

ARTICLE 7-19

ENVIRONMENTAL IMPACT MITIGATION PROGRAM

Chapter
7-19-01 General Provisions

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GENERAL PROVISIONS

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7-19-01-01. Definitions.

For purposes of this chapter:

1. "Applicant" means a person that has filed on or after March 31, 2024, or is planning to file, an application for a proposed site, corridor, or route, pursuant to North Dakota Century Code chapter 49-22.
2. "Electric energy conversion facility" means the term as it is defined by North Dakota Century Code section 49-22-03.
3. "Electric transmission facility" means the term as it is defined by North Dakota Century Code section 49-22-03.
4. "Mitigation" means avoiding or minimizing adverse environmental impact or performing an action or activity to offset or otherwise compensate for adverse environmental impact by:
 - a. Planning and executing a mitigation plan; or
 - b. Payment to the agriculture commissioner for deposit into the environmental impact mitigation fund for expenditure in accordance with North Dakota Century Code section 4.1-01-21.1.
5. "Mitigation plan" means a plan of mitigation measures including creating or restoring similar habitat or offsetting or otherwise compensating for habitat adversely affected by the construction facility or electric operation of an electric energy conversion or transmission facility.
6. "Offset" means to counterbalance residual adverse environmental impact, generally conducted after reasonable efforts have been undertaken to avoid and minimize impact or if avoidance or minimization of impact is not feasible.
7. "Similar habitat" means a physical environment that has the same or about the same corresponding resources, vegetation, and biotic factors serving multiple species that are exhibited in the physical environment within the vicinity of or generally surrounding the construction or operation of an electric energy conversion facility or electric transmission facility. These separate physical environments comprising similar habitat may resemble or somewhat differ from each other in general appearance, features, or other terrain characteristics.

History: Effective July 1, 2024; amended effective April 1, 2026.

General Authority: NDCC 4.1-01-21.1(4)

Law Implemented: NDCC 4.1-01-21.1(4), 49-22-03

7-19-01-02. Implementation and administration.

1. The agriculture commissioner is responsible for the implementation and administration of an environmental impact mitigation program and the environmental impact mitigation fund.
2. The environmental impact mitigation fund is a continuing appropriation contained within the state treasury. This fund consists of all moneys deposited in the fund by legislative appropriation or under North Dakota Century Code section 49-22-09.2 and all interest or investment earnings upon moneys in the fund.

History: Effective July 1, 2024; amended effective April 1, 2026.

General Authority: NDCC 4.1-01-21.1(4)

Law Implemented: NDCC 4.1-01-21.1, 49-22-09.2

7-19-01-03. Mitigation plan and payment.

1. Before an application is filed to construct or operate an electric energy conversion facility or electric transmission facility, or very early in the application process, an applicant may notify and coordinate with the agriculture commissioner about identified adverse environmental impacts from the construction or operation of the facility. A notification may:
 - a. Propose to the agriculture commissioner a mitigation plan to create or restore similar habitat or to offset or otherwise compensate for identified adverse environmental impacts; or
 - b. Request the agriculture commissioner to develop a mitigation plan, including a cost estimate, to create or restore similar habitat or to offset or otherwise compensate for identified adverse environmental impacts.
2. Prior to the public service commission issuing the applicant a permit or certificate, the agriculture commissioner shall notify the public service commission, for its consideration, of the mitigation plan and mitigation efforts or of any payment to the agriculture commissioner for deposit into the environmental impact mitigation fund for expenditure in accordance with North Dakota Century Code section 4.1-01-21.1.
3. As part of the permit or certificate process of a wind electric energy conversion facility, the applicant may not make an offset payment to any person, other than the agriculture commissioner, to create or restore similar habitat or to offset or otherwise compensate for the adverse environmental impact resulting from the construction or operation of the facility.

History: Effective July 1, 2024; amended effective April 1, 2026.

General Authority: NDCC 4.1-01-21.1(4)

Law Implemented: NDCC 4.1-01-21.1, 49-22-09.2

7-19-01-04. Agriculture commissioner notification and legislative management.

The agriculture commissioner shall provide a biennial report regarding the environmental impact mitigation fund to the legislative management no later than December thirty-first of every even-numbered year.

History: Effective July 1, 2024.

General Authority: NDCC 4.1-01-21.1(4)

Law Implemented: NDCC 4.1-01-21.1, 49-22-09.2