

CHAPTER 69-05.2-23
PERFORMANCE STANDARDS - POSTMINING LAND USE

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69-05.2-23-01	Performance Standards - Postmining Land Use - Determining Premining Land Use
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69-05.2-23-01. Performance standards - Postmining land use - Determining premining land use.

1. The postmining land use must be compared to those uses the land previously supported under proper management unless the land has been previously mined and not reclaimed.
2. The postmining land use for land that has been previously mined and not reclaimed must be judged on the basis of the land use that existed prior to any mining. However, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use must be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.
3. If the premining use of the land was changed within five years of beginning of mining, the comparison of postmining use to premining use must also include the historic use of the land preceding mining.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-08, 38-14.1-24

Law Implemented: NDCC 38-14.1-24

69-05.2-23-02. Performance standards - Postmining land use - Land use categories. Land use is categorized as follows:

1. Cropland.
2. Tame pastureland.
3. Native grassland.
4. Woodland.

5. Fish and wildlife habitat.
6. Developed water resources.
7. Recreation.
8. Residential.
9. Industrial and commercial.
10. Shelterbelts.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24

69-05.2-23-03. Performance standards - Postmining land use - Criteria for approving alternative postmining land uses. An alternative postmining land use may be approved by the commission, after consulting the landowner or the land management agency having jurisdiction over state or federal lands, if the following criteria are met:

1. There is reasonable likelihood the use will be achieved.
2. The use does not present an actual or probable hazard to public health or safety, or threat of water diminution or pollution.
3. The use will not:
 - a. Be impractical;
 - b. Be inconsistent with applicable land use policies or plans;
 - c. Involve unreasonable delay in implementation; or
 - d. Cause or contribute to violation of federal, state, or local law.

History: Effective August 1, 1980; amended effective May 1, 1988.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24, 38-14.1-42