routine inspections for right of way encroachments in late summer and fall, with re-inspections in the spring or as necessary. Efforts will be made to enforce right of way encroachments prior to seeding or after harvest.

However, if necessary, the County may take steps to enforce the right of way prior to harvest.

**Notification of Right of Way Encroachments**: The Walsh County Commission authorizes the County Highway Superintendent or designee to notify landowners in writing regarding any right of way encroachment.

**Remediation of Right of Way Encroachments**: In accordance with N.D.C.C. 24-05-23, the landowner must remove the encroachment within twenty days of receipt of this notice. The County Highway Superintendent may authorize a landowner to deviate from the twenty-day requirement in order to allow the landowner until the end of harvest season to correct the encroachment. Corrective action will include, but not be limited to, replacement of approved or recommended grass seed and mulch as well as correction of slopes or ditches that have been altered as a result of the encroachment. Failure to remedy this situation will cause the landowner to be liable to the County for damages resulting from the encroachment. If the landowner fails to correct the encroachment, the County will complete the necessary work to repair the encroachment and the landowner will be billed for the cost associated with correcting the damages including administrative costs to the County. The landowner may also be billed for damages to right of way markers or County signs. If the bill remains unpaid for two consecutive months, the bill will be certified to the County Auditor and all of the expenses shall be charged against the land and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected.

**Safety**: When a right of way encroachment poses an imminent safety threat, the County will take necessary action to remove the encroachment. When possible, attempts will be made to notify the landowner to remove the encroachment. If the

County incurs a cost to remove the encroachment, the cost may be levied against the landowner as stated above.

**Obstructions in the Right of Way:** In accordance with N.D.C.C. 24-06-29, if a person places or causes to be placed an obstruction or traffic safety hazard within the right of way of any highway road surface, the board of County Commissioners, County Highway Superintendent, or designee shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of County Commissioners, County Highway Superintendent, or designee shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or traffic safety hazard is responsible and may be billed for any costs incurred by the County for removal of the obstruction or traffic safety hazard. These obstructions or hazards may include, but are not limited to signs, landscaping timbers, rocks, or other hazards. In addition, landowners are not authorized to push snow into the right of way and ditches of County highways which include the roadway in-slope, ditch bottom, and back-slope of the roadway. This practice can exaggerate drifting problems experienced on highways and can create obstructions for motorists. If a landowner is notified of an unauthorized snow pile, they are responsible for removing the obstruction. The County will only notify the landowner once during the winter season. Costs incurred to remove any future obstructing snow piles will be levied against the landowner.

**Harvesting Hay in the Right of Way:** Every person harvesting hay on the County right of way, who stores the harvested hay on the right of way for later removal, shall store the harvested hay at the outer edge of the rights of way. The County Highway Superintendent may remove any hay that is not stored safely as prescribed above. All hay stored on the right of way must be removed by November first of each year.

**Unauthorized Signs:** N.D.C.C. 24-01-12 (regulation of advertising signs on highways) outlines that private signs are not authorized in the right of way. It also states that signs or billboards on private property cannot be placed within one thousand feet of any highway grade crossing in such a manner as to obstruct or interfere with a free and clear view of such crossing from any highway or railroad intersecting threat. The Walsh County Commission authorizes the County Highway Superintendent or designee to notify landowners, sign companies, or any persons placing an unauthorized sign in writing regarding the right of way encroachment. Any advertisement in or upon a public highway or private property which is deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic, may be taken down, removed, or destroyed by direction of the County Highway Superintendent or designee.

**Landowners Responsibility to Maintain Right of Way:** N.D.C.C 63-05-01 (Cutting weeds and grasses on highways) states it is the duty of landowners or operators with land adjoining regularly traveled County roads to cut all weeds and grasses along the

regularly traveled County roads adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. Further, N.D.C.C. 63-05- 03 states that any cost the County incurs due to a landowner's failure to mow can be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

**Permits Required:** The following Walsh County permits are required when work is planned in the county right of way.

**Drainage Permits:** are required when there is to be any type of work in the county right of way where any area will be disturbed. This includes but not limited to ditch cleaning, culvert installation, replacement, removal, drain tile pump installation, approach work or any other project where material will be disturbed in the right of way.

**Flowage Easements:** are required when water from a drain tile pump will be run in the county right of way.

**Utility Permits:** are required when a permanent utility will be placed within the county right of way.

## **CHAPTER 7 – CONTROLLED-ACCESS FACILITIES**

### **1. Authority to Establish Controlled-Access Facilities**

Each county is authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever traffic conditions, present or future, will justify such special facilities, provided that within municipalities such authority is subject to such municipal consent as may be provided by law. In addition to the specific powers granted by law, counties may regulate, restrict, or prohibit use of controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility.<sup>67</sup>

### **Cross-Reference: See Chapter 3, Section 1 – Basic Authority of County Engineers, Highway Supervisors, and County Commissioners**

### **2. Design of Controlled-Access Facilities**

County authorities are authorized to design any controlled-access facility and to regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. County authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person has any right of ingress or egress

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<sup>67</sup> N.D.C.C. § 24-01-30. Authority to establish controlled-access facilities.; See also, *Ebach v. Ralston*, 469 N.W.2d 801, 806 (1991) (authorizing “cities to regulate by classes of traffic the use of public ways within cities, including those city streets designated as state highways” and stating that, “A city’s power, does not, however, reach the design or the alteration of the roadway or the use of a traffic signal controlling the state highway, which are within the sole authority of the director.”).

to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted.<sup>68</sup>

**Cross-Reference: See Chapter 3, Section 1 – Basic Authority of County Engineers, Highway Supervisors, and County Commissioners**

**3. Commercial Establishments Prohibited**

No automotive service station or other commercial establishment for serving motor vehicle users may be constructed or located within the right of way of, or on publicly owned or publicly leased land acquired or used for or in connection with a controlled-access facility.<sup>69</sup>

**4. Acquisition of Property and Property Rights**

The board of county commissioners may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view, lights, and such advertising rights outside of the right of way, by gift, devise, purchase, or condemnation. All property rights acquired must be in fee simple, provided, however, as to all lands acquired or taken for highway, road, or street purposes, they may not obtain any rights or interest in or to the oil, gas, or fluid minerals underlying said lands.

In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection with a controlled-access facility, the county authority may, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be best served, even though the entire lot,

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<sup>68</sup> N.D.C.C. § 24-01-31. Design of controlled-access facility.

<sup>69</sup> N.D.C.C. § 24-01-45. Controlled-access facility – commercial establishments prohibited.

block, or tract is not immediately needed for the right of way.<sup>70</sup>

**Cross-Reference: See Chapter 6, Section 1(B) – Acquisition of Property and Property Rights**

**5. Grade Crossing Elimination at New and Existing Facilities**

The highway authorities of any county may designate and establish controlled-access highways as new or may designate and establish an existing street or highway as included within a controlled-access facility. The county has authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and municipal streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary lines of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of the facility may intersect the same at grade.<sup>71</sup>

**Cross-Reference: See Chapter 9, Section 1 – Grading and Drainage of Roads and Approaches Intersecting with County or township Roads**

**6. Authority of Local Units to Consent**

The highway authorities of the state, or any county, or municipality are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective

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<sup>70</sup> N.D.C.C. § 24-01-32. Acquisition of property and property rights.

<sup>71</sup> N.D.C.C. § 24-01-33. New and existing facilities – grade crossing elimination.

jurisdictions.<sup>72</sup>

## 7. Local Service Roads

In connection with the development of any controlled-access facility, county authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets must be of appropriate design and must be separated from the controlled-access facility by means of all devices designated as necessary or desirable by the proper authority.<sup>73</sup>

**Cross-Reference: Chapter 1, Sections 3 – State and County Cooperation; and 4 – Highways on State Lines**

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<sup>72</sup> N.D.C.C. § 24-01-34. Authority of local units to consent.

<sup>73</sup> N.D.C.C. § 24-01-35. Local service roads.

## **CHAPTER 8 – BRIDGES**

### **1. Definition of “Bridge” and Culverts as Bridges**

North Dakota Century Code does not specifically define a bridge based on its length or span distance. ND Counties currently have individual policies which define the size of structures they will participate in when it comes time to replace or repair these bridges. Culvert sizing for off system county roads is based on a 15 year flood recurrence event and for on system (major collectors) roads it is based on 25 years flood event. Township roads use a 10-year event.

In general, bridges and culverts in North Dakota that have an opening of 20 feet or less (see federal definition below) are considered to be “minor structures”. According to NDCC61-16.1-43, these minor structures can be funded by a combination of local government and available ND Water Resources dollars if they are located on approved stream crossings (see stream crossing determination request form SFN 61885 in supplemental section of Chapter 8). NDCC 61-16.1-43 states that for any bridge or culvert which is to be constructed on a county or township highway system over and across or in connection with a drain, the cost may be funded by the state water commission if funds are available and the remaining costs shall be borne forty percent by the county and sixty percent by the district which has created the need for such construction.

Structures with an opening of greater than 20 feet are considered to be “major” bridges and are eligible for federal funding provided they meet specific condition ratings.

The National Bridge Inspection Standards published in the Code of Federal Regulations

(NBIS 23 CFR §650 Subpart C) includes the following definition:

A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings (side slopes) of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

For examples of structures meeting the definition of bridges, see Chapter 8 – Supplemental Information.

## **2. Construction of Bridges by Board of County Commissioners**

Whenever a majority of the freeholders living within a radius of 3 miles of the proposed location petition the board of county commissioners for a bridge at a specified location, if the cost of the bridge exceeds the sum of \$500, the board of county commissioners shall view and investigate the necessity of the proposed bridge.

### **Cross-Reference: See Chapter 9, Section 9 – Grading and Drainage Wetlands and Surface Water – Determinations of Surface Water Flow and Appropriate Highway Construction**

If the board approves the petition, it shall proceed to advertise in the official newspaper of the county, for a period of 30 days, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge to be submitted to it at the next regular or special meeting, at which the board shall proceed to examine all proposals or bids for the building of such bridge. The board shall award the contract to

the lowest responsible bidder, requiring the bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of the bid, or contract, the bond to be approved by the board and filed in the office of the county auditor but the board may reject all bids.

**Cross-Reference: See Chapter 5, Section 1 – Construction Contracts – Advertising Requirements for Highway Improvements and Equipment Rental**

If all bids are rejected, the board shall re-advertise. Provided, however, that in any case where the amount of the lowest responsible bid is less than \$15,000.00, the board has the authority to refuse all bids received, and to proceed to construct the bridge under its own supervision, and in the manner deemed by it most expedient, and to enter into contracts for the labor or material to be used in the construction of the bridge.<sup>74</sup>

**3. Expense of Bridge**

The expense of constructing a bridge must be paid out of the county bridge fund, if such bridge is accepted and approved by the board of county commissioners.<sup>75</sup>

**4. Supervision, Repairs, Bids, Signs**

Each bridge built under the direction of the board of county commissioners is under the supervision of the board of county commissioners, and the county shall pay the cost of rebuilding or repairing these bridges.

If the cost of rebuilding or repairing a bridge would exceed \$30,000 on estimate of the county engineer and upon the approval of the estimate by the department, the county

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<sup>74</sup> [N.D.C.C. § 24-08-01. Construction of bridges by board of county commissioners – petition – bids – rejection.](#)

<sup>75</sup> [N.D.C.C. § 24-08-02. Expenses of bridge – how paid.](#)

commissioners shall advertise for bids and award the contract.

**Cross-Reference: See Chapter 5, Section 1 – Construction Contracts – Advertising Requirements for Highway Improvements and Equipment Rental**

If a bridge is destroyed by flood, fire, or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract, the county commissioners may promptly contract for the rebuilding or repair of the bridge without advertising for bids, regardless of the cost.

The board of county commissioners, at least every two years for bridges and every four years for box culverts, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county. If any bridge on the county road system is deemed unsafe for public use by the board of commissioners, it immediately shall take steps to close the bridge and prevent its use by the public.

If any bridge on the county road system is deemed unsafe for loads in excess of a certain weight, the board of commissioners shall post load limit signs which must comply with the standards for uniform traffic control devices.<sup>76</sup>

The county is not immune from claims or suits for damages arising out of negligent failure to perform these inspections, signing, and repair duties.<sup>77</sup>

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<sup>76</sup> For a North Dakota/Minnesota Truck Weight Calculator, see, <https://dotsc.ugpti.ndsu.nodak.edu/TWC/>.

<sup>77</sup> N.D.C.C. § 24-08-03. Bridges – supervisions, repairs, bids, signs – liability.; For a more detailed description of North Dakota bridge inspection procedures, see, NDDOT Bridge Inspection Manual (March, 29, 2021).

**Cross-Reference: See Chapter 11, Section 1(A) – Warning Signs of Road Construction**

5. Petition for Bridges Across Navigable Rivers

Whenever one-third of the resident taxpayers of any county, as appears by the last preceding assessment roll of the county, petition the board of county commissioners requesting an appropriation to build a bridge across any navigable river on the line of the county, setting forth therein the location of the bridge as near as may be, its estimated cost, the necessity for it to accommodate the general traveling public, the manner in which it is proposed to pay for the structure, and the time when it will be completed, the petition to be duly verified by the affidavits of at least 15 of the petitioners therein named, the board of county commissioners shall publish a notice in the official newspaper of the county, once each week for three consecutive weeks, briefly stating the object of the petition and that the same will be heard and considered at the next regular meeting of such board.

At the time appointed for the hearing of the petition, the board of county commissioners shall investigate the need for such bridge, and, if it finds the same to be necessary and that the consent of the federal government has been obtained to span such river, it, by resolution duly entered upon the minutes of the board, shall appropriate toward the building of such bridge, from the county treasury, a sum not exceeding one-half of the estimated cost of the bridge. The appropriation must be upon condition that a sufficient bond be given, conditioned that the remaining one-half or more, as the case may be, of

the cost of the bridge will be paid.<sup>78</sup>

**6. Board of County Commissioners May Act with Representatives of Other Governmental Agency**

If the remaining one-half of the cost of any bridge to be constructed is made up by an appropriation from any neighboring state or by any municipality in this state, to be expended under a commission or through any other agency, the board of county commissioners shall appoint a committee from its own number, of three or more, to meet such other municipal agency, confer with its members, and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee, such approval to be in writing and duly reported to such board and recorded in the minutes thereof, the board shall direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due from such county.<sup>79</sup>

**7. Bridge Funds to Be Turned Over to City**

The county treasurer of each county wherein any city has constructed a bridge, or hereafter shall construct a bridge, over any navigable stream, shall pay to the auditor of such city whereby such bridge has been constructed or is about to be constructed, all money in the county treasury or which may come into the county treasury in the bridge fund of such county, which may have been or which shall be levied, assessed, and

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<sup>78</sup> [N.D.C.C. § 24-08-05. Petition for bridges across navigable waters.](#)

<sup>79</sup> [N.D.C.C. § 24-08-06. Board of county commissioners may act with representatives of other governmental agency.](#)

collected from persons and property, or either, in said city.<sup>80</sup>

**8. Cost of Bridge Limited**

The total cost to any county of any bridge built across a navigable river in no case may exceed the sum of \$300,000.00.<sup>81</sup>

**9. Counties or Municipalities May Assist In Constructing Bridge**

Any county within this state desiring to assist in the construction, maintenance, or repair of a bridge over a navigable river, regardless of whether such county borders the river at the point where the bridge is to be built, by a majority vote of its board:

- a. May enter into an agreement for the construction, maintenance, and repair of such a bridge with other municipalities or counties, whether such municipalities or counties are located within the state of North Dakota or a state bordering North Dakota; and
- b. May appropriate any sum that to the said board may seem reasonable and shall direct the proper officer to draw a warrant on the general fund for the payment of such appropriation.<sup>82</sup>

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<sup>80</sup> N.D.C.C. § 24-08-08. Bridge fund to be turned over to city.

<sup>81</sup> N.D.C.C. § 24-08-09. Cost of bridge limited.

<sup>82</sup> N.D.C.C. § 24-08-10. Counties or municipalities may assist in constructing bridge.

## Chapter 8 Supplemental Information

### Bridge Inspections, Load Ratings, and Scour Analyses

The following information was provided by the North Dakota Department of Transportation – Local Government Division:

#### Bridge Inspections

- When are bridge inspections needed?
  - Bridges are required to be inspected at least every 24-months. We have gotten approval from FHWA to inspect some Concrete Box Culverts every 48-months after the initial and 1<sup>st</sup> interval inspections if there are no issues. In some cases, bridges may be required to be inspected on a more frequent interval given the condition of the bridge.
  - Anytime a bridge is repaired or rehabbed – inspections need to occur prior to opening to traffic.
  - New or replaced bridges – inspections should occur prior to opening to traffic. New bridges will require a new bridge ID #. A request for a bridge ID should be made once the size of bridge/box culvert/culverts are known – anything with a span greater than 20 feet will require a new bridge ID, initial inspection, load rating and scour analysis. Refer to NDDOT Bridge Inspection Manual for the multiple pipe definition that may require a Bridge ID.
  - If there is a question of the safety or integrity of the bridge – it should be closed until it can be inspected. For example, if the bridge was damaged as a result of a flood, vehicle damage, overloaded vehicle(s) using the bridge, etc., or any noticeable changes in condition and other possible situations, the bridge should be closed until it can be inspected.
- What do I have to do to get a bridge inspection completed?
  - Regular bridge inspections are scheduled so those occur without any notification from the owner.
  - If there is a condition or concern as mentioned above, you will need to do the following:
    - Fill out a “Bridge Inspection Notification” form

#### **Cross-reference: See Chapter 8 Supplemental Information – Structure Inspection Notification**

- Attach detailed plans, photos, documentation, etc., and other repair information to determine what was done. Document during the

repair or rehab as well and submit that documentation. The more documentation, the better so the inspector and load rater understand what was done.

- If I need to get a bridge inspected, who do I contact or send the information to?
  - Send all information to the North Dakota Department of Transportation – Local Government Division. They information will be forwarded to the appropriate NDDOT staff for review. The information can also be sent to the inspectors or others as needed.
- For more information, see the NDDOT Bridge Inspection Manual.<sup>83</sup>

## Bridge Load Rating

- When does a bridge need to be load rated?
  - Several conditions require a bridge to be load rated:
    - A new bridge
    - Repaired (depending on repair)
    - Rehabbed
    - Damaged bridge
    - FHWA requirements may change and require a new load rating
    - Adding or removing overburden
- Who does the load rating?
  - New bridges – The owner will be responsible for completing the load rating. The load rating will usually be done by the designer after shop drawings are approved, but before opening the bridge to traffic.
  - Existing bridges – NDDOT has hired a consultant to complete the ratings along with the inspections this cycle.
  - Rehabbed bridges – If a bridge is getting rehabbed, the owner will be responsible for load rating.
  - Repaired, damaged, etc. – This will depend on when this has occurred and whether or not the load rating has been completed by the consultant NDDOT has hired. Load rating may be completed by the consultant NDDOT has hired or it may be completed by NDDOT staff.
  - After the initial load rating on new or existing bridges submitted by the owner’s designer or NDDOT’s consultant, respectively, it is anticipated at this time that NDDOT would take care of future load ratings due to changes in FHWA requirements, damages, change in condition, repairs, etc.
- What are the requirements for load rating?
  - The NDDOT Load Rating Manual provides detailed information on requirements for load rating.<sup>84</sup>
- What are the requirements for vertical clearance?
  - From the NDDOT design manual, “minimum vertical clearance on grade separations shall be 16 feet 6 inches.” Anything less than 16 feet 6 inches

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<sup>83</sup> North Dakota Department of Transportation, *NDDOT Bridge Inspection Manual* (Mar, 29, 2021).

<sup>84</sup> NDDOT Load Rating Manual

should be signed. Legal height of vehicles is 14 feet unless otherwise permitted. Implements of husbandry have some exceptions.

- Who do I submit the report, summary sheet and BrR (AASHTOWare Bridge Rating software) model to if I am required to do the load rating?
  - Send all information to the North Dakota Department of Transportation – Local Government Division. The information will be forwarded to the appropriate NDDOT staff for review.

## Scour Analysis

- When do I need to do a scour analysis?
  - A scour analysis is required for any bridge (not culverts) that is new or where the substructure was replaced. However, with any stream crossing replacement, a hydraulic analysis is required to be completed by the ND Administrative Code 89-14-01.<sup>85</sup>
- When should it be submitted to NDDOT?
  - The scour analysis should be submitted at the time of final plans, but could be submitted earlier with your hydraulic analysis.
- Why does a scour analysis need to be submitted?
  - FHWA requires a scour analysis to be completed and NDDOT needs the analysis to determine how to code the bridge for scour (see the NDDOT Inspection Manual for coding information).

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<sup>85</sup> See, N.D.A.C. §§ 89-14-01-01–89-14-01-06.

# NDDOT Bridge Load Rating Summary Form

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION BRIDGE LOAD RATING SUMMARY

EXISTING BRIDGE DATA															
Bridge ID				Year Built				Yr Recon:							
Bridge Location (NBI Item 009)				Design Loading											
Material Main (Item 043A)				Length of Bridge				ft							
Design Main (Item 043B)				Number of Spans											
BRIDGE CONDITION DATA								SOFTWARE							
Superstructure Rating Item 059 (Culvert Rating Item 062)								AASHTOWare BRT version 8.8.3							
Condition Factor															
BRIDGE DEAD LOAD DATA								SPECIFICATIONS							
Depth of Fill (Bund Structures)								AASHTO Manual for Bridge Evaluation, Third Edition, 2018 with 2019 Interim Revisions							
Utility/Additional Load								NDDOT Load Rating Manual							
Overlay Type															
Overlay Depth								in							
Overlay Depth Measured															
LIVE LOAD DATA															
AADTT (one-way)															
Emergency Vehicle Route <sup>1</sup>															
LRFR RATINGS															
Level	Vehicle	GVW (Tons)	Rating Factor	Rating Tons	Posting Tons <sup>2</sup>	Limit State	Mode	Member <sup>3</sup>	Span	LFR/ASD/ENGR JUDGEMENT RATINGS					
										Rating Factor	Rating Tons	Posting Tons <sup>4</sup>	Mode	Member <sup>5</sup>	Span
Design	HL-93 (INV)	36													
	HL-93 (OPR)	36													
	HS-20 (INV)	36													
	HS-20 (OPR)	36													
Legal <sup>6</sup>	Type 3	25													
	Type 3-3	40													
	Type 3S2	36													
	NRL	40													
	SU4	27													
	SU5	31													
	SU6	35													
	SU7	39													
	EV2	29													
	EV3	43													
Permit <sup>7,8</sup>	ND 1	53													
	ND 2	59													
Controlling Posting						N/A <sup>9</sup>									
Emergency Vehicle Posting						N/A <sup>9</sup>									
Remarks:															
<sup>1</sup> Within 1 mile of the interstate <sup>2</sup> Safe posting load based determined according to MBE equation 6A.8.3-1 <sup>3</sup> Identify the girder using the format G1, G2, etc. <sup>4</sup> Safe posting tons using LFD method are equal to the Operating Rating <sup>5</sup> Rated for operating level for LFR/ASD <sup>6</sup> Rated for unlimited crossings for LRFR <sup>7</sup> RF≥1.0, No Posting Required <sup>8</sup> No Posting required (Non EV route) <sup>9</sup> Controlling Posting < 3 tons, closure is recommended												Engineer Seal			
Load Rating Performed By/Firm:								Jon Doe, P.E. / ENGR INC.							
Initials/Date								JJD 1/1/2021							
Load Rating Checked By/Firm:															
Initials/Date															

Form Date: 05/19/2021 V. 7.1

# Structure Inspection Notification

## Structure Inspection Notification

County			
Structure Number			
Location			
Reason for inspection (new/rehabilitation/repair)			
Who performed the work?			
Was Structure previously closed? (y/n)		If so, when?	
Date work was completed		Currently posted for Load? (y/n)	
<b>Location of Work Performed</b>			
<i>Work performed on the following areas of the Structure</i>			
Deck (y/n)		Pier(s) (y/n)	
Beam/Girder (y/n)		Abutment(s) (y/n)	
Pier/Abutment Caps (y/n)		Channel (riprap) (y/n)	
Other			
<b>Was the work completed due to an Alert Code on the SI&amp;A sheet (y/N)</b>			
If yes, what Alert Code was repaired			
<b>What work was completed on this Structure</b>			
<b>Materials used (provide a description of the material properties, size, etc.)</b>			
<b>Did you attach any of the following information with these sheet?</b>			
Photos		Material Spec info	
Alert code		Plans	
Other			
<b>NDDOT use only</b>			
<b>Based on work performed, was an inspection required? (y/n)</b>			
If yes, date of inspection		By who	
If no, explain reason inspection wasn't required			

# Bridge and Bridge Length Box Culvert

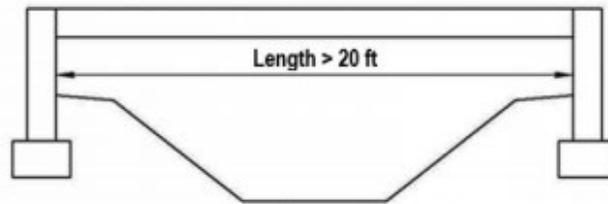


Figure 1: Example of NBI Bridge Length Bridge

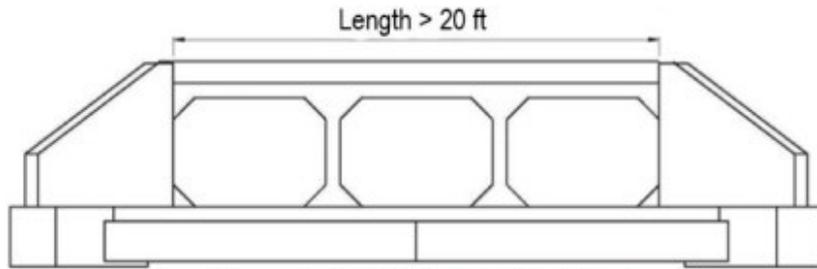


Figure 2: Example of NBI Bridge Length Box Culvert

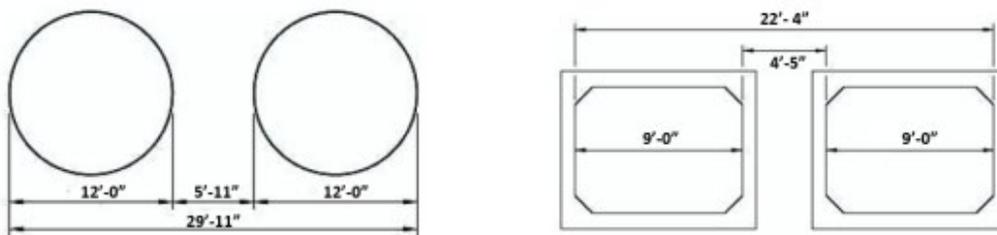
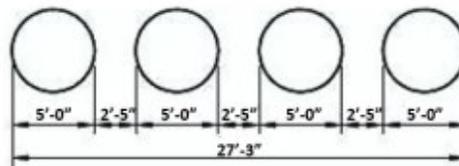


Figure 3: Examples of NBI Bridge Length Multiple Pipe

Source: North Dakota Department of Transportation, NDDOT Bridge Inspection Manual (March 29, 2021).

## Sample Policy: Walsh County Highway Department Culvert & Bridge Policy

“County” = Walsh County Highway Department

“Owner” = Township, landowner, Walsh County Water Board, other agency

- The County will provide culverts up to 40 feet in length, unless more length is required for proper slope, to an owner only when a culvert is deemed necessary, is 36” or larger, and is located in the County right-of-way.
  - A drainage permit is required for any culvert being installed in the County right-of-way or for any culvert where the drainage will lead to a Walsh County road ditch.
- The County will cost share with the Owner (70% County – 30% Owner) on a culvert up to 40 feet in length when a culvert is deemed necessary, is 36” or larger, and is located in the township right-of-way. Private drives are excluded from the cost share, as the owner is responsible for the full cost.
- The County will not cost share or provide culverts for any culvert less than 36” unless it is located in the County right-of-way and is deemed necessary.
  - The Owner is responsible to pay for any culverts that are not deemed necessary or are not located in the township or county right-of-way.
- Culverts can ONLY be ordered by a township official as the culvert will be billed to the township the culvert is being installed in. The township may then bill the owner.
- For culverts provided by the County, the owner is responsible for the installation and future maintenance of the culvert.
- The County shall maintain any bridge over a legal drain that is located on the township or county road system. The County will not bill any portion of the maintenance costs to the Water Board or the township.
- If the Water Board constructs a bridge over or in connection with a drain that is not located on the township or county road system, the Water Board shall bear the cost of construction and maintenance of the bridge. (Century Code 61-16.1-43)
- If the Water Board or Walsh County Highway Department constructs or re-constructs a bridge over or in connection with a drain that is located on the township or county road system, the cost shall be shared 60% by the drain or Water Board and 40% by the county. The cost share shall be figured after any cost share from the state. (Century Code 61-16.1-43)

- Any culvert that is to be constructed under a county or township road in conjunction with a new legal drain will be shared 60% by the drain or Water Board and 40% by the county. The cost share shall be figured after any cost share from the state. The Water Board will not bill any portion of the culvert cost to the township and the Water Board will pay for the installation costs of said culverts.
- Any time a bridge on the county bridge system is removed and replaced with culverts, the county may ask the township, in which the bridge is located, to cost share on the cost of the culverts and at that time an agreement will be signed to say which entity will maintain the culverts after they are installed.

This policy is at the discretion of the Superintendent of Highways and is also dependent on the County Highway budget. If there are no funds available, no culverts will be furnished by the County.

## Sample Policy: Walsh County Highway Department Bridge Replacement Policy

“County” = Walsh County Highway Department

“Owner” = Township, landowner, Walsh County Water Board, other agency

- Requests shall be made in writing to the Superintendent of Highways.
- The Superintendent of Highways shall determine if the replacement is warranted.
- If approved, the Superintendent of Highways shall size the replacement culvert appropriately.
- If approved, the Owner agrees to pay for 50% of the cost of the culvert.
- If approved, the Owner agrees to take ownership of the culvert and to maintain the road and culvert in the future.
  - In the future, if the culvert needs to be replaced, the County will cost share according to the Culvert and Bridge Policy at that time and if funds are available.
- If approved, the replacement will be placed on the schedule of the highway department and will be completed when time allows.
- If not approved, the Superintendent of Highways shall write to the Owner and disclose why the request is being denied.
  - Owner has the right to appeal the decision to the Walsh County Board of Commissioners.

This policy is at the discretion of the Superintendent of Highways and is also dependent on the County Highway budget. If there are no funds available, the project will not be completed until funds are available.

## Who is Responsible for a Road Culvert That is Holding Back Water in North Dakota



Property damage and crop loss caused by the ponding of water detained by undersized culverts is a common problem in North Dakota. The ND Department of Transportation, county commissioners, and township supervisors often find themselves both downstream and upstream of disputes over the management of water. Navigating the common law cases, statutes, and administrative codes that balance the interests of private property owners with the interest of the public as to drainage can be daunting.

On its face, it may seem that this issue falls within the jurisdiction of the local water resource district board. However, with limited exceptions, only those culverts that are located in and along legal assessment drains or projects (see N.D. Century Code chapters 61-16.1 & 61-21) are within the water board's jurisdiction. Setting aside those culverts associated with legal drains and projects, the Department of Transportation, county boards, and township boards, all acting as the road authority, have sole jurisdiction over and responsibility for culverts through their respective roadways.

As the road authority, highway department officials, commissioners, and supervisors are responsible for ensuring water is managed when roads are constructed or improved. Proper water management is necessary to accommodate frequent flooding; prevent erosion and sedimentation issues; address the concentration of flow on adjacent properties; and prevent damages to roads, bridges, and other infrastructure all while ensuring property rights respecting drainage are protected.

When a road is constructed, reconstructed, improved, or relocated, the impact of that construction on surface waters must be an important part of the road authority's design considerations. The road authority is responsible for roadside ditching to protect its roads from flooding and erosion, and to accommodate reasonable improvements to the flow of surface waters toward the roadway. Improper handling of changes in the right-of-way that impact drainage could land the road authority in litigation with affected

property owners. In some instances, the road will be located downstream of a natural watercourse or reasonable artificial drainage improvements. In such instances, the road authority must ensure it accommodates that level of drainage which is natural, plus some quantity of reasonable improvement upstream. In some instances, the road authority may find its roadway is enhancing or diverting drainage from upstream. In such instances, the road authority must ensure that any enhancement or diversion of waters downstream is reasonable. If the road authority obstructs, diverts, or enhances drainage in an unreasonable way, compensation from the road authority to the private landowner may be required.

Road authorities must place openings in roadways to permit surface water to escape in its natural course from higher lands to lower lands. The road authority must make proper and adequate provision for passage of waters that can reasonably be anticipated to approach the roadway based on past history, and all facts and circumstances reasonably available to the road authority. If a road does not reasonably accommodate the area's natural flows, the road authority could be responsible to pay a monetary judgment for property that is damaged, typically in a case that is rooted in a claim for "inverse condemnation."

Historically, courts would analyze the management of surface water between private property owners and road authorities under a standard of "reasonableness." The common-law standard of reasonableness provides little certainty respective of liability to adjacent landowners for a road authority designing and constructing its roadway.

In 1953, the state legislature enacted legislation now codified at N.D.C.C. § 24-03-06. In 1953, this statute required all highways constructed or reconstructed thereafter be "designed as to permit the waters running into such ditches to drain into coulees, rivers, and lakes according to the surface and terrain where such highway or highways are constructed **in accordance with scientific highway construction and engineering** so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands." S.L. 1953, ch. 177, § 58 (emphasis added). The "scientific highway construction and engineering" language provided the road authorities with some measure of what is reasonable.

Effective August 1, 1999, this statute was amended, replacing the phrase "in accordance with scientific highway construction and engineering" with the phrase "in accordance with the stream crossing standards prepared by the department [of transportation] and the state engineer." S.L. 1999, ch. 248, § 1. In effect, this amendment provided the road authorities with clarity as to the measure of reasonableness, and shifted the burden of the measure of reasonableness to the Department of Transportation and the state engineer, directing those entities to prepare stream crossing standards.

In response to the 1999 amendment, the Department of Transportation, in conjunction with the State Water Commission, developed North Dakota's stream crossing standards, which became effective May 1, 2001. These standards, found in Section 89-14-01 of the North Dakota Administrative Code,

require road authorities ensure every “stream crossing” (defined as “an opening to permit the flow of water under, adjacent to, or because of a highway”) is designed and constructed in such a way as to “avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands.”

The stream crossing standards require crossings be designed to withstand peak runoffs from flood events ranging from 10-year events to 50-year events, depending on the roadway. If the crossing is designed and constructed consistent with the applicable stream crossing standard, the North Dakota Century Code shields the responsible road authority from liability for any damages caused by water being detained by that crossing. It follows that if the crossing is undersized and out of compliance with the required stream crossing standard, the road authority may be liable for any damages caused by water being held back by the noncompliant crossing.

The stream crossing standards provide the road authority with objective certainty as to whether its crossing meets the proper measure of reasonableness, and provides additional statutory liability protection. Without the stream crossing standards, the road authority would still be required to protect the property rights of adjacent landowners, but would be required to do so under the much more tenuous and subjective common law standard of “reasonableness.”

While the local water board does not have authority or jurisdiction over these crossings, the water board does play a role in ensuring that the road authority is in compliance with the stream crossing standards. First, whenever a county or township plans to construct, reconstruct, or modify a crossing, the county or township is required to provide the local water board with thirty days notice prior to construction. See N.D.C.C. § 24-06-34. The board may then provide comments to the county or township to ensure compliance with the stream crossing standards. Second, if a landowner believes that a crossing is undersized and out of compliance with the stream crossing standards, the landowner can request the local water board obtain a stream crossing determination from the Office of the State Engineer. The State Engineer will then determine the discharge interval (measured in cubic feet per second) required at the crossing to comply with the applicable stream crossing standard. Once the required discharge interval has been determined, an engineer can properly size the culvert or culverts necessary to ensure that the road authority has complied with the stream crossing standards and has shielded itself from liability.

If an undersized crossing is holding back water and causing damage to your property and you would like to discuss your options, please contact one of our environmental law attorneys.

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# STREAM CROSSINGS

## FACTS & FAQs

### WHAT IS A...

#### STREAM CROSSING



According to North Dakota Administrative Code (N.D.A.C.) section 89-14-01-02, a "stream crossing means an opening to permit the flow of water under, adjacent to, or because of a highway."

#### HIGHWAY



According to North Dakota Century Code (N.D.C.C.) section 24-01-01.1(22), a "highway, street, or road" is "a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a 'road,' while a highway in an urban area may be called a 'street.'"

#### STREAM CROSSING DETERMINATION



A stream crossing determination is a formal determination of flow (i.e., discharge) provided by the Department of Water Resources (DWR) upon request from an eligible party under N.D.C.C. section 24-03-08.

# WHO, WHAT, WHERE'S ON STREAM CROSSINGS



## WHO HAS JURISDICTION OVER STREAM CROSSINGS?

Generally, the road authority has jurisdiction over culverts, bridges, etc. in their roads, whether that be the township, county, municipal, or state road authority. Water resource districts only have authority over culverts needed to accommodate a “drain.” Jurisdiction has been litigated in the North Dakota Supreme Court in several cases. A good resource for discussion on this topic is the “Roadways” section of the North Dakota Water Managers Handbook, which is available from the [North Dakota Water Resource District Association](#).

## WHERE CAN I FIND THE APPLICABLE LAWS REGARDING STREAM CROSSINGS?

N.D.C.C. titles 24 and 61 include the laws directly or indirectly relating to stream crossings, depending on the specific issue. The specific laws generally governing stream crossing determinations include:

- N.D.C.C. section 24-03-06
- N.D.C.C. section 24-03-08
- N.D.C.C. section 24-06-26.1
- N.D.A.C. article 89-14

## WHAT ARE “STREAM CROSSING STANDARDS?”

“Stream Crossing Standards” are minimum design standards for road crossings that were developed by the DWR and N.D. Department of Transportation (NDDOT) to further refine the requirements of N.D.C.C. section 24-03-08. In short, Stream Crossing Standards are the minimum design standards for a stream crossing to convey a standard recurrence interval (e.g., 10-year, 15-year, 25-year, and 50-year) flow rate (e.g., cubic feet per second). The “minimum design standards” for a crossing are located in N.D.A.C. chapter 89-14-01.

## WHAT IS THE PURPOSE OF STREAM CROSSING STANDARDS?

Stream Crossing Standards were developed in the early 2000s through a cooperative effort between the DWR and NDDOT to ensure reasonable road design requirements for all road authorities regarding stream crossings. Stream Crossing Standards attempted to balance upstream, downstream, and road authority interests with proper roadway design. Stream Crossing Standards were also developed to provide liability protection for road authorities, their contractors, subcontractors, or agents, and any individual firm, corporation, or limited liability company that installs stream crossings that comply with Stream Crossing Standards.

## WHEN SHOULD A STREAM CROSSING COMPLY WITH STREAM CROSSING STANDARDS?

Crossings installed before Stream Crossing Standards were adopted are considered “grandfathered” or “legacy” crossings if their construction pre-dated the Stream Crossing Standards design requirements. However, when a crossing is constructed or reconstructed, or when a stream crossing determination is made by the DWR, the new crossing must comply with Stream Crossing Standards. Compliance with Stream Crossing Standards affords a road authority liability protection as described in N.D.C.C. section 24-03-08 and N.D.A.C. section 89-14-01-01. However, enforcing compliance with Stream Crossing Standards is outside of the DWR’s jurisdiction.

## HOW DO I DETERMINE A CROSSING SIZE?

The crossing must be designed and installed under the road authority’s supervision to convey the design flow rate within the allowable headwater limitations provided in the Stream Crossing Standards. The crossing design can be highly dependent on the site location and topography, the road authority’s budget, availability of materials and contractors, etc.



# DWR STREAM CROSSING DETERMINATIONS

## WHO CAN REQUEST A “STREAM CROSSING DETERMINATION” AND HOW?

According to N.D.C.C. section 24-03-08, the following parties may request a stream crossing determination:

- Board of county commissioners
- Township supervisors
- A water resource board
- A petition of the majority of landowners of the area affected

The request can be submitted to the DWR by filling out a [Stream Crossing Determination Request form \(SFN 61885\)](#).

## WHAT INFORMATION WILL I GET IF I REQUEST AN DWR STREAM CROSSING DETERMINATION?

The requesting party will receive “the design discharge that the crossing is required to carry to meet the stream crossing standards” (see N.D.A.C. section 24-03-08). In other words, the requesting party will receive the minimum flow rate required at the crossing in question and for the particular recurrence interval required in Stream Crossing Standards.

The road authority shall install a culvert or bridge of sufficient capacity upon notification of the stream crossing determination made by the DWR, as described in N.D.C.C. section 24-03-08. The DWR does not recommend or suggest the size or shape opening necessary to meet “sufficient capacity” to convey the identified minimum flow. This is a task left to the road authority.

## HOW DOES THE DWR MAKE A DETERMINATION?

DWR staff will assess the location and determine the best engineering method to calculate the minimum flow rate. Typically, the acceptable engineering practice is to utilize the U.S. Geological Survey’s regression equations, which are summarized in [USGS’s Scientific Investigations Report 2015-5096](#). DWR staff will use these equations in combination with analyzing the most recent topographic data, typically GIS software and LiDAR data, to delineate a drainage area contributing to the crossing and develop the variables needed for the equations. The DWR

will verify culvert locations via aerial photography investigation. Typically, the DWR will not make a site visit to verify culvert locations unless it would make a substantial difference in the DWR’s determination. DWR staff will also identify non-contributing areas from several data sources and decide whether the DWR areas should be included in the drainage area.

## USGS STREAM STATS

DWR staff often use [USGS’s Stream Stats](#) when feasible to do an initial approximation of the drainage area. This tool is publicly available online. While this tool provides an approximation of the drainage area and anticipated flow rate, the DWR does not recommend usage of this tool for formal stream crossing studies or determinations.

## OTHER METHODS

There are limitations to using the regression equations to determine a flow rate, so DWR staff may use other hydrology methods to verify the regression equations’ results or determine a flow rate.

## IS A ROAD CROSSING EVER CONSIDERED A “DAM?”

Generally, the Department of Water Resources does not regulate highways or stream crossings as “dams” as long as the crossing meets Stream Crossing Standards. However, road authorities should properly place culverts at grade or channel bottom to ensure the crossing acts as an “opening to permit the flow of water” and does not otherwise impound water.

## WHAT ABOUT PRIVATE ROAD STREAM CROSSINGS?

Private road stream crossings are not subject to Stream Crossing Standards. However, any approach crossing within a road right of way must meet Stream Crossing Standards. Additionally, it is recommended that all private roads comply with Stream Crossing Standards so that the road does not act as a dam, as defined in N.D.A.C. section 89-08-01-01, or as an obstruction, as defined in N.D. Century Code section 61-16.1-51.

## WHAT IF I DISAGREE WITH AN DWR STREAM CROSSING DETERMINATION?

DWR stream crossing determinations are considered an “action or decision” by DWR as described in N.D.C.C. section 61-03-22. Any person aggrieved by a stream crossing determination has 30 days to request a DWR hearing on the matter.



## OTHER IMPORTANT CONSIDERATIONS

- The DWR does not provide culvert or bridge sizing services.
- The DWR hydrologic review process incorporates NDDOT's approach to determinations, which takes a conservative regional approach.
- Site-specific detailed hydraulics modeling and review is beyond the scope of the DWR's determination services.
- Compliance with Stream Crossing Standards provides liability protection to the road authority and others (see N.D.C.C. sections 24-03-06, 24-03-08, and 24-06-26.1). Non-compliance may remove this liability protection.
- Nothing contained in the Stream Crossing Standards is intended to restrict a road authority from providing greater flow capacity in a crossing beyond minimum standards.
- If multiple crossings or an entire watershed is being considered, it may be more beneficial and economical to seek the assistance of a consulting engineer with experience in water resources engineering. They will be able to determine both the flow rate and crossing design necessary to comply with Stream Crossing Standards.
- If requesting a stream crossing determination for a NDDOT stream crossing, the DWR recommends contacting the applicable [NDDOT District Engineer](#) before submitting stream crossing request to the DWR.
- Road authorities may request a deviation from Stream Crossing Standards, but such a deviation must be approved by both the DWR and NDDOT. NDDOT has deviation authority over Stream Crossing Standards if it "determines it is appropriate to do so and the crossings are designed under scientific highway construction and engineering standards" (see N.D.A.C. section 89-14-01-06).

### MORE INFORMATION

Contact the DWR at (701) 328-4956 or by email at [dwrregpermits@nd.gov](mailto:dwrregpermits@nd.gov).

More information is available on the DWR's "Other Regulations" webpage [website](#).



**STREAM CROSSING DETERMINATION REQUEST**  
 NORTH DAKOTA DEPARTMENT OF WATER RESOURCES  
 REGULATORY DIVISION  
 SFN 61885 (9/2022)

Crossing Type					
<input type="checkbox"/> City / Municipal Road / Urban		<input type="checkbox"/> County Road / Off System		<input type="checkbox"/> County Road / Major Collector	
<input type="checkbox"/> Township Road		<input type="checkbox"/> State Highway			
Road Authority of Jurisdiction (e.g., Barnes County Highway Department, Dwight Township, etc.)					
Have you contacted the Road Authority regarding this request? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable					
Road Description (e.g., County Hwy No. 1, 110th Ave NE, etc.)					
Request Location					
Upstream	¼	¼	Section	Township	Range
Downstream	¼	¼	Section	Township	Range
<b>MUST ATTACH MAP TO HELP INDICATE LOCATION(S) REQUESTED.</b> <i>If multiple stream crossings are requested, please provide location details on a separate sheet(s).</i>					
Anticipated construction start date of stream crossing, if known?					
Requestor's Certification					
<i>I am requesting a stream crossing determination from the Department of Water Resources. I understand the requirements of North Dakota Century Code sections 24-03-06 and 24-03-08 and that upon receipt of the Department of Water Resources stream crossing determination, the stream crossing must be designed and installed, at minimum, according to the Department of Water Resources discharge (i.e., flow rate) provided the requirements in sections 24-03-06 and 24-03-08 and the requirements in North Dakota Administrative Code article 89-14. Additionally, I acknowledge that my request is accurately described and depicted as I intended. My signature below acknowledges that I have read and agree to these statements.</i>					
Requestor Affiliation					
<input type="checkbox"/> Petition by Majority of Landowners of the Area Affected		<input type="checkbox"/> Township Supervisors			
<input type="checkbox"/> Board of County Commissioners		<input type="checkbox"/> Water Resource District			
Requestor Name (Please list organization name; if petition, please provide separate sheets)					
Address			City	State	ZIP Code
Telephone Number			Email Address		
Requestor Signature					Date

*Additional Sheets May Be Attached If Necessary*

If you need any assistance, please contact the Regulatory Division at (701) 328-4956.

This request must be submitted to  
 North Dakota Department of Water Resources

**Mail** | 900 East Boulevard Ave, Bismarck ND 58505

**Email** | [dwrregpermits@nd.gov](mailto:dwrregpermits@nd.gov)

**Fax** | (701) 328-3696



**STREAM CROSSING DETERMINATION REQUEST**  
 NORTH DAKOTA DEPARTMENT OF WATER RESOURCES  
 REGULATORY DIVISION  
 SFN 61885 (9/2022)

Crossing Type					
<input type="checkbox"/> City / Municipal Road / Urban		<input type="checkbox"/> County Road / Off System		<input type="checkbox"/> County Road / Major Collector	
<input type="checkbox"/> Township Road		<input type="checkbox"/> State Highway			
Road Authority of Jurisdiction (e.g., Barnes County Highway Department, Dwight Township, etc.)					
Have you contacted the Road Authority regarding this request? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable					
Road Description (e.g., County Hwy No. 1, 110th Ave NE, etc.)					
Request Location					
Upstream	¼	¼	Section	Township	Range
Downstream	¼	¼	Section	Township	Range
<b>MUST ATTACH MAP TO HELP INDICATE LOCATION(S) REQUESTED.</b> <i>If multiple stream crossings are requested, please provide location details on a separate sheet(s).</i>					
Anticipated construction start date of stream crossing, if known?					
Requestor's Certification					
<p><i>I am requesting a stream crossing determination from the Department of Water Resources. I understand the requirements of North Dakota Century Code sections 24-03-06 and 24-03-08 and that upon receipt of the Department of Water Resources stream crossing determination, the stream crossing must be designed and installed, at minimum, according to the Department of Water Resources discharge (i.e., flow rate) provided the requirements in sections 24-03-06 and 24-03-08 and the requirements in North Dakota Administrative Code article 89-14. Additionally, I acknowledge that my request is accurately described and depicted as I intended. My signature below acknowledges that I have read and agree to these statements.</i></p>					
Requestor Affiliation					
<input type="checkbox"/> Petition by Majority of Landowners of the Area Affected		<input type="checkbox"/> Township Supervisors			
<input type="checkbox"/> Board of County Commissioners		<input type="checkbox"/> Water Resource District			
Requestor Name (Please list organization name; if petition, please provide separate sheets)					
Address			City	State	ZIP Code
Telephone Number			Email Address		
Requestor Signature					Date

*Additional Sheets May Be Attached If Necessary*

If you need any assistance, please contact the Regulatory Division at (701) 328-4956.

This request must be submitted to  
 North Dakota Department of Water Resources  
**Mail** | 900 East Boulevard Ave, Bismarck ND 58505  
**Email** | [dwrregpermits@nd.gov](mailto:dwrregpermits@nd.gov)  
**Fax** | (701) 328-3696

## OTHER POTENTIAL LOCAL, STATE, AND FEDERAL WATER REGULATIONS AND CONSIDERATIONS

The North Dakota Department of Water Resources (DWR) manages several areas of regulatory requirements regarding North Dakota's water resources. However, the DWR's regulatory requirements are only a subset of the regulatory requirements or considerations a project may have with respect to water resources regulation and management. Below is a list developed by the DWR of known regulatory considerations for water resource projects. This list is not intended to be all-inclusive and is only provided as general guidance.

### STATE AGENCIES

#### Department of Water Resources (DWR)

- Construction permitting for dams, dikes, and other water control devices
- Drainage permitting for surface drainage projects
- Permitting for projects within the ordinary high water mark of North Dakota's navigable rivers and lakes (i.e., sovereign lands)
- Water use permitting for consumptive and other water uses
- » Contact DWR at (701) 328-2750 or [dwr@nd.gov](mailto:dwr@nd.gov)
- » Website: <https://www.dwr.nd.gov/>

#### North Dakota Department of Environmental Quality (DEQ)

- 401 permitting and other water quality regulations and considerations
- » Contact DEQ's Water Quality Division at (701) 328-5210 or [deq@nd.gov](mailto:deq@nd.gov)
- » Website: <https://deq.nd.gov/WQ/>

#### North Dakota Department of Transportation (NDDOT)

- Authority and permitting for water or drainage related activities within NDDOT rights-of-way
- » Website: <https://www.dot.nd.gov/district/index.htm>

#### North Dakota Game and Fish (NDG&F)

- Invasive species and threatened and endangered species considerations
- » Contact NDG&F's Conservation and Communications Division at (701) 328-6311
- » Website: <https://gf.nd.gov/wildlife>

### LOCAL ENTITIES OR POLITICAL SUBDIVISIONS

#### Water Resource Districts' Authorities Over Water Management

- » Website: [https://www.dwr.nd.gov/info\\_edu/water\\_links/nd\\_resource\\_boards.html](https://www.dwr.nd.gov/info_edu/water_links/nd_resource_boards.html)

#### Floodplain Management Regulations and Permitting

- » Website: [https://www.dwr.nd.gov/reg\\_approp/FloodplainManagement/](https://www.dwr.nd.gov/reg_approp/FloodplainManagement/)

#### Zoning Regulations and Permitting by Political Subdivisions (i.e., county, township, city)

#### Road Right-of-Way Regulations and Permissions by Political Subdivisions

### FEDERAL AGENCIES

#### U.S. Army Corps of Engineers North Dakota Regulatory Office (USACE ND)

- 404 permitting and authorizations for placement of fill in Waters of the United States
- » Contact USACE ND at (701) 255-0015 or [CENWO-OD-RND@usace.army.mil](mailto:CENWO-OD-RND@usace.army.mil)
- » Website: <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/North-Dakota/>

#### U.S. Fish and Wildlife Service (USFWS)

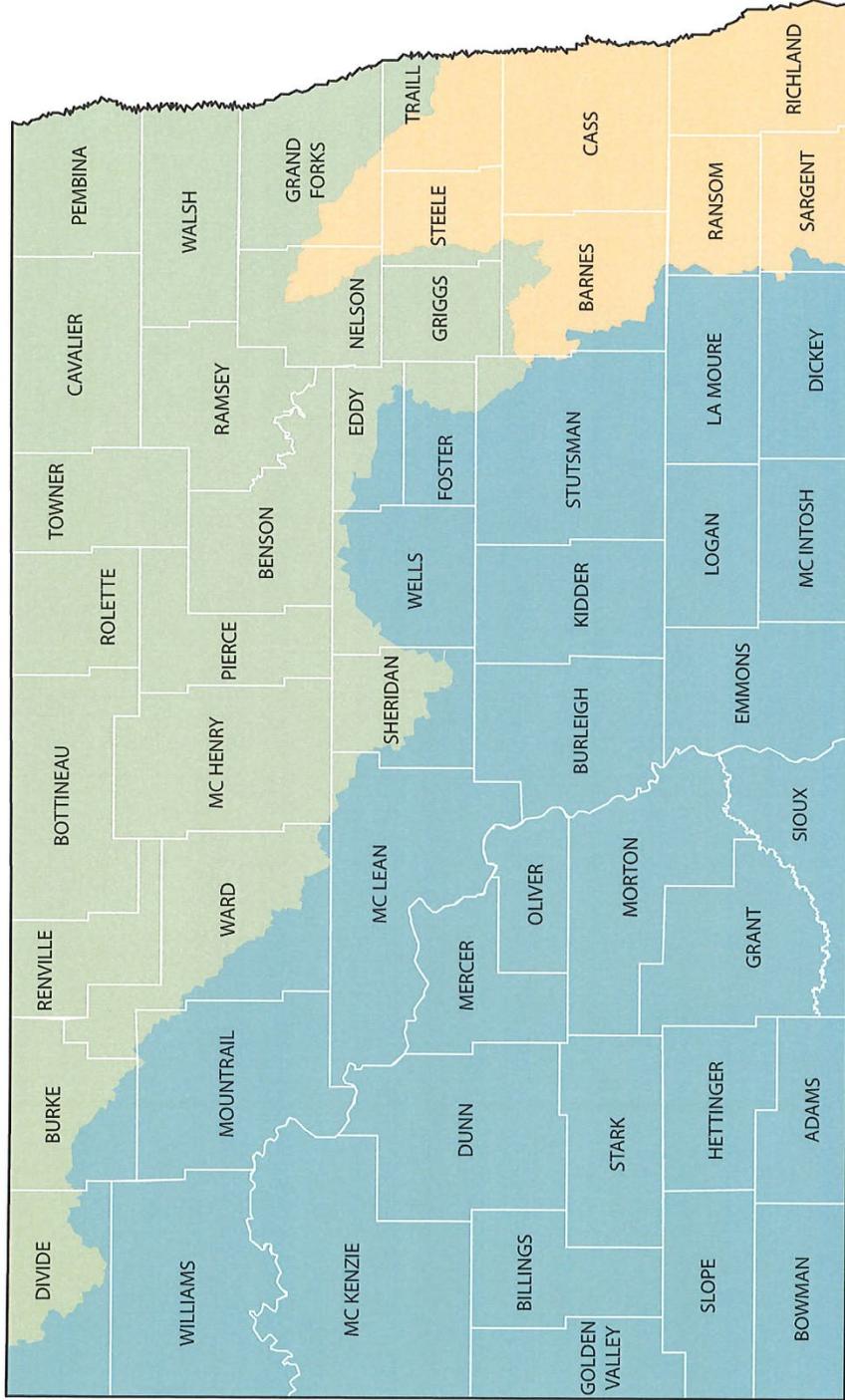
- Wetland easement regulations and considerations
- Federally listed Threatened and Endangered species considerations
- » Contact USFWS at (701) 250-4481 or [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov)
- » Website: <https://www.fws.gov/northdakotafieldoffice/>

#### National Resource Conservation Service (NRCS)

- Farm program compliance regulations and considerations
- » Contact NRCS State office at (701) 530-2000
- » Local NRCS: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/nd/contact/local/>
- » Website: <https://www.nrcs.usda.gov/wps/portal/nrcs/site/nd/home/>

# REGULATORY ENGINEER PROJECT AREAS

Regulatory Division/Engineering & Permitting Section - (701) 328-2752



June 2022

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## **CHAPTER 9 - GRADING AND DRAINAGE**

### **1. Roads and Approaches Intersecting with County or Township Roads**

All roads and approaches constructed after July 1, 1973, which intersect with county or township roads must have a graded inslope at the place of intersection of at least a 3:1 ratio, thus permitting vehicles, which may accidentally leave any county road and strike the inslope, a reasonably safe access over the road or approach.<sup>86</sup>

### **2. Graded Inslope Requirement – Exceptions**

The above requirement (Section 9-1) as to a graded inslope of all roads and approaches does not apply:

- A. Where the governing body having authority over such roads and approaches exempts such roads and approaches due to factors causing an unduly prohibitive cost of compliance.
- B. To roads and approaches of the state highway system which intersect county roads.
- C. To roads and approaches which intersect county roads constructed in compliance with requirements of the federal-aid system.<sup>87</sup>

### **3. Culverts - County to Furnish and Pay for Culverts on Township Roads**

The county shall furnish and install, at county expense, such culverts as are necessary

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<sup>86</sup> N.D.C.C. § 24-05-21. Roads and approaches intersecting with county or township roads – requirement. For more information on county design standards, see [County Township Design Standards \(ndltap.org\)](http://ndltap.org).

<sup>87</sup> N.D.C.C. § 24-05-22. Graded inslope requirement – exceptions.

to be used along township roads at points of intersection with established drains.<sup>88</sup>

**Cross-Reference: See Chapter 9 – Supplemental Information, Township Maintenance Agreement**

**Chapter 11, Section 1(A) – Warning Signs of Road Construction**

**4. Ditches**

All highways constructed or reconstructed by the department, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into the ditches to drain into coulees, rivers, and lakes according to the surface and terrain where the highway or highways are constructed in accordance with the stream crossing standards prepared by the department and the department of water resources so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands.

In the construction of highways, the natural flow and drainage of surface waters to the extent required to meet the stream crossing standards prepared by the department and the department of water resources may not be obstructed, but the water must be permitted to follow the natural course according to the surface and terrain of the particular terrain.

The department, county, township, their contractors, subcontractors, or agents, or any individual firm, corporation, or limited liability company is not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing

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<sup>88</sup> [N.D.C.C. § 24-08-02.1. County to furnish and pay for culverts on township roads.](#)

standards prepared by the department and the department of water resources.<sup>89</sup>

**Cross-Reference: See Chapter 6, Section 1(A) – Purchase or Condemnation of Right of Way**

**5. County and Township Road Grades and Ditches to Be Back Sloped**

All county roads shall be constructed with back sloped grades and ditches.

Such grades and ditches shall be sloped to a sufficient degree to permit farm implements used for cutting and gathering hay to operate thereon, and such grades and ditches shall be cleared of all stones or other obstructions that would hinder the operation of such implements.<sup>90</sup>

**Cross-Reference: See Chapter 14, Section 1 – Noxious weeds**

**6. County Must Plant Grass on Grades and Ditches**

Upon completion of such newly constructed or reconstructed roads, the governing body having authority over such roads shall plant grass upon the back slopes of the grades and ditches. The grass or hay growing upon or within the right of way of such roads may be cut for hay by any owner or tenant of lands adjoining the right of way.<sup>91</sup>

**Cross-Reference: See Chapter 14, Section 1 – Noxious Weeds; and Section 4(B) – Haying of No-Mow or Managed-Mow Areas**

**7. Pest Control on Road Right of Ways, Including Back Slopes and Ditches**

The governing body of a county may control, or cause to be controlled, grasshoppers

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<sup>89</sup> N.D.C.C. § 24-03-06. Method of construction of highway ditches.

<sup>90</sup> N.D.C.C. § 24-05-20. County and township roads grade and ditches to be back sloped – planting of grass – plant pest control.

<sup>91</sup> N.D.C.C. § 24-05-20. County and township roads grade and ditches to be back sloped – planting of grass – plant pest control.

and other plant pests which are infesting vegetation in the road rights of way under their authority. Only pesticides labeled for use on forage crops may be used so that the forage may be cut and used for hay. At least three days prior to treatment, the governing body of the county shall provide written notice to all of the landowners or tenants, or both, of all land adjacent to the rights of way to be treated. The notice must include the approximate date of treatment, the name of the pesticide that will be used, and any restrictions on the harvest and use of the treated forage. If a landowner or occupant of land adjacent to the road right of way to be treated gives notice opposing the treatment to the governing body of the county prior to the treatment date, that section of the right of way must be excluded from treatment. The landowner or tenant of the land is responsible for clearly marking or flagging the section of the right of way to be excluded from treatment.

The governing body of a county may enter into agreements with the department of transportation for the purpose of controlling grasshoppers and other plant pests in state highway system rights of way. The governing body of a township may enter into agreements with the governing body of a county for controlling grasshoppers and other plant pests in rights of way of the county road system.

The governing body of a county may use the county emergency fund to pay for the cost of control in rights of way of the county road system. The county emergency fund may also be used to cost share with townships for control expenses in township rights of way.<sup>92</sup>

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<sup>92</sup> [N.D.C.C. § 24-05-20. County and township roads grade and ditches to be back sloped – planting of grass – plant pest control.](#)

## 8. Encroachment Upon County Roads, Ditches, Approaches

A landowner who encroaches upon a county road or its ditches or approaches must be given notice by the board of commissioners for that county that the encroachment has been discovered. If the landowner fails to remedy the encroachment within 20 days after receiving the notice, that landowner is liable to the county for damages resulting from the encroachment. The board of commissioners for that county shall issue to the landowner written notice of the amount of damages determined to be a result of the encroachment. If the landowner fails to pay the county for the damages, the expense of the repair must be charged to the land or the landowner. The expenses charged become a part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes are collected and placed to the credit of the county that incurred the expense of the repair.<sup>93</sup>

Whether the location of a mailbox is a hazard to vehicle traffic is not for the court, but is an issue to be decided by officials having jurisdiction over the road.<sup>94</sup>

## 9. Wetlands and Surface Water - Determinations of Surface Water Flow and Appropriate Highway Construction

Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the department of water resources, upon petition of the majority of landowners of the area affected or at the request of the

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<sup>93</sup> N.D.C.C. § 24-05-23. Encroachment upon county roads, ditches, approaches – liability for damages.

<sup>94</sup> Gajewski v. Taylor, 1995 ND, 536 N.W.2d 360.

board of county commissioners or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the department of water resources.

When the determination has been made by the department of water resources, the department of transportation, or the board of county commissioners, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The county is not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the department of water resources.<sup>95</sup>

**Cross-Reference: See Chapter 8, Section 1 – Construction of Bridges by Board of County Commissioners**

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<sup>95</sup> [N.D.C.C. § 24-03-08. Determinations of surface water flow and appropriate highway construction.](#)

Chapter 9 – Supplemental Information

Township Maintenance Agreement

**TOWNSHIP MAINTENANCE AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by and between the County of Kittson and Township of \_\_\_\_\_.

1. It is agreed between the parties hereto that regular maintenance work including blading, snow plowing, spraying and signing along township roads will be performed by Kittson County at township request and direction.

2. Kittson County agrees to furnish equipment and manpower for \_\_\_\_\_ Township, Kittson County, Minnesota in order to provide service and to complete the work in an efficient manner.

3. \_\_\_\_\_ Township agrees to pay Kittson County for the labor, materials, spraying chemicals and equipment used for said maintenance work at the usual and regular rate upon invoices submitted to the township by Kittson County. All bills are due in 30 days.

4. \_\_\_\_\_ Township agrees to provide maps showing which routes are to be bladed, snow plowed or sprayed annually in order to help insure the safety of the traveling motorist on these public township roads.

This Agreement is for a period of one (1) year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and will renew automatically for successive one (1) year terms until terminated as provided herein. Either party may terminate this agreement by thirty (30) days written notice; the obligations pursuant to paragraphs 1 and 4 of the Agreement shall be continuing and shall survive the termination of the Agreement.

\_\_\_\_\_ Township

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Kittson County:

By \_\_\_\_\_

County Highway Engineer

Date \_\_\_\_\_

Original – County Highway Engineer  
Copy – Township Board of Supervisors



## **CHAPTER 10 – CATTLE GUARDS**

### **1. Cattle Guards - How Permitted**

Whenever the erection of cattle guards is necessary to complete an enclosure which includes land on both sides of any highway in the state, except a highway which has been designated as part of the state highway system, or to cross a section line, the board of county commissioners, if the cattle guard is to be erected across a county road or a section line subject to jurisdiction of the board of county commissioners, may issue permission to any person, firm, or corporation to erect a cattle guard and gateway across the highway or section line upon the conditions prescribed below (Section 10-2).<sup>96</sup>

### **2. Construction and Maintenance of Cattle Guards**

Before any cattle guard and gateway may be erected across any highway or section line, the board of county commissioners shall approve written specifications of the cattle guard and gateway. Specifications approved by the board of county commissioners must be filed with the county auditor and specifications approved by the board of township supervisors must be filed with the township clerk. The specifications must include requirements for warning signs to be placed approximately 300 feet from and

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<sup>96</sup> [N.D.C.C. § 24-10-01. Cattle guards – how permitted.](#)

plainly visible to people approaching the cattle guard upon the highway or section line.

**Cross-Reference: See Chapter 11, Section 3 – Cattle Guard Warning Signs**

A cattle guard must be so constructed as to permit the passage of motor vehicles through and over the same. No cattle guard may be erected upon any highway or section line unless there also is provided adjacent thereto an ample gateway in which must be erected a gate which may be opened easily and closed by the public.<sup>97</sup> State legislature left precise size of gateways and cattle guards erected upon highways or section lines as a matter to be determined by the board of township supervisors.<sup>98</sup>

The person who applied for permission to erect the cattle guard shall maintain the cattle guard and gateway unless application is otherwise assigned. Within the limits of an enclosure so completed by authorized cattle guards erected in accordance with such specifications, livestock must be permitted to run at large without liability for being upon the highway or section line.<sup>99</sup>

**3. Cattle Guards May Be Ordered Removed**

The board having authority to permit the erection of a cattle guard and gateway across any highway or section line also has authority to cause the same to be removed, if the same is not kept in repair, or if in the judgment of said board, it becomes necessary to remove the cattle guard and gateway for the purpose of improving the highway or

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<sup>97</sup> N.D.C.C. § 24-10-02. Cattle guards – construction – maintenance – effect; See also, N.D.C.C. § 24-10-03. Leaving gates open – penalty (providing that, “Any person who opens and fails to close promptly any gate provided for in this chapter is guilty of an infraction.”).

<sup>98</sup> Ames v. Rose Tp. Bd. Of Tp. Supervisors, 502 N.W.2d 845, 850-51 (N.D. 1993).

<sup>99</sup> N.D.C.C. § 24-10-02. Cattle guards – construction - maintenance – effect.

section line.

If the board determines any cattle guard and gateway should be removed under this section, written notice by registered or certified mail must be sent to the occupant of the enclosure, notifying the occupant to effect such removal within 30 days from the date of mailing. Where the notice is not complied with, the board, upon expiration of the period, is authorized to remove or destroy the cattle guard and gateway.<sup>100</sup>

#### **4. County and Townships Exercise Joint Authority**

If the cattle guard and gateway is sought to be erected upon any township or county line, the governing boards of the adjacent territory shall exercise joint authority and jurisdiction and the proceedings required must be taken in both jurisdictions.<sup>101</sup>

#### **5. Cattle Ways Under Highways**

Upon application to the board of county commissioners of any county by any person for permission to construct a cattle way under any public road, such board may grant the same upon condition that the cattle way may not interfere with the public travel, that the grade of the road over the cattle way may not exceed 1 foot in 10 feet, and that it may not obstruct watering at any running stream.

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<sup>100</sup> N.D.C.C. § 24-10-04. Cattle guards may be ordered removed.

<sup>101</sup> N.D.C.C. § 24-10-05. County and townships exercise joint authority.

**Cross-References: See Chapter 9, Section 4 – Grading and Drainage of Ditches, and Section 9 – Wetlands and Surface Water – Determinations of Surface Water Flow and Appropriate Highway Construction**

The applicant shall construct the same at his own expense and is responsible for all damages that may arise from its construction or from failure to keep the same in repair.<sup>102</sup>

**6. Failure to Keep Cattle Way in Repair**

If the person on whose land a cattle way is constructed fails to keep the cattle way in repair, the overseer of highways shall make all necessary repairs, and shall charge the expenses to the person who requested the way be constructed or to that person's assignee. Upon refusal by that person to pay, the county in which the cattle way is situated shall recover the expenses in an action brought in the name of the county and the state's attorney shall prosecute the action. The money, when collected, must be expended on improving or repairing the public roads in the road district where the cattle way is constructed.<sup>103</sup>

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<sup>102</sup> [N.D.C.C. § 24-10-06. Cattle ways under highways.](#)

<sup>103</sup> [N.D.C.C. § 24-10-07. Failure to keep cattle way in repair.](#)

## 7. Board May Prescribe Regulations

The board granting an application to construct a cattle way may prescribe such further regulations and specifications in the construction of such way as it may deem proper.<sup>104</sup>

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<sup>104</sup> N.D.C.C. § 24-10-08. Board may prescribe regulations.



## CHAPTER 11- SIGNS AND SAFETY<sup>105</sup>

### 1. Construction Warning Signs

#### Warning Signs of Road Construction

Whenever any county enters into a contract for the construction and improvement of any road or culvert, or bridge thereon, it, as a condition of such contract, shall provide therein that the contractor shall place warning signs and devices which are in conformity with chapter 39 -13 of the North Dakota Century Code.<sup>106</sup> When a highway is so marked, the traveler shall proceed only with great care and diligence, but nothing contained in this section makes any county liable for the failure of any contractor to erect such warning signs.<sup>107</sup>

#### Warning Sign Placement Duty

Whenever a county shall construct, improve, or repair any road, culvert, or bridge, or shall gravel any road, and such work renders travel on such road, culvert, or bridge unsafe or dangerous, the board of county commissioners of any such county, or the director or any foreman or other person in charge of such work, shall place such warning signs.<sup>108</sup>

#### Penalty for Failure to Erect Warning Signs

Any person in charge of any work or repairs on any public road, culvert, or bridge who

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<sup>105</sup> For a broad overview on traffic control devices, see [The Manual on Uniform Traffic Control Devices](#) (hyperlink leads to the 2009 version with Revision Numbers 1 and 2 incorporated, May 2012). The MUTCD sets minimum standards, provides guidance, and ensures uniformity of traffic control devices across the nation.

<sup>106</sup> See, N.D.C.C. § 39-13. Motor vehicles – traffic signs.

<sup>107</sup> N.D.C.C. § 24-03-09. Warning signs of road construction.

<sup>108</sup> N.D.C.C. § 24-03-10. Public officers – warning sign placement duty.

fails or neglects to erect and maintain suitable warning signs is guilty of a class B misdemeanor.<sup>109</sup>

## 2. Railroad Crossings

Standard Railroad Crossing Warning Systems Advance Warning Signs – Exceptions

The sole signing duty of the county road authority at public grade crossings (railroad crossings) in the state is the erection and maintenance of advance warning signs in accordance with the federal Manual on Uniform Traffic Control Devices,<sup>110</sup> which North Dakota has adopted in whole. The road authorities have a reasonable length of time, not exceeding 2 years, in which to fully implement this requirement.<sup>111</sup>

### **Cross-Reference: See Chapter 13, Section 1 – Limitations of Billboards and Other Advertising Signs Within 1,000 Feet of Grade Crossings**

Stop Signs May be Required

At each grade crossing where, because of the dangers attendant upon its use, the reasonable protection to life and property makes it necessary for all persons approaching the grade crossing to stop before crossing the railroad tracks thereat, stop signs shall be installed. The department, after performing an engineering study of the crossing, may designate any crossing requiring such additional protection as a stop crossing, and shall notify the road authority with jurisdiction over the roadway of such designation and of the location where the stop sign is to be installed. Within 30 days after such notification, the road authority shall erect uniform stop signs on separate

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<sup>109</sup> N.D.C.C. § 24-03-11. Penalty for failure to erect warning signs.

<sup>110</sup> See, 23 C.F.R. § 655.601 et seq (2021).

<sup>111</sup> N.D.C.C. § 24-09-04. Advanced warning signs – exceptions.

posts at the designated location on each side of said crossing.<sup>112</sup>

#### Additional Safeguards at Crossings May be Required

The commission, upon written application made to it by the director, the board of county commissioners of any county, the board of supervisors of any township, any municipality, the railroad company, or upon its own motion, shall investigate and determine whether any railroad grade crossing over any state, county, township, or municipal highway in the state is dangerous to life and property and needs protection further than that set out in this chapter, and may order the same protected in any manner it may find reasonable and proper, including a requirement that the railroad company separate the grades.<sup>113</sup>

#### Department of Transportation to Apportion Cost – Exception

To promote public safety at intersections of railroad lines and all classes of highways and in the event that the commission orders that any grade crossing must be protected by automatic grade crossing protection devices, the commission shall, in its order, apportion the cost thereof between the railroad interested, the political subdivision having jurisdiction of the highway involved, and the state of North Dakota. Such cost must be apportioned to such parties or to any one or more of such parties on the basis of the benefit derived respectively by highway users and the railroad from the installation of such crossing protection device. The cost attributable to the benefit of the

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<sup>112</sup> N.D.C.C. § 24-09-05. Stop signs may be required.

<sup>113</sup> N.D.C.C. § 24-09-08. Additional safeguards at crossings may be required.

highway users must be apportioned to the state of North Dakota or to the political subdivision having jurisdiction of the highway involved or to both such parties.

The cost apportioned to the state of North Dakota must be paid out of the highway fund in the state treasury, provided that not more than \$100,000 may be expended for this purpose in any one biennium.<sup>114</sup>

#### Changing or Closing Railroad Crossing

It is in the interest of public safety to eliminate unnecessary railroad grade crossings whenever reasonable access can be safely provided at another crossing. Whenever it is desired, either by the public officials having the necessary authority or by the railway company operating the railroad, to establish, vacate, or relocate any crossing of a public highway and a railroad, or to separate grades, and an agreement cannot be reached between the public official and the railway company, either as to the necessity for establishing, vacating, or relocating a crossing or for separating grades, as to place, manner of construction, or a reasonable division of the expense, either party may file a petition with the commission, setting forth the facts and submitting the matter to it for determination.

The commission, after giving notice as it shall deem reasonable, shall conduct a hearing and shall issue its order determining whether there should be an establishment, vacation, or relocation of the crossing in question, or a separation of grades, and dividing the expense of the establishment, relocation, or separation of grades.

Irrespective of the establishment, relocation, or the consideration of further reasonable

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<sup>114</sup> [N.D.C.C. § 24-09-08.1. Department of transportation to apportion cost – exception.](#)

protection of a crossing, if the commission finds any railroad crossing to be unnecessary or unsafe, it shall order the crossing closed after reasonable notice and hearing.

Whenever a final order is entered vacating or closing a crossing, it must be vacated or closed at the railroad company's expense.<sup>115</sup>

### **3. Cattle Guard Warning Signs and Other Regulations.**

Cattle Guard warning signs may be required by the board of county commissioners of the county in which the cattle guard is located.<sup>116</sup> The board granting an application to construct cattle way may prescribe regulations and specifications in the construction of such way as it may deem proper.<sup>117</sup>

### **4. Erection and Maintenance of Guardrails**

The director has the authority to erect and maintain guardrails, stretch wires, and other devices, on all highways under his jurisdiction, in the interest of public safety.<sup>118</sup>

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<sup>115</sup> N.D.C.C. § 24-09-10. Changing or closing railroad crossing – power of public service commission – hearing.

<sup>116</sup> See, N.D.C.C. § 24-10-02. Cattle guards – construction – maintenance – effect.

<sup>117</sup> N.D.C.C. § 24-10-08. Board may prescribe regulations.

<sup>118</sup> N.D.C.C. § 24-01-16. Erection and maintenance of guardrails.



## **CHAPTER 12 – PUBLIC UTILITIES**

### **1. Use of Right of Way for Utilities Subject to Regulations by Department**

Electric transmission, telephone or telegraph lines, pole lines, railways, ditches, sewers, water, heat, or pipelines, gas mains, flumes, or other structures outside of the limits of any municipality which under the laws of this state, may be constructed, placed, or maintained across or along any highway which is a part of the state highway system, by any person, persons, corporation, limited liability company, or subdivision of the state, may be so maintained or constructed only in accordance with such regulations as may be prescribed by the department, which has power to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining along, across, or on any such state highway any of the utilities hereinbefore set forth. Nothing herein restricts the action of public authorities in extraordinary emergencies.<sup>119</sup>

### **2. Right of Way for Utilities**

The director of the North Dakota Department of Transportation may grant to any person, who is a resident of this state, or to any corporation organized under the law of this state, or licensed to do business within this state, the right of way for the erection of a telephone line or electric line over or upon any state highway or structure constituting part of such highway or to lay pipes, conduits, or tunnels in, through, or over any such state highway or structure, or to erect, construct, and maintain any bridge, conduit, or other crossing in, under, or over such state highway or structure and in accordance with

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<sup>119</sup> [N.D.C.C. § 24-01-39. Use of right of way for utilities subject to regulations by department.](#)

the rules and regulations therefor.<sup>120</sup> All “state highways” are under the general control and supervision of the N.D. Department of Transportation; but such department is not empowered to grant a right of way for the erection of an electric power transmission line over or upon any of the state highways under the control and supervision of such department.<sup>121</sup>

### **3. Construction of Utility Facility**

No person, firm, or association may construct any electrical supply or communication line, gas, oil, or water, or other pipeline parallel to and within 100 feet of the centerline of any state highway right of way or within 75 feet of the center line of any county highway right of way without first obtaining the consent of the board of county commissioners.<sup>122</sup>

### **4. Utility Facility – Removal**

Any utility or transmission line hereinafter constructed contrary to the above provisions (sections 12-2 and 12-3) must be removed at the expense of the utility, when such removal is required for purposes of highway expansion.<sup>123</sup>

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<sup>120</sup> N.D.C.C. § 24-01-40. Right of way for utilities – granted by director.

<sup>121</sup> Morton County v. Hughes Electric, 53 N.D. 742, 204 N.W. 108.

<sup>122</sup> N.D.C.C. § 24-01-42. Construction of utility facility – limitation.

<sup>123</sup> N.D.C.C. § 24-01-43. Utility facility – removal.

## 5. Utility Facility - Right of Way for Relocation

Whenever highway improvements require the relocation of utility facilities, and it is deemed to be in the best interest of the state, the director or the board of county commissioners may acquire such right of way as may be required for such relocation, in the manner they are authorized by law to acquire highway right of way.<sup>124</sup>

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<sup>124</sup> N.D.C.C. § 24-01-44. Utility facility – right of way for relocation.



## **CHAPTER 13 – BILLBOARDS AND ADVERTISING**

### **1. Limitations of Billboards and Other Advertising Sign Within 1,000 Feet of Grade Crossings**

No person, firm, corporation, or limited liability company may place, put, or maintain any sign, billboard, or advertisement within the limits of a public highway, or in any manner paint, print, place, put, or affix, or cause to be painted, printed, placed, or affixed, any advertisement on or to any stone, tree, fence, stump, pole, mile board, milestone, danger sign, danger signal, guide sign, guidepost, billboard, building, or other object within the limits of a public highway, or place, put or maintain any sign or billboard upon private property within 1,000 feet of any highway grade crossing in such place or manner as to obstruct or interfere with a free and clear view of such crossing from any intersecting highway or railroad. Any advertisement in or upon a public highway or private property which, in the judgment of the commissioner, may be deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic, may be taken down, removed, or destroyed by direction or authority of the department in the case of the state highway system, the board of county commissioners in the case of the county road system, and by the board of township supervisors in the case of township roads.<sup>125</sup>

### **2. Limitations of Outdoor Advertising<sup>126</sup> Within 660 Feet of Right of Way**

No sign may be erected or maintained within 660 feet from the nearest edge of the right

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<sup>125</sup> N.D.C.C. § 24-01-12. Regulation of advertising signs on highways.

<sup>126</sup> For a definition of "outdoor advertising" see N.D.C.C. § 24-17-02(4), "a sign, display, or device of any kind or character including statuary, erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever may be placed for advertising purposes and shall include but not be limited to any card, cloth, paper, metal, painted, or wooden sign of any character placed for outdoor advertising purposes, on or affixed to the ground or any tree, wall, bush, rock, fence, building, structure, or thing, either privately or publicly owned. The terms 'sign, display, or device' comprehend all forms of outdoor advertising and the use of one such term in this

of way and visible from the main traveled way of any highway that is a part of the state highway system in this state except the following:

- A. Official signs and notices and directional signs and notices, including signs and notices pertaining to natural wonders, scenic and historic attractions, and outdoor recreational areas subject to the national standards to be promulgated by the secretary of transportation.
- B. Signs advertising the sale or lease of property upon which they are located.
- C. Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on property used for the purpose advertised or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.
- D. Signs in unzoned commercial or industrial area.
- E. Signs relocated by reason of the construction or reconstruction of the state highway system.
- F. Official highway signs within interstate rights of way giving specific information for the traveling public.
- G. Signs calling attention to the location of buried utility lines.
- H. Political signs temporarily installed on private property, providing the signs do not include any form of commercial advertising.<sup>127</sup>

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chapter includes all forms of outdoor advertising..

<sup>127</sup> N.D.C.C. § 24-17-03. Outdoor advertising distance limitations; See also, N.D.C.C. § 24-17-02(5) (defining “political sign” as a “temporary sign erected on private property, which includes signs which solicit votes or support for, or in opposition to, any candidate or any political party under whose designation any candidate is seeking nomination or election. Political signs may also contain messages concerning any public question on the ballot in an election held under the laws of the state. Political signs

### 3. Limitations of Outdoor Advertising<sup>128</sup> Beyond 660 Feet from Right of Way

No sign may be erected<sup>129</sup> or maintained<sup>130</sup> beyond 660 feet from the nearest edge of the right of way, located outside of urban areas, visible from the main traveled way of the highway system, and erected with the purpose of their message being read from such main traveled way except the following:

- A. Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic, and historical attractions which are required or authorized by law.
- B. Signs, displays, and devices advertising the sale or lease of property upon which they are located.
- C. Signs, displays, and devices advertising activities conducted on the property on which they are located.<sup>131</sup>

### 4. Compensation for Removal of Signs

No county or political subdivision may remove or cause to be removed any advertising structures, except such structures that encroach upon the right of way, without paying

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do not include signs which have been issued a legal billboard permit by a city, county, or the state of North Dakota.”).

<sup>128</sup> For a definition of “outdoor advertising” see N.D.C.C. § 24-17-02(4), “a sign, display, or device of any kind or character including statuary, erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever may be placed for advertising purposes and shall include but not be limited to any card, cloth, paper, metal, painted, or wooden sign of any character placed for outdoor advertising purposes, on or affixed to the ground or any tree, wall, bush, rock, fence, building, structure, or thing, either privately or publicly owned. The terms ‘sign, display, or device’ comprehend all forms of outdoor advertising and the use of one such term in this chapter includes all forms of outdoor advertising.”

<sup>129</sup> "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. N.D.C.C. § 24-17-02(2).

<sup>130</sup> "Maintain" means to exist. N.D.C.C. § 24-17-02(3).

<sup>131</sup> N.D.C.C. § 24-17-03.1. Outdoor advertising beyond distance limitations.

compensation.<sup>132</sup>

Signs destroyed by elements or vandalism and not reconstructed within one year or which contained no advertising copy for one year would be deemed abandoned and non-compensable. The district court did not err in determining that signs lawfully erected prior to January 1, 1968, which were subsequently expanded or substantially altered would be compensated only as to their value prior to expansion or alteration.<sup>133</sup>

## 5. Unlawful Advertising

Any advertising sign which violates the provisions of this chapter or the rules adopted by the director is hereby declared to be illegal. The director shall give 30 days' notice, by certified mail, to the owner thereof to remove the same if it is a prohibited sign, or cause it to conform to rules promulgated by the director if it is an authorized sign. If the owner fails to act within 30 days as required in the notice, or if the director is unable to ascertain the ownership of the sign, then such sign must be deemed abandoned and the director may remove such sign, and to this end the director may enter upon private property for the purpose of removing such sign without liability for the director's actions.<sup>134</sup>

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<sup>132</sup> N.D.C.C. § 24-17-05. Compensation for removal of signs.

<sup>133</sup> Newman Signs, Inc. v. Hjelle, 1982, 317 N.W.2d 810.

<sup>134</sup> N.D.C.C. § 24-17-11. Unlawful advertising.

6. Prohibition on Obstructing View of Legally Placed Signs

Neither the director nor any other agency nor political subdivision of this state may, by plantings, obstruct the view or in any other way interfere with the effectiveness of any sign legally in place.<sup>135</sup>

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<sup>135</sup> [N.D.C.C. § 24-17-12. Enforcement.](#)



## **CHAPTER 14 – NOXIOUS WEEDS AND OTHER HIGHWAY MAINTAINENCE**

### 1. Noxious Weeds

It is the duty of landowners or operators with land adjoining regularly traveled county highways, as designated by the board of county commissioners, to cut all weeds and grasses along the regularly traveled highways adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. The cutting shall be completed not later than September 15 or October 1, as prescribed by the board of county commissioners. The board of county commissioners may also, if necessary, require an additional cutting be completed by August 1.<sup>136</sup>

The board of county commissioners of each county shall prescribe the time for cutting of the weeds and grasses, prescribe the height of stubble to be left and the minimum width of the cuts, designate the county highways along which weeds and grasses shall be cut, and request the board of township supervisors to designate township roads along which weeds and grasses shall be cut. The board of township supervisors shall make the designation, and the board of county commissioners shall publish notice of the designated highways, the time for cutting, and the height of stubble to be left and the minimum width of cut in the official county newspaper at least twice, and the last publication must appear not less than two weeks prior to the deadline date. If no official newspaper is published in the county, written notice must be given by posting, in the same manner as election notices are posted. Expenses incurred in publishing the notice

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<sup>136</sup> [N.D.C.C. § 63-05-01. Landowners or operators along county and township highways to cut weeds and grasses.](#)

must be paid by the board of county commissioners.<sup>137</sup>

A person may not willfully transport or dispose of any material or equipment that contains noxious weed seeds or propagating parts, on a public road, in a manner that allows for the dissemination of noxious weeds. A person may not willfully dispose of any such material that allows for the dissemination of noxious weeds.<sup>138</sup>

Before the director may add a weed to or remove from the state noxious weed list, the director shall consult with the North Dakota State University Extension Service. Before January 1, 2010, and at least every five years thereafter, the director shall review the state noxious weed list. The director shall provide each county and city weed board with at least fourteen days' notice of the time and place at which the list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide each county and city weed board with written notice of any changes to the state noxious weed list.<sup>139</sup>

#### Failure to Cut Weeds and Grasses

If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads, the board of county commissioners may cause the weeds and grasses to be cut and the actual expense of cutting shall be certified to the county auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and

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<sup>137</sup> [N.D.C.C. § 63-05-02. Designation of time for cutting – notice.](#)

<sup>138</sup> [N.D.C.C. § 4.1-47-30. Preventing the dissemination of noxious weeds – penalty.](#)

<sup>139</sup> [N.D.C.C. § 4.1-47-05. State noxious weed list – compilation.](#)

placed to the credit of the respective subdivisions entitled thereto.<sup>140</sup>

## 2. County Weed Board - Duties

Each county weed board shall:

1. Implement a program for the control of noxious weeds;
2. Provide for the control of noxious weeds along county and township roads and along county highways;
3. Establish the time and place of regular board meetings;
4. Meet at least once each year;
5. Keep minutes of its board meetings and a complete record of all official acts;
6. Control and disburse all money received by the county from any source for noxious weed control;
7.
  - a. Provide for the compensation of its members and its secretary and treasurer;
  - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
  - c. Provide a mileage allowance at the same rate as that established for state employees; and
8.
  - a. Employ and provide for the compensation of a weed control officer;
  - b. Reimburse the weed control officer for actual and necessary expenses; and
  - c. Provide a mileage allowance at the same rate as that established for state employees.<sup>141</sup>

Additionally, county weed boards have the duty to determine for what purposes and how much money should be used and disbursed for noxious weed control. Boards of

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<sup>140</sup> N.D.C.C. § 63-05-03. Failure to cut weeds and grass – expenses levied as taxes against land.

<sup>141</sup> N.D.C.C. § 4.1-47-09. County weed board – duties.

county commissioners have the administrative duty to pay the expenses of noxious weed control programs and may exert some control over whether to hire, and the compensation of, weed control officers and other weed board employees, through the budgeting process. Finally, boards of county commissioners have authority over other employment conditions of a weed control officer and other weed board employees, through employee policies and the budgeting process.<sup>142</sup>

### 3. County Weed Control Officer – Duties

The county weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the county.
2. Become acquainted with the location of noxious weeds within the county.
3. Meet the pesticide certification requirements set forth in N.D.C.C. 4.1-33.<sup>143</sup>
4. Encourage noxious weed control by all landowners and land occupants within the county.
5. Investigate all signed complaints received by the officer regarding noxious weeds.
6. Post or publish in the official newspaper of the county any notices the commissioner deems necessary to further noxious weed control under this chapter.
7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under this chapter.

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<sup>142</sup> 2010 N.D. Op. Atty. Gen. No. L-15.

<sup>143</sup> See, N.D.C.C. § 4.1-33. Pesticide control.

#### 4. Publicly Owned Land - Weed and Pest Control

The commissioner shall attempt to arrange a satisfactory noxious weed and pest eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control officers shall attempt to arrange a satisfactory noxious weed eradication or, if authorized, pest eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds and pests on such lands. Upon failure of a state agency to adequately control noxious weeds or, if authorized, pests on land under its control, the county weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control the noxious weeds and, if authorized, pests. The state agency shall reimburse the county weed board for expenses incurred in the control of noxious weeds or, if authorized, pests within 30 days after the agency receives the bill.

A federal agency shall develop a management program for controlling noxious weeds or, if authorized, pests on land the agency controls or over which the agency has jurisdiction. If a federal agency does not control or set up a management program to the satisfaction of the weed control authority, the weed control office shall notify the agency. The federal agency shall provide a report to the commissioner and the county weed authorities describing the methods used by the federal agency and showing cause why the federal agency is not controlling the noxious weeds or, if authorized, pests. The commissioner may specify the forms on which the federal agency report must be

submitted.

Upon being notified by a county of the federal agency's failure to control noxious weeds or, if authorized, pests, the commissioner may hold a public hearing under such conditions and terms as the commissioner determines advisable, to determine the reason for the failure or refusal.

#### **5. Publicly owned land – Noxious Weed Control**

Each state agency shall provide for the control of noxious weeds on land within its jurisdiction. If a state agency fails to control noxious weeds on land under its jurisdiction, the county weed board, upon approval of the commissioner, may enter upon the land to control the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in controlling the noxious weeds within thirty days after the agency receives the bill.<sup>144</sup>

#### **6. Overseer of Highways to Fill Wells on State Land**

The overseer of highways shall cause to be filled or covered abandoned or disused wells, shafts, and other excavations situated on any United States lands, state lands, or common school lands within his district. The overseer shall receive such compensation, payable out of the road and bridge fund of the township as the board of township supervisors, on presentation of his account therefor verified by oath, shall deem reasonable.<sup>145</sup>

Any person owning or occupying lands in this state upon which is located any abandoned or disused well or shaft shall cause such a well or shaft to be filled with

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<sup>144</sup> N.D.C.C. § 4.1-47-26. Publicly owned land – noxious weed control.

<sup>145</sup> N.D.C.C. § 23-13-07. Overseer of highways to fill wells on state and school lands – compensation.

earth or stones so as to obviate any possible menace to the safety of persons or property. Any person violating the provisions of this section is guilty of a class B misdemeanor.<sup>146</sup>

If any individual, firm, corporation, or limited liability company owning or occupying lands neglects or refuses to comply, the overseer of highways of the district in which the land is located shall serve a written notice on such owner or occupant, and if the owner or occupant neglects or refuses to comply with the provisions of such section, the overseer, within 30 days after having given such notice, shall cause such wells or mines to be filled or covered. The owner of such land is liable to the township for the cost of such work and the material furnished and the necessary expense incurred in collecting the same.<sup>147</sup>

## 7. No-Mow Areas

### No-Mow Agreements

No state agency or political subdivision of the state may enter into any agreement to increase the no-mow acres contained in the rights of way of the state highway system.<sup>148</sup>

### Haying of No-Mow or Managed-Mow Areas

Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow

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<sup>146</sup> N.D.C.C. § 23-13-06. Owner of land to fill abandoned or disused wells, shafts, and other excavations.

<sup>147</sup> N.D.C.C. § 23-13-08. Failure of owner to protect mine or well – duty of overseer.

<sup>148</sup> N.D.C.C. § 24-01-12.3. Entry into no-mow agreements.

area may hay the no-mow or managed-mow area after July 15 without any payment or penalty.<sup>149</sup>

#### **8. Removal of Highway Obstructions**

The board of county commissioners (or other governing body having authority over the right of way of a county or township road) may develop and implement rules governing the disposal of any stored hay or other obstruction placed on the right of way on a county highway.<sup>150</sup>

Every person harvesting hay on the rights of way of the state highway system who stores the harvested hay on the rights of way for later removal, shall store the harvested hay at the outer edge of the rights of way. The director may remove any hay that is not stored as prescribed in this section. All hay stored on the rights of way must be removed by November first of each year.<sup>151</sup>

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<sup>149</sup> N.D.C.C. § 24-01-51. Haying of no-mow areas

<sup>150</sup> N.D.C.C. § 24-05-24. County and township right of way – removal of obstructions.

<sup>151</sup> N.D.C.C. § 24-01-12.1. Harvesting hay on state highway system – storage and removal.

## **CHAPTER 15 – SECTION LINES**

### **1. In General**

In all townships in North Dakota, section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines.<sup>152</sup> The right-of-way does not depend upon availability of the full 66 feet. The fact that some narrowing occurs does not terminate public travel on what remains.<sup>153</sup>

A section road does not prescribe a duty on a county or township to maintain an improved road on a section line.<sup>154</sup> A township does not have a duty to inspect every unimproved and unvacated section line for possible natural and man-made obstacles.<sup>155</sup> However, a township cannot simply ignore hazardous or dangerous section line road conditions of which it has knowledge. Said township then has a duty to warn travelers of that condition.<sup>156</sup>

The status of a public road offers some legal protections, primarily the roadway cannot be obstructed. For example, “no person may:

1. Obstruct any public highway in any manner with intent to prevent the free use thereof by the public.
2. Willfully and knowingly obstruct or plow up ... any public highway or right of way ...
3. Build or place a barbed wire fence across any well-traveled trail which has been the usual and common route of travel for not less than one year without placing on the

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<sup>152</sup> N.D.C.C. § 24-07-03. Section lines considered public roads open for public travel – closing same under certain conditions.; See generally, U.S. 1873-74 Rev. Stat. § 2477 (stating, “the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”).

<sup>153</sup> 2009 N.D. Op. Atty. Gen. L-01.

<sup>154</sup> DeLair v. LaMoure County, 1982, 326 N.W.2d 55.

<sup>155</sup> Kappenman v. Klipfel, 2009 ND 89, ¶ 11, 765 N.W.2d 716, 721 (citing Douville v. Christensen, 641 N.W.2d 651, 655 (S.D.2002)).

<sup>156</sup> Kappenman v. Klipfel, 2009 ND 89, ¶ 11, 765 N.W.2d 716, 721.

outside of the top tier of barbed wire ... a board, pole, or other suitable protection, to be at least sixteen feet [4.88 meters] in length; or

4. Plow up a section line in a manner so as to obstruct usual travel on the section line.”<sup>157</sup>

## 2. Obstruction

Any person who intentionally obstructs a public way is guilty of a class B misdemeanor.<sup>158</sup>

Further, no person may place any permanent obstruction [including a fence], stones, trees, or rubbish within thirty-three feet of any section line, unless written permission is first secured from the board of county commissioners or the board of township supervisors. The permission to place a permanent obstruction, such as a fence, within thirty-three feet of a section line must be granted where the section line has been closed or where the topography of the land along the section line is such that the construction of a road on a section line is impossible.<sup>159</sup>

## 3. Closing Section Lines

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, after public hearing and a finding by the

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<sup>157</sup> [N.D.C.C. 24-12-02. Obstructing highways.](#)

<sup>158</sup> [N.D.C.C. 24-12-05. Penalties.](#)

<sup>159</sup> [N.D.C.C. § 24-06-28\(1\). Obstruction of section lines prohibited – exception – certain fences not considered obstructions – obstructions and traffic safety hazards – penalty.](#)

commissioners of public benefit, may close section lines or portions thereof which:

- are not used for ten years,
- are not traveled due to natural obstacles or difficulty of terrain,
- are not required due to readily accessible alternate routes of travel, or
- are intersected by interstate highways causing the section line to be a dead-end, providing the closing of the dead-end section line does not deprive adjacent landowners access to the landowners' property.

After the section lines are closed, they may be used to the benefit of the adjacent landowners. However, survey or property reference monuments may not be disturbed, removed, or destroyed. If drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming the lands.<sup>160</sup>

#### **4. Removal of Fences and Notice**

Whenever any public road has been laid out through enclosed, cultivated, or improved lands, the board must give the owner or occupant of the land through which the road is laid out thirty days' written notice to remove the owner's or occupant's fences. If the owner does not remove the fences within thirty days after the notice, the board shall cause the fences to be removed and shall direct the road to be opened and worked, but no enclosure may be ordered opened between April first and October

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<sup>160</sup> [N.D.C.C. § 24-07-03. Section lines considered public roads open for public travel – closing same under certain conditions.](#)

first.<sup>161</sup>

## 5. Cattle Guards and Gateways

Whenever the erection of cattle guards is necessary to cross a section line, the board of county commissioners or the board or township supervisors may issue permission to erect a cattle guard and gateway across the section line upon the conditions prescribed below:

Before any cattle guard or gateway may be erected across any highway or section line, the board of county commissioners or board of township supervisors must approve written specifications which must then be approved by the appropriate clerk. The specifications must include requirements for warning signs to be placed approximately three hundred feet [91.44 meters] from and plainly visible to persons approaching the cattle guard upon the highway or section line. A cattle guard must be so constructed as to permit the passage of motor vehicles through and over the same. No cattle guard may be erected upon any highway or section line unless there also is provided a gateway that includes a gate that may be opened easily and closed by the public. The person who applied for permission to erect the cattle guard shall maintain the cattle guard and gateway, unless application is otherwise assigned. Within the limits of an enclosure so completed by authorized cattle guards erected in accordance with such specifications, livestock must be permitted to run at large without liability for being upon the highway or section line.<sup>162</sup>

The Legislature left the precise size of gateways and cattle guards as a matter to be determined by the board of township supervisors in the exercise of its discretion in the

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<sup>161</sup> [N.D.C.C. § 24-07-19. Notice to party to remove fences.](#)

<sup>162</sup> [N.D.C.C. § 24-10-02 Cattle guards – construction – maintenance – effect.](#)

approval of the specification for cattle guards and gateways. Cattle guards are only required to be constructed so as to permit motor vehicles to pass through and over the guards, and that the gateways contain a gate which may be opened and closed easily by the public.<sup>163</sup> Any person who opens and fails to close promptly any gate is guilty of an infraction.<sup>164</sup>

**Cross-Reference: See Chapter 10 – Cattle Guards**

**6. Minimum Maintenance Roads**

Designation

A [township or county] board having jurisdiction may designate a road under its jurisdiction as a minimum maintenance road. To qualify as a minimum maintenance road, the board or governing body must determine that the road is used only occasionally or intermittently for passenger travel.

When designating the minimum maintenance road, the board or governing body must (1) identify the beginning and end of the road and (2) notify each adjoining political subdivision.<sup>165</sup>

Limitations on designations of minimum maintenance roads

A road is not eligible for designation as a minimum maintenance road if:

- Federal highway aid to North Dakota would be reduced as a result of

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<sup>163</sup> [Ames v. Rose Township Board Of Township Supervisors, 502 N.W.2d 845, 1993 N.D. Lexis 127 \(N.D. 1993\).](#)

<sup>164</sup> [N.D.C.C. § 24-10-03. Leaving gates open – penalty.](#)

<sup>165</sup> [N.D.C.C. § 24-07-35. Designation of minimum maintenance road.](#)

that designation.

- Additional right of way or easement by eminent domain is required for constructing or designation the road as a minimum maintenance road, unless the consent of the landowner is given, or the designation is necessary for drainage or public safety.<sup>166</sup>

#### Notice

Notice to the public is given by the governing body by posting signs at the beginning of the road and at regular intervals along the road. If the signs are properly posted, that fact is evidence that adequate notice of the roads status as a minimum maintenance road has been given to the public.<sup>167</sup>

**CROSS REFERENCE: Federal government funding 4-1-C, Acquiring right of way Ch 6**

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<sup>166</sup> N.D.C.C. § 24-07-37. Limitations on designation of minimum maintenance roads.

<sup>168</sup> N.D.C.C. § 11-11-26. When board shall advertise for bids for fuel.

**CHAPTER 16 - BIDDING AND ADVERTISING**  
**REQUIREMENTS FOR ROADS, BRIDGES AND OTHER**  
**PUBLIC IMPROVEMENTS**

1. Road, Bridge, and Associated Projects

Fuel

For the purchase of fuel when the amount exceeds \$4,000, the board of county commissioners shall seek bids either by telephone solicitation from at least two suppliers, or by advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in other newspapers as the board deems advisable.<sup>168</sup> The advertisement must state what type of fuel is required and when the bids will be opened and passed upon by the board of county commissioners. The bid of the lowest responsible bidder must be accepted, but the board may reject any or all bids.<sup>169</sup>

Road work

If a contract for a highway improvement exceeds (revised to \$200,000 per HB1127), the board of county commissioners shall seek bids by publishing an advertisement at least once each week for two consecutive weeks in the official newspaper of the county and in other newspapers as the board deems advisable. The first publication must be made

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<sup>168</sup> N.D.C.C. § 11-11-26. When board shall advertise for bids for fuel.

<sup>169</sup> N.D.C.C. § 11-11-27. Contents of fuel bids advertisement – when bids may be opened – lowest bidder accepted.

at least fifteen days before the day set for the opening of the bids. For any contract for a highway improvement that exceeds \$50,000 but does not exceed \$200,000, the county, when possible, shall seek quotes from at least two contractors.<sup>170</sup> If a road is destroyed by a flood or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract, the county commissioners may promptly contract for the rebuilding or repair of the road without advertising for bids, regardless of the cost.

### Road Machinery

A purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles, except necessary repairs for road machinery, which exceeds the sum of \$100,000 must be advertised by publishing an advertisement for bids at least once each week for two consecutive weeks in the official newspaper of the county and in any other newspapers as the board deems advisable.<sup>171</sup>

### Bridges

If the cost of rebuilding or repairing a bridge would exceed \$200,000, the county commissioner shall advertise for bids in the official newspaper of the county, by publication at least once each week, for two successive weeks<sup>172</sup> asking for sealed bids for the building of such construction of the bridge, to be submitted to it at the board of

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<sup>170</sup> [N.D.C.C. § 24-05-04\(1\). Contracts to be advertised – road construction – requirements for rental contracts.](#)

<sup>171</sup> [N.D.C.C. § 24-05-04\(2\). Contracts to be advertised – road construction – requirements for rental contracts.](#)

<sup>172</sup> [N.D.C.C. § 24-08-03. Bridges – supervisions, repairs, birds, signs – liability; N.D.C.C. § 24-08-01. Construction of bridges by board of county commissioners – petition – bids – rejection.](#)

county commissioners the next regular or special meeting of the board, at which time the board shall proceed to examine all proposals or bids for the building of such bridge. The first publication for bids must be made at least fifteen days before the meeting of the board to examine the proposals or bids. Then upon the receipt of satisfactory bids, the board shall award the contract to the lowest responsible bidder, requiring the bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of the bid or contract, the bond to be approved by the board and filed in the office of the county auditor but. If no satisfactory bids are received, the board may reject all bids. If all bids are rejected, the board shall readvertise as provided hereinfor bids in accordance with this section. Provided, however, that if the amount of the lowest responsible bid is less than fifteen thousand dollars, the board may refuse all bids received and proceed to construct the bridge under its own supervision as it deems most expedient and may enter into contracts for the labor or material to be used in the construction of the bridge. For any contract for a bridge improvement that exceeds fifty thousand dollars but does not exceed two hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors. If a bridge is destroyed by a flood, fire, or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract pursuant to section 24-08-01, the county commissioners may promptly contract for the rebuilding or repair of the bridge without advertising for bids, regardless

of the cost.

## 2. Public Improvement – (Vertical Construction)

### Definition

“Public improvement” means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.<sup>173</sup>

### When Professional Services are Required for Plans and Specifications

If the estimated cost for the construction of a public improvement is in excess of \$200,000, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road

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<sup>173</sup> [N.D.C.C. § 48-01.2-02.1. Public improvement construction threshold.](#)

materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation. Plans, drawings, and specifications of an architect or engineer must be stamped and sealed by the date of the initial bid advertisement.<sup>174</sup>

### When Bidding is Required for Public Improvements

The threshold for bidding construction of a public improvement is \$200,000.<sup>175</sup> If the estimated cost for the construction of a public improvement is in excess of \$200,000, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least 21 days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, in a daily newspaper having a general circulation in the area where the project is located, and in a trade publication, electronic plan service, builders exchange<sup>176</sup>, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least 14 days

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<sup>174</sup> [N.D.C.C. § 48-01.2-02. Plans and specifications for a public improvement contract.](#)

<sup>175</sup> [N.D.C.C. § 48-01.2-02.1. Public improvement construction threshold.](#)

<sup>176</sup> [Associated General Contractors of North Dakota, \*General Bid Advertisements\*.](#)

before the bid opening.

## Limitations on Bid Requirements

### a. Specified Brands, Marks, Names of Patented Articles

A governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit or unless as provided in N.D.C.C. § 44-08-01 (Preference to North Dakota bidders, sellers, and contractors).<sup>177</sup>

### b. Preference to North Dakota Bidders

The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the

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<sup>177</sup> [N.D.C.C. § 48-01.2-03. Specified brands, marks, names or patented articles may not be specified.](#)

state of the nonresident bidder, seller, or contractor.<sup>178</sup>

c. Additional Prohibition for Specification of any Trademarked  
or Copyrighted Brand or Name

The State or political subdivision may not specify the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.<sup>179</sup>

#### Emergency Exception

If the governing body declares an emergency, the governing body may contract for the construction of a public improvement without seeking public bids.<sup>180</sup>

**Cross-reference: See Chapter 3 – Supplemental Information, Sample**

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<sup>178</sup> N.D.C.C. § 44-08-01, Preference to North Dakota bidders, sellers, and contractors.

<sup>179</sup> N.D.C.C. § 44-08-01(3), Preference to North Dakota bidders, sellers, and contractors.

<sup>180</sup> N.D.C.C. § 48-01.2-04. Publication of advertisement for bids – emergency exception. This exception to bidding is specific to public improvements and there is no equivalent statute for roads.

## Emergency Declarations

### 3. Bid Opening and Process

#### Mistakes

##### a. Minor Informalities

Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid or proposal document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions, that can be waived or corrected without prejudice to other bidders or offerors.

If the mistake is attributable to an error in judgment by the bidder or offeror, the bid or proposal may not be waived or corrected. An example of an error in judgment would be failure to consider all the requirements of the solicitation and submitting an inaccurate price.

Correction or withdrawal of a bid or proposal because of an inadvertent, minor informality requires careful consideration to protect the integrity of the competitive solicitation process and to ensure fairness.

Bid or proposal correction or withdrawal by reason of a minor informality is permissible but only to the extent it is not contrary to the interest of the state or the fair treatment of other bidders or offerors.

Examples of minor informalities include failure of a bidder or offeror to:

- Return the number of signed bid or proposal documents required by the solicitation.
- Sign the response, but only if the unsigned response is accompanied by

other material indicating the bidder's intent to be bound, such as a cover letter, or a signed bid or proposal is provided within the time limit set by the procurement officer.

- Sign or initial a material correction to the bid or proposal, including a typeover, write over, correction tape, or white-out, but the bidder or offeror may be required to confirm the correction within the time limit set by the procurement officer.
- Submit product literature or other documents required in the solicitation, but only if the bidder or offeror complies within the time limit set by the procurement officer; and
- Acknowledge receipt of an amendment to the solicitation, but only if:
  - It is clear from the bid or proposal that the bidder or offeror received the amendment and intended to be bound by its terms.
  - The amendment involved had a negligible effect on price, quantity, quality, or delivery; or
  - The bidder or offeror provides an acknowledgment of receipt within the time limit set by the procurement officer.<sup>181</sup>

In the case of a mistake in the calculation of a total price, the unit price will govern.<sup>182</sup>

#### b. Mistakes discovered before opening

A bidder or offeror may correct a mistake discovered before the time and date set for

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<sup>181</sup> N.D.A.C. § 4-12-10-01. Minor informalities.

<sup>182</sup> N.D.A.C. § 4-12-10-02. Unit price governs.

opening of bids or proposals by withdrawing or correcting the bid or proposal.<sup>183</sup>

c. Confirmation of bid or proposal

When the procurement officer knows or has reason to conclude that a mistake has been made, the procurement officer may request the bidder or offeror to confirm the bid or proposal. Examples of situations in which confirmation is appropriate include obvious, apparent errors on the face of the bid or proposal, or a bid or proposal unreasonably priced in relation to the others submitted.

If the bidder or offeror confirms the mistake, the bid or proposal may be corrected or withdrawn in accordance with these rules.<sup>184</sup>

d. Mistakes discovered after opening but before  
Award.

The procurement officer may waive minor informalities or allow the bidder or offeror to correct them depending on which is in the best interest of the state.

If the mistake and the intended correct bid or proposal are clearly evident on the face of the bid or proposal document, the bid or proposal must be corrected to the intended correct bid or proposal and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid or proposal document are typographical errors, errors in extending unit prices, transposition errors, and mathematical errors.

A bidder may be permitted to withdraw a low bid or proposal if a mistake is clearly

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<sup>183</sup> N.D.A.C. § 4-12-10-03. Mistakes discovered before opening.

<sup>184</sup> N.D.A.C. § 4-12-10-04. Confirmation of bid or proposal.

evident on the face of the solicitation response but the intended correction is not similarly evident or the bidder or offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.<sup>185</sup>

e. Mistakes discovered after award.

A mistake in a bid or proposal discovered after award does not relieve the contractor from performance in accordance with the contract award. The bidder or offeror must submit evidentiary proof of value that clearly and convincingly demonstrates a mistake has been made. If the terms of the contract permit modification of the contract price, no correction may be permitted that would cause the contract price to exceed the next low bid or result in another proposal being determined to be most advantageous.<sup>186</sup>

### Determinations Required

When a bid or proposal is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer will prepare a written determination showing that the relief was granted or denied in accordance with these rules.<sup>187</sup>

### Evaluation

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<sup>185</sup> N.D.A.C. § 4-12-10-05. Mistakes discovered after opening but before award.

<sup>186</sup> N.D.A.C. § 4-12-10-06. Mistakes discovered after award.

<sup>187</sup> N.D.A.C. § 4-12-10-07. Determinations required.

Unless circumstances exist under which competition can be limited or waived, contracts must be awarded through a competitive solicitation process to the vendor responsible with the lowest responsive bid or the most advantageous proposal. An award will be made according to the evaluation criteria specified in the solicitation. A contract award will be made as soon as practicable after the opening and evaluation of bids or proposals.<sup>188</sup>

Any preference given to North Dakota bidders must be equal to the preference given or required by the state of the nonresident bidder, in accordance with North Dakota Century Code section 44-08-01.<sup>189</sup>

#### Winning Bid and Contracting

At the time and place specified in the notice, a governing body or its designated agent shall open publicly and read aloud each responsible bid received. The governing body shall award the contract to the lowest responsible bidder. A governing body may reject any and all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any agreement has been entered by the bidders or others to prevent competition. The governing body may advertise new bids in accordance with this chapter until a satisfactory bid is received.<sup>190</sup>

A governing body shall enter a contract with the lowest responsible bidder. The contract

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<sup>188</sup> [N.D.A.C. § 4-12-11-01. Standards for awarding contracts.](#)

<sup>189</sup> [N.D.A.C. § 4-12-11-02. Application of preference for North Dakota vendors \(Referencing N.D.C.C. § 44-08-01. Preference to North Dakota bidders, sellers, and contractors\).](#)

<sup>190</sup> [N.D.C.C. § 48-01.2-07. Opening of bids – award of contract.](#)

must contain the following:

1. The written terms of the agreement and any associated document signed by the governing body and the contractor;
2. The required surety bond; and
3. Any other document deemed appropriate by the governing body and identified in the advertisement for bids.<sup>191</sup>

When a satisfactory bid is received, a governing body that is authorized to enter into a contract for the construction of a public improvement in excess of \$200,000 shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract.<sup>192</sup>

The “lowest responsible bidder” and “lowest and best bidder” requirements allow the county to exercise discretion to consider the ability, experience, integrity, efficiency, reputation, and capacity of the bidders.<sup>193</sup> To overturn a bid award on appeal, a court must make a finding that the county made a decision that was arbitrary, capricious, or unreasonable, or if it misinterprets or misapplies the law.<sup>194</sup>

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<sup>191</sup> N.D.C.C. § 48-01.2-09. Contract with successful bidder.

<sup>192</sup> N.D.C.C. § 48-01.2-10. Bonds from contractors for public improvements.

<sup>193</sup> *Baukol Builders, Inc. v. County of Grand Forks*, 2008 ND 116, ¶ 23, 761 N.W.2d 191, 199.

<sup>194</sup> *Baukol Builders, Inc. v. County of Grand Forks*, 2008 ND 116, ¶ 32, 761 N.W.2d 191, 201 (citing *Bertsch v. Bertsch*, 2007 ND 168 ¶ 10, 740 N.W.2d 388).



## **CHAPTER 17 – LOCAL ROAD IMPROVEMENTS & TOWNSHIP ROAD MAINTENANCE AGREEMENTS**

### **1. Township Supervision, Purchasing of Road Machinery, & Contracting**

The board of township supervisors of any township in the state has general supervision over the roads, highways, and bridges throughout the township.<sup>195</sup> The board of supervisors of any township may contract for and purchase, upon credit or otherwise, any road machinery, implements, or equipment for the use of such township.<sup>196</sup>

The board of supervisors of any township may enter into a contract with the board of county commissioners of the county, the board of supervisors of another township, or the directors of a soil conservation district for the construction, improvement, or repairing of township roads and bridges without the necessity of advertising for bids.<sup>197</sup>

### **2. Municipal Road Improvements**

In all places where highways are improved and graded under the contract system in a township where land contiguous to, adjoining, and outside of the limits of any city has been surveyed into a block or blocks and divided into city lots, the person to whom such contract is awarded shall comply strictly with the ordinances of such city as to roads, streets, grades, space for sidewalks, berms, and gutters, if, in the opinion of the board of township supervisors having control of the same, the cost of such grading is \$100 or upwards. An estimate, profile, and cross section of such desired improvement must be

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<sup>195</sup> [N.D.C.C. 24-06-01. Board of township has supervision over township roads.](#)

<sup>196</sup> [N.D.C.C. 24-06-02. Township may purchase road machinery – credit terms.](#)

<sup>197</sup> [N.D.C.C. 24-06-09. Contract for township road and bridge work by county, township, or soil conservation district.](#)

made by the county surveyor of said county, and the contract for such improvement must be let to the lowest responsible bidder not a member of the said board and the work done under such contract may not be accepted or paid for until said surveyor has reported that the said contract has been complied with substantially. All roads and streets in city additions of outlots must be graded according to the requirements of such city ordinance or custom as to space for sidewalks, berms, and gutters.<sup>198</sup>

### **3. Township road and drainage construction standards**

When the construction or reconstruction of a township road or bridge, the insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain in connection with a township road affects the flow of surface waters and increases the surface waterflow through ditches, drains, bridges, and culverts in other townships, the board of township supervisors or the township overseer of highways of the township undertaking the construction or reconstruction shall give notice to the boards of township supervisors or township overseers of highways in all townships affected by the construction or reconstruction projects.

The boards of township supervisors of townships affected by any road or bridge construction that changes or increases the flow of surface waters shall cooperate in the construction projects expending on any portion of the projects the portions of the road and bridge tax as deemed conducive to the interests of the township. The board of township supervisors shall construct the ditches, drains, bridges, and culverts in

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<sup>198</sup> [N.D.C.C. 24-06-10. Roads contiguous to municipality – grades – how established.](#)

accordance with stream crossing standards prepared by the department and the department of water resources. A township, board of township supervisors, and township overseer of highways are not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the department of water resources.<sup>199</sup>

#### 4. Maintenance of Township Road Ditches

##### Limited Duty to Adjacent Landowners

The party with an interest in land adjacent to a township road is not responsible for maintaining that ditch unless improper conservation practices on that party's adjoining land have led to unreasonable wind and water erosion, not commonly experienced in the locality, which resulted in conditions adversely affecting the ditch. On the occurrence of such improper conservation practices, the board of township supervisors may require the adjoining party with an interest in the land to clean the ditch at that party's expense. If that party fails to clean the ditch, the procedures applicable to the duty to cut weeds under chapter 63-05 apply with respect to the cleaning of the ditch.<sup>200</sup>

##### Authorization by Private Property

The board of township supervisors may authorize any private party to maintain, clean, or shape a ditch along a township road at that party's own expense and in accordance

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<sup>199</sup> N.D.C.C. § 24-06-26.1. Township road and drainage construction standards.

<sup>200</sup> N.D.C.C. § 24-06-26.2. Maintenance of township road ditches – limited duty.

with this section. In maintaining, cleaning, or shaping a ditch, the private party may not spread any soil or debris from that ditch along adjoining land without the permission of all parties with an interest in that land. The ditch may be on a continuous grade from the bottom of the upstream water outlet to the bottom of the downstream water outlet structure. The grade ratio in that distance must be a slope that, in light of the soil types and potential for vegetative cover in the ditch, will resist erosion. For any action to be considered maintenance of a ditch in accordance with this section, the ditch must be entirely contained within the township right of way, must have a bottom that is not wider than 12 feet, and may not alter the side slope of the ditch to a slope steeper than the existing side slope. The board of township supervisors may not approve private maintenance of a ditch that does not comply with the standards of this section. If the board of township supervisors denies permission to maintain a ditch under this section, the petitioner may appeal that decision to the water resource board that has jurisdiction over the ditch. This section does not relieve any person from compliance with any requirements for a drainage permit which are required by statute or rule.<sup>201</sup>

##### **5. Construction of Crossings over Ditches, Drains, and Roads**

Whenever a township constructs a ditch or drain in connection with road building, and such ditch, drain, or road interferes with the ingress or egress of any owner of adjoining land, the township shall install crossings at such point or points as will afford the owner or owners of the premises suitable ingress thereto or egress therefrom.<sup>202</sup>

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<sup>201</sup> [N.D.C.C. § 24-06-26.3. Maintenance of township road ditches by private party – power of board of township supervisors – approval – standards of construction.](#)

<sup>202</sup> [N.D.C.C. § 24-06-11. Construction of crossings over ditches, drains, and roads.](#)

Chapter 17 Supplemental Information

Sample Township Maintenance Agreement

**TOWNSHIP MAINTENANCE AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the County of Kittson and Township of \_\_\_\_\_.

1. It is agreed between the parties hereto that regular maintenance work including blading, snow plowing, spraying and signing along township roads will be performed by Kittson County at township request and direction.

2. Kittson County agrees to furnish equipment and manpower for \_\_\_\_\_ Township, Kittson County, Minnesota in order to provide service and to complete the work in an efficient manner.

3. \_\_\_\_\_ Township agrees to pay Kittson County for the labor, materials, spraying chemicals and equipment used for said maintenance work at the usual and regular rate upon invoices submitted to the township by Kittson County. All bills are due in 30 days.

4. \_\_\_\_\_ Township agrees to provide maps showing which routes are to be bladed, snow plowed or sprayed annually in order to help insure the safety of the traveling motorist on these public township roads.

This Agreement is for a period of one (1) year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and will renew automatically for successive one (1) year terms until terminated as provided herein. Either party may terminate this agreement by thirty (30) days written notice; the obligations pursuant to paragraphs 1 and 4 of the Agreement shall be continuing and shall survive the termination of the Agreement.

\_\_\_\_\_ Township

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Kittson County:

By \_\_\_\_\_

County Highway Engineer

Date \_\_\_\_\_

Original – County Highway Engineer  
Copy – Township Board of Supervisors



## Sample Policy: Walsh County Mud on Roadway Policy

This policy refers to instances where farm or commercial activities from an owner, renter or contractor of land or property adjacent or near a county roadway that is maintained with public funds, deposits mud or other debris upon the roadway.

The objective is to minimize or remove deposits from the roadway that may constitute a road safety hazard for roadway users. In particular, mud is considered to be a danger to users of the roadway because it may lead to accidents. This can be accelerated in adverse weather conditions.

Owners, renters, or contractors are responsible for the following:

1. Do everything possible to prevent mud or other debris from being deposited on the roadway.
2. Use "Mud on Roadway" or "Slippery Road" signs when necessary to inform the public of the hazard. Make sure signs are positioned to give maximum visibility and warning to other road users.
3. Clean the road as necessary during the day and at the end of the working day.
4. When asked by any law enforcement agency or by any highway department official to clean the roadway, the roadway shall be cleaned within two hours of being notified.
5. Labor, equipment and material costs associated with replacing any gravel in order to ensure the safety of all county residents and to restore the roadway to pre-harvest conditions. This will be done at the discretion of the Walsh County Highway Department and billed to the owner, renter, or contractor.

If the owner, renter, or contractor fails to follow this policy as set by the Walsh County Board of Commissioners, the Walsh County Highway Department may cause the mud or other debris to be removed and the cost of removing the mud or other debris, and/or the replacement of any gravel or other material, if necessary, shall be billed to the landowner, renter, or contractor. If the bill remains unpaid for two consecutive months, the bill will be certified to the County Auditor, and all of the expenses shall be charged against the land and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected.

This policy is in accordance with North Dakota Century Code 24-06-28 and 24-06-29 which was enacted August 1, 2011.

Policy adopted March 2009 and updated August 2010. (Walsh County)

## Sample Policy: Walsh County Roadside Mowing Policy

It is the duty of landowners or operators with land adjoining county roads as designated by the Walsh County Board of Commissioners to cut all weeds and grasses along the county roads adjoining their lands, including weeds and grasses growing within the public right of way bordering county roads and their lands. The cutting shall be completed no later than **September first** of each year, as prescribed by the Walsh County Board of Commissioners.

If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads as provided in this policy, the Walsh County Board of Commissioners may cause the weeds and grasses to be cut and \$100 per one-half land mile (one side of road), fine or the actual cost of mowing, which ever is greater, shall be certified to the County Auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected. Grass must be mowed shoulder level or lower.

This policy is in accordance with Century Code: 63-05-01, 63-05-02.



## **CHAPTER 18 – SIZE, HEIGHT, & WEIGHT**

### **RESTRICTIONS**

#### **1. Classifications of highway weight and load capacities**

The director, the board of county commissioners, and other appropriate bodies having control of roads, may classify public highways and roads under their respective jurisdictions and limitations as to the weight and load of vehicles thereon for such respective classifications.<sup>203</sup>

#### **2. Enforcement**

Every police officer, including members of the state highway patrol, having reason to believe that the weight of a vehicle and the load carried thereon is unlawful, may weigh such vehicle and load or have the same weighed either by means of portable or stationary scales, and for that purpose the officer may require the vehicle to be driven to the nearest scales. Such officer may require the driver of such vehicle immediately to unload such portion of the load as may be necessary to decrease the gross weight to the maximum allowed by the provisions of this chapter.<sup>204</sup>

#### **3. Exception for Inclement Weather**

Whenever a highway will be seriously damaged or destroyed by reason of deterioration, rain, snow, or other climatic conditions unless the use of vehicles is prohibited or the

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<sup>203</sup> N.D.C.C. § 39-12-01. State and local authorities may classify highways as to weight and load capacities.

<sup>204</sup> N.D.C.C. § 39-12-07. Peace officers may weigh vehicle to determine load – Decreasing gross weight of vehicle.

weight of the vehicle thereon is limited, the director, employees authorized by the director by an order, or local authorities by ordinance or resolution, may prohibit the operation of vehicles upon such highway or may impose weight restrictions on vehicles. The director or employees making the order and local authorities enacting the ordinance must erect or cause signs to be erected and maintained designating the provisions of the order, ordinance, or resolution. The signs must be erected and maintained at each end of the portion of highway affected, and the order, ordinance, or resolution is not effective until the signs are erected and maintained. The operation of trucks or other commercial vehicles or limitations as to the weight of vehicles on designated highways may be prohibited or limited in the same manner.

In instances of inclement weather, as determined by the local authorities, changes may be made to existing posted restrictions on a portion of a highway if the local authority:

- Gives public notice of the change in the posted restrictions on any portion of a highway by publishing the inclement weather restriction on the local authority's website and a uniform county permit system or similar permit system within one hour after the initial determination of inclement weather; and
- Within five days of the first date of inclement weather, erects and maintains a sign at each end of the portion of the highway affected by the inclement weather restriction.<sup>205</sup>

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<sup>205</sup> [N.D.C.C. § 39-12-03. Director or local authorities may limit use of vehicles on highways – Exception for inclement weather.](#)

#### 4. Exceptions to Width, Height, and Length Limitations

##### Width Limit

Vehicles operated on a highway in North Dakota may not exceed a total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:

- i. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
- ii. Implements of husbandry being moved by resident farmers, ranchers, governmental entities, dealers, or manufacturers between sunrise and sunset.
- iii. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
- iv. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, commercial movement of portable grain cleaners, commercial movement of forage harvesters, and the commercial movement of hay grinders.
- v. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
- vi. Any non-load-carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer

is excluded from the measurement of trailer width.

vii. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.

#### Height Limit.

Vehicles operated on a highway in North Dakota may not exceed a height of fourteen feet [4.27 meters], whether loaded or unloaded. This limitation does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:

- i. The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.
- ii. The trip is at most sixty miles [96.56 kilometers].
- iii. The trip is between sunrise and sunset.
- iv. None of the trips are on an interstate highway.

#### Length limit.

A vehicle operated on a highway in this state may not exceed the following length limitations:

- i. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
- ii. A combination of two units including the load thereon may not exceed a length of

seventy-five feet [22.86 meters].

iii. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.

iv. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.

v. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.5 meters] except that trailers and semitrailers titled and registered in North Dakota before July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].

Vehicles without length limitations:

i. Building moving equipment.

ii. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.

iii. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.

iv. Structural material of telephone, power, and telegraph companies.

v. Truck-mounted haystack moving equipment, provided the equipment does not

exceed a length of fifty-six feet [17.07 meters].

vi. A truck tractor and semitrailer or truck tractor, semitrailer, and the trailer when operated on the interstate highway system or parts of the federal aid primary system as designated by the director, only when federal law requires the exemption.

vii. Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles.<sup>206</sup>

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<sup>206</sup> [N.D.C.C. § 39-12-04. Width, height, and length limitations on vehicles – Exceptions.](#)