

## ARTICLE 89-10

### SOVEREIGN LANDS

Chapter  
89-10-01 Sovereign Lands

#### CHAPTER 89-10-01 SOVEREIGN LANDS

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**89-10-01-01. Authority.** These rules are adopted and promulgated by the state engineer pursuant to North Dakota Century Code chapter 61-33 to provide

consistency in the administration and management of sovereign lands. These rules do not apply to the interests of the state of North Dakota in oil, gas, and related hydrocarbons.

**History:** Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-02. Prohibition on permanent relinquishment.** Sovereign lands may not be permanently relinquished but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

**History:** Effective November 1, 1989; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-03. Definitions.** The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Grantee" means the person, including that person's assigns, successors, and agents who are authorized pursuant to an authorization.
4. "Navigable waters" means any waters which were in fact navigable at time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water, including the Missouri River, the Yellowstone River, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, Devils Lake, Painted Woods Lake, and Sweetwater Lake.
5. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety.

6. "Project" means any activity which occurs either partially or wholly on sovereign lands.
7. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
8. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.
9. "Structure" means something that is formed from parts, and includes boat docks, boat ramps, and water intakes.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-04. Authorization.** Each project requires an authorization from the state engineer prior to construction or operation, except as otherwise provided by these rules.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-05. Application for permit, easement, lease, or management agreement.** Applications for an authorization must be on forms prescribed by the state engineer and contain the information required by the state engineer. Applications must be submitted to the North Dakota State Engineer, State Office Building, 900 East Boulevard, Bismarck, North Dakota 58505-0850.

**History:** Effective November 1, 1989.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-06. Application review.** Upon receipt of a completed application, the state engineer shall initiate a review as follows:

1. Comments must be requested from the following entities:
  - a. The state game and fish department;
  - b. The state department of health;
  - c. The state historical society;
  - d. The state land department;

- e. The state parks and recreation department;
  - f. The United States fish and wildlife service;
  - g. The park district and planning commission of any city or county, if any part of the project is within the boundaries of the city or county;
  - h. Any water resource district in which the proposed project will be wholly or partially located; and
  - i. Other agencies, private entities, and landowner associations as appropriate or required by law.
2. Each entity shall submit all comments in writing to the state engineer within thirty days of the date requests for comments were mailed. The state engineer is not bound by any comment submitted.
  3. Upon completion of the review and any public meeting held pursuant to section 89-10-01-07, the state engineer may grant, deny, or condition the application.
  4. The state engineer shall provide written notice of the decision on the application by certified mail or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the decision was served.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-07. Public meeting.** An information-gathering public meeting may be held by the state engineer prior to final action on a project. The procedure for notice and meeting must be as follows:

1. The state engineer shall cause a notice of meeting to be published in the official newspaper for each county in which the project is located. The notice must be published once each week for two consecutive weeks.
2. The meeting date must be at least twenty days after the date of last publication.
3. The meeting must be conducted by the state engineer and the meeting may be held in Bismarck.

4. The meeting is not an adversary proceeding nor a contested case hearing under North Dakota Century Code chapter 28-32.

**History:** Effective November 1, 1989; amended effective August 1, 1994.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-08. General permit standards.** The state engineer may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the state engineer shall consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;
4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality;
10. Cultural and historical resources; and
11. Alternative uses.

**History:** Effective November 1, 1989; amended effective April 1, 2008.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-09. Specific project requirements.**

1. In addition to the considerations set forth in section 89-10-01-08, the following conditions apply when a permit application involves the mining of gravel, sand, or other resources other than oil, gas, and related hydrocarbons:
  - a. Mining must be completed in the shortest practicable period of time and during the season which will minimize the effects on the waterway and biotic life in the waterway.

- b. Mining may be prohibited or restricted when it would, in the judgment of the state engineer, adversely affect the maintenance or reproduction of fish or other wildlife populations.
  - c. If the state engineer determines mining will have a significant adverse impact on downstream riparian owners, the grantee must obtain the riparian owner's written consent.
2. In addition to the considerations set forth in section 89-10-01-08, the following considerations apply when a permit application involves dredging or filling:
- a. Unless there is no reasonable alternative or the public need exceeds other values, dredging or filling will not be permitted.
  - b. Dredged material must be removed to a site above the ordinary high watermark unless otherwise authorized by the state engineer.
  - c. Approved fill must be clean, nonpolluting material free of waste metal, organic material, and unsightly debris.

**History:** Effective November 1, 1989; amended effective August 1, 1994.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-10. Projects not requiring a permit.** The following projects do not require a permit:

1. Boat docks if all of the following conditions are satisfied:
  - a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;
  - b. The dock is used only for embarkation, debarkation, moorage of boats, or recreation;
  - c. Only clean, nonpolluting materials are used;
  - d. The dock does not extend more than twenty-five feet [7.6 meters] in length from the edge of the water on a river and fifty feet [15.24 meters] in length from the edge of the water on a lake, and there is no unreasonable interference with navigation or access to adjacent riparian owner's property;
  - e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters]

in length, and is removed from below the ordinary high watermark each fall;

- f. There is no excavation or filling below the ordinary high watermark in excess of that authorized in subsection 4; and
  - g. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
2. Boat ramps if all of the following conditions are satisfied:
- a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;
  - b. Excavation of the bank is limited to the minimum width necessary for the placement of a single lane boat ramp adjacent to privately owned property or a double lane boat ramp adjacent to publicly owned property;
  - c. Material excavated from the bank is removed to a location above the ordinary high watermark;
  - d. Only such clean, nonpolluting fill and riprap material free of waste metal, organic materials, and unsightly debris are placed below the ordinary high watermark as necessary to construct and stabilize the boat ramp; and
  - e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
3. Water intakes if all of the following conditions are satisfied:
- a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for riparian owner's or lessee's personal use;
  - b. Excavation of the bank is limited to the minimum width necessary to install and maintain the water intake;
  - c. Materials excavated from the bank are removed to a location above the ordinary high watermark;
  - d. The intake is entirely removed each fall; and
  - e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

4. Dredging or filling if all of the following conditions are satisfied:
  - a. The work is completed and maintained by the riparian owner or the riparian owner's lessee;
  - b. The amount of dredge or fill material does not exceed ten cubic yards as part of a single and complete project;
  - c. No stream diversion results;
  - d. No extension of a claim of ownership to sovereign lands results; and
  - e. Only clean, nonpolluting material free of waste metal, organic materials, and unsightly debris is used.
5. Boats that are temporarily moored.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-10.1. Boat docks, boat ramps, and water intakes.** Boat docks, boat ramps, and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

**History:** Effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-11. Structures.** Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is constructed on or moored to sovereign lands, the state engineer shall:

1. Issue an order identifying the action required to modify, remove, or otherwise eliminate the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken shall be at least twenty days after the order is issued.
2. If the ordered action is not taken by the date specified in the order, the state engineer may modify, remove, or otherwise eliminate the structure.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies, removes, or eliminates the structure, the state engineer may assess the fees and

costs of such action against any property of the person responsible for the structure; or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the cost against property of the person responsible for the structure and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. Within ten days of the date the order is issued, a person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the sovereign lands at issue are located in accordance with North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33, 61-03-21.3, 61-03-22

**89-10-01-12. Public recreational use.** The public may use sovereign lands for recreational purposes except as otherwise provided by these rules or by signage posted by the state engineer.

**History:** Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-13. Vehicular access.** The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the state engineer;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and

the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;

3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that must be submitted to the state engineer, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;
4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;
5. To launch or load a boat, canoe, or other watercraft in the most direct manner possible;
6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;
7. To access private land that has no other reasonable access point, provided that access across sovereign lands is in the most direct manner possible;
8. By disabled persons who possess a totally or permanently disabled person's fishing license or shoot from vehicle permit;
9. When operation is necessary as part of a permitted activity or project;
10. By the riparian owner or the riparian owner's lessee on sovereign lands that are adjacent to the riparian owner's property, provided it does not negatively affect public use or values; and
11. When being used by government personnel in the performance of their duties.

This section does not authorize use of property above the ordinary high watermark. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-14. Cancellation by the state engineer.** The state engineer may cancel any authorization granted pursuant to these rules. Cancellation does not release the grantee from any liability.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-15. Termination by applicant.** The grantee may terminate or surrender any authorization by notifying the state engineer in writing, paying all fees or royalties or other money owed to the state, and reclaiming the site pursuant to section 89-10-01-18.

**History:** Effective November 1, 1989.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-16. Assignments.** Any authorization granted pursuant to these regulations may only be assigned with the written consent of the state engineer.

**History:** Effective November 1, 1989.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-17. Inspections.** The state engineer may inspect all projects on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

**History:** Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-18. Reclamation.** After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location. The time allowed for reclamation shall be one hundred twenty days, unless the permit is for mining which shall be reclaimed within sixty days after the lease expires or the mining is complete. The state engineer may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required timeframe, the state engineer may enter and restore the project location. The grantee is liable for all reclamation costs.

**History:** Effective November 1, 1989.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-19. Maintenance and repair.** Maintenance or repair of authorized projects do not require additional authorization provided the work is in conformance

with the original authorization, standards, and specifications provided in this article, and the work does not alter the use or size of the project.

**History:** Effective November 1, 1989; amended effective August 1, 1994.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-20. Areas of special interest.** The state engineer may enter agreements for management of areas of high public value. Examples include, but are not limited to, parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

**History:** Effective November 1, 1989.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-21. Organized group activities.** Organized group activities that are publicly advertised or are attended by more than twenty-five persons are prohibited on sovereign lands without a permit issued by the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-22. Pets.** Pets are not allowed to run unattended on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-23. Camping.** Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-24. Hunting, fishing, and trapping.** All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules and regulations or laws, or as posted at public entry points. Posting sovereign lands with signage by anyone other than the state engineer is prohibited without a sovereign

lands permit. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-25. Unattended watercraft.** Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

1. When moored to privately owned docks;
2. When moored to private property above the ordinary high watermark with a rope, chain, or other type of restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark; or
3. By riparian owners on land below the ordinary high watermark.

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-26. Removal of public property.** Trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, water, firewood, posts, poles, or other public property may not be removed from sovereign lands without a permit issued by the state engineer, except that firewood may be removed under certain stated conditions from designated firewood cutting plots, and the riparian owner or the riparian owner's lessee may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the state engineer. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. Removal of property from sovereign lands by permit shall only be in a manner, limit, and condition specified by the permit. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-27. Cultural or historical resources.** Artifacts, or any other cultural or historical resources, occurring on sovereign lands may not be disturbed

or destroyed without formal written approval from the state historical society and a permit from the state engineer.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-28. Disposal of waste.** The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or boats may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-29. Glass containers.** Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-30. Abandoned property.** Abandonment of vehicles or other personal property is prohibited on sovereign lands.

**History:** Effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-31. Firearms.** Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner and as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-32. Tree stands.** Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands and portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting

rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth of the year and shall be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33

**89-10-01-33. Baiting.** Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities conducted by the state engineer. Bait may be used to lure and take furbearers when engaged in trapping in lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2009.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-33