

**ARTICLE 85-01
GENERAL ADMINISTRATION**

Chapter
85-01-01 Definitions and General Provisions

**CHAPTER 85-01-01
DEFINITIONS AND GENERAL PROVISIONS**

Section
85-01-01-01 Definitions
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85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.2, and 57-62, apply to this title:

1. "Acquired lands" includes all property defined as "nongrant" and "other than original grant lands" in North Dakota Century Code section 15-07-01.
2. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.
3. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, and haying.
4. "Board" means the board of university and school lands.
5. "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.
6. "Certified appraiser" means a certified general appraiser or a certified residential appraiser who holds a valid permit issued by the North Dakota real estate appraiser qualifications and ethics board.
7. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.
8. "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.
9. "Coal leased premises" means the land subject to a given coal lease.
10. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.

11. "Commercial quantities" means whether: The well yields a profit exceeding operating costs over a reasonable period of time; and
12. A reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.
13. "Commissioner" means the commissioner of university and school lands.
14. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
15. "Construction aggregate lease" means a contract entered between the board and a third party for mining of construction aggregate on trust lands.
16. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.
17. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.
18. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day-to-day care for the livestock.
19. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.
20. "Department" means the office of the commissioner and the department of trust lands.
21. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.
22. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases which are administered separately.
23. "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area under article 85-04.
24. "F.O.B." means free on board.
25. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but does not include coal, lignite, oil shale, or similar hydrocarbons.
26. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.
27. "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.
28. "Invasive species" means a species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
29. "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or the seller is not compelled to sell.

30. "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.
31. "Nonpermanent Improvement" means agricultural structures that can be readily removed from the land including but not limited to fences, creep feeders, stock tanks.
- ~~30~~ 31. "Offset drainage" means the drainage of oil or gas to an adjoining tract of land on which a well is being drilled or is already in production.
- ~~34~~ 32. "Offset well" means any well drilled opposite another well on adjoining property with the specific purpose of preventing drainage to the adjoining property.
- ~~32~~ 33. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
- ~~33~~ 34. "Oil and gas lease" means a contract entered between the board and a third party for oil and gas production.
- ~~34~~ 35. "Oil and gas leased premises" means the land subject to a given oil and gas lease.
- ~~35~~ 36. "Oil well" means a well capable of producing oil and which is not a gas well as defined herein.
- ~~36~~ 37. "Original grant lands" means all those lands granted to the state of North Dakota by virtue of the Enabling Act of 1889, as further defined in North Dakota Century Code section 15-06-01.
- ~~37~~ 38. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
39. "Permanent Improvement" means agricultural structures that are permanently affixed to the land including but not limited to well casing, dams, dugouts.
- ~~38~~ 40. "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.
- ~~39~~ 41. "Surface land lease" means a contract entered between the board and a third party for agricultural use on trust lands.
- ~~40~~ 42. "Surface land leased premises" means the land area subject to a given surface land lease.
- ~~44~~ 43. "Terminate," unless otherwise provided, has the same meaning as the word "cancel."
- ~~42~~ 44. "Trust lands" means any property owned by the state of North Dakota and managed by the board.
- ~~43~~ 45. "Trusts" means permanent trusts and other funds managed or controlled by the board.
- ~~44~~ 46. "Vertical oil and gas well" means a well, the wellbore of which is drilled on a vertical or directional plane into a non-shale formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation.
- ~~45~~ 47. "When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019; amended effective January 1, 2020; January 1, 2021; April 1, 2022; April 1, 2024; _____, 2026.

General Authority: NDCC 15-01-02, 15-05-05, 15-05-09, 15-05-18, 15-07-02, 15-07-20, 15-08.1-06, 43-30.2-03, 61-33-06.

Law Implemented: NDCC 4.1-47-04, 15-01-02, 15-04, 15-05, 15-07, 15-08, 15-08.1

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**ARTICLE 85-03
UNCLAIMED PROPERTY**

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**CHAPTER 85-03-03
CLAIMING PROPERTY**

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85-03-03-03	Payment of Claim
85-03-03-04	Heir Finder Requests
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85-03-03-02. Required documentation.

A claimant shall provide adequate documentation to establish ownership of the abandoned property, including photo identification and documentation of social security number.

1. The following additional documentation is required when a claim is submitted on behalf of:
 - a. Deceased individuals: Copy of death certificate and documentation providing legal claim authority.
 - b. Business claims: Federal employer identification number and documentation providing legal claim authority.
 - c. Incapacitated individuals: Copy of documentation providing legal claim authority.
 - d. Minors: A claim for property held in the name of an owner under the age of eighteen must be submitted by a person with legal authority to act on the owner's behalf. The claimant must provide documentation sufficient to establish such authority.
2. If there are multiple owners, all reported owners or the legal representative shall submit a claim form.
3. The administrator may request additional documentation necessary to support a claim.
4. If a claimant chooses to donate the property to the common schools trust fund, required documentation remains the same.

History: Effective January 1, 2019; amended effective _____, 2026

General Authority: NDCC 15-01-02, 47-30.2-03

Law Implemented: NDCC 47-30.2-50, 47-30.2-51, 47-30.2-52

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ARTICLE 85-04 SURFACE LAND MANAGEMENT

Chapter	
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85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
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CHAPTER 85-04-01 LEASING TRUST LANDS FOR AGRICULTURAL USE

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85-04-01-06	Custodial Agreement
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85-04-01-13	<u>Weed and Pest</u> Cost-Share Payments
85-04-01-14	Biological Control Agents
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85-04-01-01. Failure to pay or ~~nonsufficient~~ insufficient funds at auction.

1. The commissioner may not issue a surface land lease for agricultural use until payment in full is received by the department.
2. A successful bidder who fails to pay for a surface land lease ~~is~~ may be deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year ~~plus~~ and a minimum of three additional full calendar years thereafter.
3. If a surface land lease payment made at auction ~~is, fails to clear~~ for any reason ~~not paid by the bank on which it is drawn~~, the commissioner shall notify the bidder by mail addressed to the bidder's ~~post office~~ address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

History: Effective January 1, 2020; amended effective . 2026.

General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-07-20, 54-30-17.1

85-04-01-02. Annual surface land lease rental payment.

1. The annual surface land lease rental payment for the second and ~~each~~ succeeding years of a surface land lease must be received by the department ~~no later than five p.m. central standard time~~ by the close of business on the last business day of January of the surface land lease year. If payment is not received, the surface land lease automatically terminates without notice.
2. If the annual surface land lease rental payment, for any reason, ~~is not paid by the bank on which it is drawn~~ fails to clear after ~~five p.m. central standard time~~ the close of business on the last business day of January of the surface land lease year in which it is due, the surface land lease automatically terminates and the commissioner may designate the lessee ineligible to bid at subsequent surface land lease auctions for the remainder of the current calendar year ~~plus~~ and a minimum of three additional full calendar years thereafter.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-03. Assignment and use by a third party.

1. A surface land lease or any part thereof may not be assigned, nor may the lessee allow the surface land leased premises or any part thereof to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.
2. A lessee may request an assignment of a surface land lease from the department. The commissioner shall approve or deny an assignment based on the best interests of the trusts. The following assignments may be approved:
 - a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original surface land lease.
 - ~~b. An assignment of less than the full surface land lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the surface land leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day to day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.~~
 - e b. An assignment to a third party with the surface land lease expiring at the end of the current surface land lease year. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.
3. A lessee may request to add one or more additional lessees to a surface land lease. All such additional lessees shall be bound by the full terms and conditions of the surface land lease.
4. A lessee may request to remove one or more lessees from a surface land lease. The removal of any lessee must be approved in writing by all current lessees named on the lease.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

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85-04-01-08. Surface land lease termination.

1. Failure to comply with the surface land lease terms, board rules, ~~and board policies, and or~~ applicable laws ~~(except as otherwise stated in this chapter)~~ may result in surface land lease termination by the commissioner. ~~Before a surface land lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate the surface land lease specifying the reason for termination.~~
2. ~~A lessee may file with the department a written request for waiver of the notice of intent to terminate the surface land lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the surface land lease. A request for a waiver is deemed filed when personally delivered to or when received by the department. The commissioner may:~~
 - ~~a. Waive any breach except those terms required under applicable laws; or the commissioner may~~
 - ~~b. Allow the lessee time to cure the breach; or~~
 - ~~c. Terminate the surface land lease.~~
3. ~~Not less than ten business days after the notice of intent to terminate the surface land lease is served on the lessee, the commissioner may terminate the surface land lease. Surface land lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the surface land lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service. Termination of the surface land lease does not release the lessee from liability for any sum due the board or from any damages due.~~
3. The procedure to terminate a surface land lease is as follows:
 - a. The department shall provide notice of intent to terminate the surface land lease with specific reasons for termination by certified mail to the lessee's last known address on file with the department.
 - b. A lessee may file with the department a written request for review of the intent to terminate the surface land lease. The request for review must:
 - (1) Be received by the department within fifteen business days after service of notice to the lessee; and
 - (2) Include a statement for reason of review.
 - c. The commissioner may terminate a surface land lease no earlier than fifteen business days after the date of notice of intent to terminate the surface land lease.
 - (1) A notice of termination of a surface land lease must be sent by certified mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt.
 - (2) Termination of a construction aggregate lease is effective upon the date of notice of termination.
4. Termination of the surface land lease does not release the lessee from liability for any sum due amounts or damages owed to the board.

- 4 5. When a surface land lease is terminated, the commissioner may deem the former lessee ineligible to bid at a surface land lease auction administered by the department for a minimum of the remainder of the current calendar year plus and a minimum of three additional full calendar years thereafter.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

85-04-01-09. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~ determine if board review is warranted.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-07-20, 28-32-02

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-10. Weed and Pest Cost-share on surface land leased premises.

The lessee is responsible for noxious weed and invasive species and pest control on the surface land leased premises. The department may participate in weed and pest cost-share reimbursement, as follows:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or
3. Payments for other invasive species and pests as allowed by the department.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-11. Weed and Pest Cost-share application.

A lessee ~~shall~~ may submit a request for weed or pest cost-share. The request must be submitted using the electronic cost-share application available on the department's website or a paper application provided upon request. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The amount of the cost-share must be determined by the department consistent with the department's cost-share policy.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-12. Weed and Pest Cost-share on cropland.

Noxious weeds and invasive species on cropland are not eligible for cost-share.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-13. Weed and Pest Cost-share payments.

Cost-share payments may be made ~~upon receipt of an invoice~~ for allowable expenses related to weed and pest control.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-04-24

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ARTICLE 85-04 SURFACE LAND MANAGEMENT

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85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
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CHAPTER 85-04-02 CONSTRUCTION AGGREGATE

Section	
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<u>85-04-02-22</u>	<u>Assignment of Construction Aggregate Lease</u>
<u>85-04-02-23</u>	<u>Reserved Rights</u>

85-04-02-01. Application.

An applicant shall submit a request for a construction aggregate lease, amendment, assignment, or extension using the electronic application available on the department's website or a paper application provided upon request. ~~The application must clearly state whether the request is for a construction aggregate lease, amendment, assignment, or extension. An application submitted on any other form may not be accepted.~~

1. An application fee may be charged as determined by the board. ~~Each application and construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres [64.75 contiguous~~

~~hectares] of like net construction aggregate interest. An application must be made as follows:~~

- ~~2.~~ An application is deemed filed and complete when the department receives the application, the application fee if applicable, and any supplemental information requested by the department.
- ~~3.~~ An application for a construction aggregate lease must:
 - ~~4 a.~~ Construction aggregate lease. An applicant shall provide all information required by the application and any supplemental information requested by the department. An application must designate the type of construction aggregate desired. An application is deemed filed and complete when the department receives an application, the application fee, and any supplemental information requested by the department. Designate the type of construction aggregate desired; and
 - ~~b.~~ Provide all information required by the application and any supplemental information requested by the department.
- ~~2 4.~~ Amendment. A lessee may submit a request for an amendment to a construction aggregate lease for a specific purpose. ~~If the request for an amendment is granted, the department shall mail the amendment to the applicant for signature.~~
- ~~3 5.~~ Assignment. A construction aggregate lease may be assigned upon prior written consent of the commissioner. ~~Assignments must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign a construction aggregate lease for good cause. The assignor remains responsible for compliance of all construction aggregate lease terms and this chapter until the assignment is approved by the commissioner. Upon approval, the assignee is responsible for compliance with all construction aggregate lease terms and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.~~
- ~~4 6.~~ Extension.
 - ~~a.~~ A lessee may submit ~~a request~~ an application for an extension of a construction aggregate lease for up to an additional five-year term to be granted at the discretion of the commissioner.
 - ~~b.~~ The department may adjust the royalty rate if an additional term is granted. ~~If the request for a construction aggregate lease extension is granted, the department shall mail the construction aggregate lease extension to the applicant for signature.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-02. Construction aggregate lease term.

1. A construction aggregate lease term may not exceed five years.
2. When the lessee is a state agency or a political subdivision;
 - ~~a.~~ ~~Lease term of one year or less;~~ the royalty rate must be a fixed ~~for a construction aggregate lease term of one year or less~~ amount based on fair market value.
 - ~~b.~~ ~~For a construction aggregate~~ Lease term greater than one year;~~;~~ the royalty rate must be based on fair market value. The department may include an annual adjustment based on the current fair market value.

3. When the lessee is a private entity ~~requesting less than five thousand cubic yards [3822.77 cubic meters] of construction aggregate, the term of the construction aggregate lease must be for one year or less:~~
 - a. For leases with a term of one year or less:
 - (1) The royalty rate must be a fixed amount based on fair market value; and
 - (2) The lease must be for less than five thousand cubic yards [3822.77 cubic meters] of construction aggregate.
 - b. For leases with a term greater than one year:
 - (1) The lease shall be offered at public auction; and
 - (2) The royalty rate must be based on fair market value. The department may include an annual adjustment based on the current fair market value.
4. ~~A construction aggregate lease to any entity other than a state agency or a political subdivision for a term greater than one year must be offered at public auction.~~
5. When construction aggregate is requested for an emergency, the term of the construction aggregate lease may not exceed one year.
6. Each construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres [64.75 contiguous hectares] of like net construction aggregate interest.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

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85-04-02-04. Notice of construction aggregate leasing.

Upon receipt of an application for a construction aggregate lease and a determination that the application covers a tract the commissioner is willing to lease, the department shall post on the department's website a notice of the application for construction aggregate lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a construction aggregate lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. ~~Applicant's name and address;~~
3. The legal description of the proposed construction aggregate leased premises as shown on the published notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the construction aggregate lease.

~~Those comments must be brought to the board along with the department's recommendations.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-05. Auctioned construction aggregate leases.

1. Notice of an auction must be published in the official newspaper of the county where the proposed construction aggregate leased premises is located and in the Bismarck Tribune.
2. The notice must be published once at least ten days prior to the day of the auction.
3. The notice must contain the legal description of the proposed construction aggregate leased premises, the construction aggregate lease term, and the time and place where the auction will be held. ~~Bidding must be on a royalty per yard basis. Immediately after the bidding session, comments as to whether a construction aggregate lease should be issued can be presented to the department.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

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85-04-02-07. Advance royalties.

1. As consideration for a construction aggregate lease with a term greater than one year, the lessee shall pay on the date a construction aggregate lease is issued an advance on the yearly royalty, as determined by the commissioner, but not less than one thousand dollars.
 - a. The advance payment is due each year in which the construction aggregate lease is in force ~~and is due prior to the construction aggregate lease anniversary date.~~
 - b. The advance payment may be credited against construction aggregate mined during the term of the construction aggregate lease. Advance royalty payments for which a credit is not claimed must be forfeited.
 - c. The commissioner may adjust the advance royalty payment amount. ~~Any adjustment takes effect on the anniversary date of the construction aggregate lease following notice to lessee.~~
2. The commissioner may require an advance royalty deposit for a construction aggregate lease with a term of one year or less. The deposit must be credited against construction aggregate mined during the term of the construction aggregate lease.
3. If payment is not timely received, a notice of intent to terminate the construction aggregate lease must be issued by the department.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-08. Royalties.

1. Royalties must be received by the department by five p.m. central ~~standard~~ prevailing time on the last business day of the calendar ~~month~~ year following sale, utilization, stockpiling, or removal from the construction aggregate leased premises of the construction aggregate mined.
2. ~~If payment is not timely received, a notice of intent to terminate the construction aggregate lease must be issued.~~ Royalties must be paid in full on any stockpiled construction aggregate remaining

on the construction aggregate leased premises ninety days prior to the expiration of the construction aggregate lease.

3. The commissioner may terminate a construction aggregate lease if payment is not received in accordance with this section.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-09. Testing.

The department may require a lessee to conduct drilling tests on the construction aggregate leased premises prior to mining. The commissioner may terminate a lease for failure to conduct test drilling when required or failure to furnish the required information. If testing is required;

1. Sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the ~~construction aggregate~~ leased premises.
2. The lessee shall furnish the department a map of the ~~construction aggregate~~ leased premises showing the boundaries of the construction aggregate deposit and furnish the department a written report estimating the thickness, depth, quality, quantity, and type of construction aggregate.
3. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. ~~Failure to conduct test drilling when required or failure to furnish the required information must result in a notice of intent to terminate the construction aggregate lease being issued.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-10. Mining and reclamation plan.

1. Prior to issuance of a construction aggregate lease, the department, in consultation with the lessee, will develop a mining and reclamation plan for the commissioner's approval. Mining must not begin on the construction aggregate leased premises until the mining and reclamation plan is approved by the commissioner and a lease is issued.
2. The intent of the reclamation plan is to reclaim the construction aggregate leased premises to its previous potential use and productivity.
3. The commissioner may terminate the construction aggregate lease if the lessee fails to comply with the reclamation plan. ~~The reclamation plan may be modified by the commissioner and the lessee shall comply with any modifications to the plan. In the event the lessee does not comply with the modified reclamation plan, the construction aggregate lease may be terminated.~~
- 3 4. The reclamation plan must:
 - a. ~~indicate the location of~~ Include details describing the construction aggregate mining operation in relation to the construction aggregate deposit and a plan for ~~the~~ reclamation ~~once after~~ the construction aggregate has been removed. ~~The reclamation plan must~~
 - b. Include the leveling of the disturbed surface at the close of the construction aggregate mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed.

- c. Include details for the preservation and respreading of topsoil, and the revegetation of the surface with appropriate flora.
- 4 5. Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not unreasonably increase the cost of reclamation.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-11. Bond.

1. ~~Payment of all royalties and reclamation of any portion of the construction aggregate leased premises disturbed by the lessee is the responsibility of the lessee.~~ To assure payment of royalties and satisfactory reclamation, the lessee ~~must~~ shall obtain and retain in force a surety bond, in an amount determined by the commissioner.
2. ~~The lessee, in lieu of a surety bond, may file another form of security subject to the commissioner's approval.~~
1. Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.
2. Bond Amount:
- 3 a. The commissioner shall set the initial surety bond amount at a minimum of five thousand dollars per acre for the initial mine disturbed area, with no initial surety bond amount being less than ten thousand dollars.
- 4 b. The commissioner may adjust the amount of the surety bond annually, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines an additional surety bond or other security is required, the lessee shall submit the additional surety bond or other security within thirty days after request by the commissioner as required by this section.
3. The lessee, in lieu of a surety bond, may file another form of security subject to the commissioner's approval.
- 5 4. The lessee may submit a written request for a full or partial release of the surety bond to the commissioner. At the commissioner's discretion, the surety bond may be released in whole or in part.
- 6 5. Upon the payment of all outstanding royalties and satisfactory completion of ~~the~~ reclamation, the commissioner shall release the surety bond. ~~The lessee may forfeit the surety bond may be forfeited to pay outstanding royalties or to complete reclamation. The commissioner shall give final approval of the reclamation before the surety bond is released. The forfeiture of the surety bond by the lessee does not release the lessee of the duty and responsibility to reclaim the construction aggregate leased premises.~~
7. ~~Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

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85-04-02-14. Construction aggregate mining operations.

The lessee shall conduct construction aggregate mining operations in a good and ~~workmanlike~~ professional manner and in accordance with the construction aggregate lease terms, board rules and policies, and applicable laws, ~~and a construction aggregate lease may be terminated by the lessor for a failure to comply.~~ The lessee shall take reasonable steps to prevent construction aggregate mining operations from unnecessarily causing or increasing soil erosion or drainage and damage to crops, pasture, or trees.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-15. ~~Reserved rights and~~ Termination of a Construction Aggregate Lease.

1. Failure to comply with construction aggregate lease terms, board rules, and board policies, and or applicable laws may result in construction aggregate lease termination by the commissioner. ~~Before a construction aggregate lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate construction aggregate lease specifying the reason for termination. The commissioner may:~~
 - a. Waive any breach except those terms required under applicable law;
 - b. Allow the lessee time to cure the breach; or
 - c. Terminate the construction aggregate lease.
2. The procedure to terminate a construction aggregate lease is as follows:
 - a. The department shall provide notice of intent to terminate the construction aggregate lease with specific reasons for termination by certified mail to the lessee's last known address on file with the department.
 - 2 b. The lessee may file with the department a written request for waiver review of the ~~notice of intent to terminate the construction aggregate lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the construction aggregate lease. A request for a written waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except a breach in violation of applicable laws, or the commissioner may allow the lessee time to cure the breach. The request for review must:~~
 - (1) Be received by the department within fifteen business days of the date of notice; and
 - (2) Include a statement of reason why review is warranted.
 - c. The commissioner may terminate a construction aggregate lease no earlier than fifteen business days after the date of notice of intent to terminate the construction aggregate lease.
 - (1) A notice of termination of a construction aggregate lease must be sent by certified mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt.

(2) Termination of a construction aggregate lease is effective upon the date of notice of termination.

3. Termination does not release the lessee from liability for royalty owed to the board, damages resulting from a breach of a construction aggregate lease term, or to reclaim the construction aggregate leased premises.

- ~~3- The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases for the production of coal, oil and gas, uranium, potash, or other valuable minerals have priority over any lease for the mining of construction aggregate.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-16. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~ determine if board review is warranted.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-17. Surrender by lessee.

The lessee may surrender a construction aggregate lease upon payment of all outstanding royalties and other debts owed the board. Surrender of a construction aggregate lease does not release the lessee from its responsibility to reclaim the construction aggregate leased premises in accordance with these rules and terms of the construction aggregate lease.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-18. Conditions on expiration, termination, or surrender.

At the expiration, termination, or surrender of a construction aggregate lease and, upon the completion of reclamation, unless otherwise waived, the lessee shall remove its property from the construction aggregate leased premises within one hundred twenty days from the date of expiration, termination, surrender, or the date reclamation is completed. The lessee is liable to the board for the costs of removal of any property remaining on the construction aggregate leased premises after the deadline for removal. If the lessee does not remove all stockpiled construction aggregate from the construction aggregate leased premises by the construction aggregate lease expiration, termination, or surrender date, it is considered abandoned and becomes the property of the board unless otherwise approved in writing by the commissioner.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

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85-04-02-20. Surface lessee protection.

Where the surface of the construction aggregate leased premises is managed or owned by the board and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee shall restore all fences and other improvements that have been damaged, moved, or removed as a result of construction aggregate mining operations and shall further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-21. Protection of cultural resources.

1. If any historical, archaeological, paleontological, or other cultural artifacts, vestiges, or remains are found prior to, during, or after any exploration, testing, production, mining, or reclamation operations on the construction aggregate leased premises, ~~the director of the state historical board and the commissioner must be notified immediately and~~ the lessee shall:
 - a. Immediately notify the commissioner and the state historical society.
 - b. Protect the site and the materials ~~must be protected by the lessee~~ from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. ~~Upon written request, the commissioner may grant an extension of the construction aggregate lease term for delays in operations caused by the requirements of this section.~~
2. If no further disturbance is allowed, the construction aggregate lease may be terminated ~~and the lessor shall refund to the lessee any advance royalties not already credited or forfeited as provided in this chapter.~~
3. The department and the ~~director of the state historical board~~ society may inspect the construction aggregate leased premises at all times to determine compliance with this section.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18, 55-02-07

85-04-02-22. Assignment of Construction Aggregate Lease.

1. The commissioner may refuse to consent to the assignment of a construction aggregate lease for good cause.
2. The assignor remains responsible for compliance of all construction aggregate lease terms, board rules and policies, and applicable laws until the assignment is approved by the commissioner.

History: Effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18, 55-02-07

85-04-02-23. Reserved Rights.

The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases issued by the board for the production of coal, oil, gas, uranium, potash, or other minerals have priority over any lease for the mining of construction aggregate.

History: Effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-18

Law Implemented: NDCC 15-05-18, 55-02-07

ARTICLE 85-04 SURFACE LAND MANAGEMENT

Chapter	
85-04-01	Leasing Trust Lands for Agricultural Use
85-04-02	Construction Aggregate
85-04-03	Permanent Improvements
85-04-04	Encumbrances of Trust Lands
85-04-05	Public Access and Use [Repealed]
85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

CHAPTER 85-04-03 PERMANENT IMPROVEMENTS

Section	
85-04-03-01	Permanent and Nonpermanent Improvements
85-04-03-02	Application
85-04-03-03	Rent Credit, Cost-Share, and Depreciation
85-04-03-04	General Standards for a Permit for a Permanent Improvement
85-04-03-05	Issuance of a Permit for Permanent Improvement

85-04-03-01. Permanent and nonpermanent improvements.

1. Permanent improvements may not be placed on, removed from, or applied to any surface land leased premises without the written consent of the commissioner.
2. Permanent improvements placed on or implemented on any surface land leased premises are the property of the state of North Dakota.
- 2 3. A lessee may place nonpermanent improvements on any surface land leased premises without written consent of the commissioner.
4. Upon expiration or termination of the surface land lease:
 - a. The lessee may remove the nonpermanent improvements within one hundred twenty days after the surface land lease expires or is terminated.
 - b. The commissioner may, upon written request from the lessee before the end of the one-hundred-twenty-day period and for good cause, extend the period of time for removing nonpermanent improvements.
 - c. Any nonpermanent improvements not removed within one hundred twenty days become the property of the next lessee unless the Commissioner deems the nonpermanent improvements to be a hinderance to the surface land leased premises.
 - (1) Any nonpermanent improvements deemed to be a hinderance must be removed by the responsible party within 120 days after delivery of written notification from the department ~~The commissioner, upon written application from the lessee before the end of the one hundred twenty day period, for good cause, may extend the period of time for removing nonpermanent improvements.~~

(2) If hinderances are not removed within 120 days, the department may remove the hinderance and require the responsible party to pay for the cost.

5. A lessee shall be responsible for any damage or improvements that remain on the leased premises and are deemed a hinderance by the commissioner.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-08-26

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85-04-03-03. Rent credit, cost-share, and depreciation.

1. Rent credits, cost-share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.
2. Rent credits or cost-share may not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from non_department sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from non_department sources and rent credits or cost-share from the department for a period not to exceed ten years.
4. Any unexpired depreciation amount must be available from the department before the surface land lease auction and must be announced at the surface land lease auction.
5. If the former lessee is not the successful bidder at auction, the new lessee is required to compensate the former lessee for the undepreciated amount and the department shall continue to depreciate through the original depreciation term. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the surface land lease.
- ~~5. No rent credits, cost share, or depreciation for livestock water developments are allowed on surface land leased premises that receive an up front livestock water deduction in determining the minimum bid for public auction.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-04-24, 15-08-26

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85-04-03-05. Issuance of a permit for permanent improvement.

The commissioner may determine whether to issue a permit for the construction of a permanent improvement and ~~to determine~~ the maximum project cost, rent credit, cost-share, and depreciation

amounts. The commissioner may impose such terms on a permit as the commissioner deems necessary. A permit must be issued prior to site preparation or construction.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-08-26

ARTICLE 85-04 SURFACE LAND MANAGEMENT

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85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

CHAPTER 85-04-04 ENCUMBRANCES OF TRUST LANDS

Section	
85-04-04-01	Application
85-04-04-02	Surveying and Planning Permit Requirements
85-04-04-03	General Standards for an Encumbrance
85-04-04-04	Issuance of an Encumbrance
85-04-04-05	Right of Entry <u>and Inspection</u>
85-04-04-06	Expiration of an Encumbrance
<u>85-04-04-07</u>	<u>Assignment of an Encumbrance</u>
<u>85-04-04-08</u>	<u>Full or Partial Release of an Encumbrance</u>

85-04-04-01. Application.

An applicant shall submit a request for an encumbrance, amendment, ~~assignment~~ consent to assign, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. ~~The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension, or renewal.~~ An application submitted on any other form will not be accepted. ~~An application fee may be charged as determined by the board. An application must be made as follows:~~

1. An application must be submitted for the following:

- 4 a. Encumbrance. ~~An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.~~
- 2 b. Amendment to an encumbrance. ~~An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.~~
- 3 c. Consent to Assignment of an encumbrance. ~~An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. An assignment must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to~~

~~assign an encumbrance for good cause. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor is responsible for compliance with all terms of the encumbrance and this chapter until the department is notified of the assignment. Upon approval or notification, the assignee shall be responsible for compliance with all terms of the encumbrance and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.~~

4 d. Extension or renewal of an encumbrance. ~~An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department shall notify the applicant.~~

e. Full or partial release of an encumbrance.

2. An application must state a specific purpose for which it is being submitted.

3. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.

4. An application for a consent to assign an encumbrance must be received by the department prior to execution of an assignment between applicable parties.

5. An application fee may be charged as determined by the board.

6. Compensation may be requested by the department.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-02. Surveying and planning ~~permit~~ requirements.

1. Prior to accessing trust lands to conduct any surveys, including general surveys, metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and habitat or wetland delineations, ~~an applicant shall obtain a surveying and planning permit from the department. The applicant shall complete an electronic application available on the department's website or a paper application provided upon request. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.~~ the following criteria must be met:

a. An application for an encumbrance for which the survey is being conducted has been filed with the department; and

b. Any person or entity conducting survey work on behalf of the applicant shall obtain a surveying and planning permit from the department.

2. ~~Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third party applicant has filed an application for an encumbrance. The surface tenant must be notified by the third party applicant of the required access to trust lands at least one calendar week prior to the date of access. The person or entity conducting the survey shall provide notice to the surface tenant of the need for access to trust lands for survey purposes no later than seven calendar days before the scheduled access date.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

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85-04-04-04. Issuance of an encumbrance.

1. The commissioner may approve and issue an encumbrance on the board's behalf in accordance with this chapter.
2. ~~If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration. An~~ encumbrance shall not be approved or issued until all required payments and information is received by the department.
3. ~~The commissioner may impose such terms as deemed necessary. An~~ encumbrance must be issued prior to site preparation or construction, except for surveying in accordance with a granted surveying and planning permit.
4. The commissioner may impose such terms to an encumbrance as the commissioner deems necessary.
5. The commissioner may refuse to issue an encumbrance at commissioner's sole discretion.
6. ~~If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the commissioner may bring the application to the board for consideration.~~

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-05. Right of entry and inspection.

The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-06. Expiration of an encumbrance.

1. Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed on trust lands in accordance with the terms of the encumbrance.
2. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction.
3. Prior to the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-07. Assignment of an Encumbrance.

An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner.

1. Specifically authorized by the terms of the encumbrance.
 - a. The assignor is responsible for compliance with all terms of the encumbrance, this chapter, and applicable laws until the department is notified of the assignment.
 - b. Upon notification, the assignee shall be responsible for compliance with all terms of the encumbrance, this chapter, and applicable law.
2. Upon written consent of the commissioner.
 - a. The commissioner may refuse to assign an encumbrance at commissioner's sole discretion.
 - b. A consent to assignment shall not be deemed valid unless provided in writing by the commissioner.
 - c. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until consent to the assignment is provided by the commissioner. Upon approval, the assignee shall be responsible for compliance with all terms of the encumbrance, this chapter, and applicable law.

History: Effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-08. Full or Partial Release of an Encumbrance.

1. An encumbrance may not be released unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner.
2. Prior to a full or partial release of an encumbrance:
 - a. All infrastructure, both above and below ground, shall be removed from the property unless specifically authorized by the terms of the encumbrance or upon prior written consent of the commissioner.
 - b. Pipelines must be purged to eliminate potential contaminants.
 - c. If a pipeline is authorized by the commissioner in writing to remain on the property, the pipeline shall be capped at the property boundaries and termination points. The encumbrance holder shall remain liable for pipelines remaining on the property.
 - d. The department may require a survey identifying the location of the released infrastructure. The survey shall clearly identify any components of the infrastructure that will remain on the property after the release.

History: Effective _____, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

ARTICLE 85-04 SURFACE LAND MANAGEMENT

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85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

CHAPTER 85-04-06 LAND EXCHANGE WITH THE UNITED STATES

Section	
85-04-06-01	Approval of Land Exchange
85-04-06-02	Criteria for Land Exchange
85-04-06-03	Application for Land Exchange
85-04-06-04	Evaluation of Application
85-04-06-05	Comments and Notice
85-04-06-06	Exchange Report
85-04-06-07	Board Authorization

85-04-06-01. Approval of land exchange.

The board may approve an exchange of trust lands with the United States which it determines is in the best interests of the trusts and complies with current law. Under North Dakota Century Code section 15-06-01, any land received under an exchange of original grant land maintains its status as "original grant lands".

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: N.D. Constitution article IX, § 6; NDCC 15-06-01, 15-06-19.1

85-04-06-02. Criteria for land exchange.

The department shall consider the criteria listed below in any land exchange. Land exchanges are not required to satisfy all criteria outlined below. Criteria will be considered in a cumulative manner and meeting certain criteria may not guarantee approval.

1. Equal or greater value. A land exchange must result in the board receiving equal or greater asset value to the trusts.
 - a. ~~In connection with any exchange the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed exchange land. The same appraiser shall conduct appraisals of the trust lands to be exchanged and the~~

~~proposed exchange land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.~~

- ~~b. The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands to be exchanged is determined by the highest and best use of the land, not simply the present use. For example, if an exchange is proposed in which the trust lands to be exchanged are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands to be exchanged must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.~~
 - a. Any appraisals considered by the department must include appraised values for both the trust lands highest and best use as well as the current use.
 - e b. The department ~~shall~~ may consider features not reflected in the market price which are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands to be exchanged.
2. Equal or greater income to the trusts. A land exchange must result in the board receiving equal or greater income to the trusts. The projected agricultural income for the proposed exchange land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed exchange land will be compared to the present income received by the trusts from the trust lands to be exchanged, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.
3. Acreage. Land exchanges should result in the board receiving equal or greater acreage. The board, however, may consider receiving less acreage in return for ~~substantially higher value or income, or both~~ one or more of the following:
- a. Improved dedicated access;
 - b. Substantially higher value in relation to the amount of acres lost; or
 - c. Substantially higher income in relation to the amount of acres lost.
4. Consolidation of trust lands. The proposed land exchange must not fragment trust land holdings by creating isolated parcels of trust land. ~~In all exchanges, the board shall reserve all minerals underlying the trust lands to be exchanged pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.~~
5. Potential for long-term ~~appreciation~~ increase in income and value. The proposed exchange land must have similar ~~revenue~~ or greater income and value potential as ~~than~~ the trust lands to be exchanged.
6. Access. A land exchange must not diminish access to trust lands. Accessible trust lands should be exchanged with lands that offer equal or improved access.
7. In connection with any exchange of trust land with the United States, the department may consider all available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment.
8. In all exchanges, the board shall reserve all minerals underlying the trust lands to be exchanged pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06-19.1, 15-06-22, 15-07-02

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85-04-06-04. Evaluation of application.

The department shall evaluate the application and may request the applicant provide additional information. After the department's evaluation:

1. The commissioner may reject an application:
 - a. If the application does not meet the requirements of subsections 1 and 2 of section 85-04-06-02; or
 - b. If the application fails to comply with North Dakota law.
2. If the commissioner determines an application meets the requirements of section 85-04-06-02, the commissioner shall present the application to the board to determine if the application reflects a tract the board is willing to exchange.
3. If the land is leased, the commissioner shall notify the lessee of the intent to exchange the property.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06-19.1

85-04-06-05. Comments and notice.

1. ~~Upon receipt of an application for land exchange and a determination by the board that~~ If the board determines the application covers a tract of land the board is willing to exchange, the department shall:
 - a. Post on the department's website a notice of the application for land exchange, any supporting documentation, and instructions for submitting public comments.
 - b. ~~The department also shall~~ publish notice of an application for land exchange in the official newspaper of the county where the proposed exchange land and proposed trust lands to be exchanged are located and in the Bismarck Tribune. The notice must:
 - (1) Be published once each week for three consecutive weeks prior to the deadline for comments; and
 - (2) ~~The notice must~~ Contain the legal description of the proposed exchange land and proposed trust lands to be exchanged and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest.

2. ~~All comments must be in writing and contain the following:~~

- ~~a. Name and address of the interested person;~~
 - ~~b. Applicant's name and address;~~
 - ~~c. The legal description of the proposed exchange land and proposed trust lands to be exchanged as shown on the published notice; and~~
 - ~~d. A detailed statement as to whether the interested person supports or opposes the proposed land exchange.~~
- c. Solicit public comment regarding the proposed exchange. All comments must be in writing and include the following:
- (1) Name and address of the interested person;
 - (2) The legal description of the proposed tract for exchange as shown on the published notice; and
 - (3) A detailed statement as to whether the interested person supports or opposes the exchange.

- 3 2. The department shall give notice of the proposed exchange to any entity having a property interest in any portion of trust lands involved in the exchange as reflected in the records of the department and if the land is leased, the commissioner shall notify the lessee of the intent to exchange the property during the months of October through January.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06-19.1

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85-04-06-07. Board authorization.

~~Upon receipt of the department's exchange report, the board shall consider the specific recommendations of the department and public comments and evaluate the merits of the land exchange. The board shall determine whether further review and public comment are required.~~

~~When a proposed exchange satisfies the exchange criteria, the board may exercise its discretion to suspend further review and disapprove the application as not in the best interests of the trusts.~~

~~Alternatively, the board may direct the commissioner to complete specific tasks relating to the merits of the proposed exchange and report back to the board with findings before proceeding further. When the board is satisfied that the department and applicant have generated all information necessary for its decision, the board shall review and determine whether the proposed exchange is in the best interests of the trusts.~~

~~The commissioner is authorized to complete all documents for the exchange on the board's behalf if the board approves the exchange.~~

The board shall review the exchange report, department recommendations, and public comments and determine whether to proceed with the exchange. The commissioner is authorized to complete all documents for the exchange on the board's behalf if the board approves the exchange. If the land is leased, the commissioner shall notify the lessee within the months of October through January of the intent to exchange the property.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06-19.1

**ARTICLE 85-04
SURFACE LAND MANAGEMENT**

Chapter	
85-04-01	Leasing Trust Lands for Agricultural Use
85-04-02	Construction Aggregate
85-04-03	Permanent Improvements
85-04-04	Encumbrances of Trust Lands
85-04-05	Public Access and Use [Repealed]
85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

**CHAPTER 85-04-07
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-06**

Section	
85-04-07-01	Sale of Original Grant Lands
85-04-07-02	Requirements of Sale
85-04-07-03	Sale Procedure
85-04-07-04	Payment of Costs
85-04-07-05	Board Review

85-04-07-01. Sale of original grant lands.

The board shall retain and manage original grant lands to produce revenue consistent with the long-term maintenance of the original grant lands' income producing potential and ecological health. The commissioner may propose, ~~or accept letters of application for,~~ the sale of original grant lands after the original grant lands have been evaluated ~~by the commissioner~~ for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If the tract has been zoned or has high potential to be zoned residential, commercial, ~~or industrial,~~ or similar zoning type;
- ~~2. The tract's potential for mineral development, including sand, gravel, clay, and scoria;~~
- 3 ~~2~~. If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;
- 4 ~~3~~. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or
- 5 ~~4~~. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-02. Requirements of no net loss sale.

Any sale of original grant lands, ~~with the exception of~~ excluding sale of tracts ~~provided~~ listed in subsection 1, 2, or 3 of section 85-04-07-01, is subject to the following:

1. The proposed sale would result in no net loss of leasable original grant lands; and
2. The ~~applicant agrees to~~ land provided as consideration must provide accessible and leasable land equal or greater in acres (unless otherwise provided in this section) and value to the trust from which the original grant lands were sold, for which the department then shall consider the criteria listed below ~~in subsections a through f in~~ for any no net loss sale. Land provided for a no net loss sale is not required to satisfy all ~~six~~ criteria outlined below. Criteria will be considered in a cumulative manner and meeting certain criteria may not guarantee approval.
 - a. Equal or greater value. A no net loss sale must result in the board receiving equal or greater asset value to the trusts. Any appraisals considered by the department must include both the values for the trust lands highest and best use and the current use.
 - (1) ~~In connection with any no net loss sale the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23, and shall request additional appraisals be completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.~~
 - (2) ~~The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.~~
 - (3) ~~b.~~ b. The department ~~shall~~ may consider features not reflected in the market price that are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.
 - ~~b c.~~ c. Equal or greater income to the trusts. A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected agricultural income for the proposed no net loss sale land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land will be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.
 - ~~e d.~~ d. Acreage. A no net loss sale should result in the board receiving equal or greater acreage. The board may, however, consider receiving less acreage in return for one or more of the following:

- (1) Improved dedicated access;
 - (2) Substantially higher value in relation to the amount of acres lost; or
 - (3) Substantially higher income in relation to the amount of acres lost.
- ~~d e.~~ Consolidation of trust lands. The proposed no net loss sale must not fragment trust land holdings by creating isolated parcels of trust land. ~~In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.~~
 - e f. Potential for long-term ~~appreciation~~ increase in income and value. The proposed no net loss sale land must have similar ~~revenue~~ income and value potential as the trust lands.
 - f g. Access. A no net loss sale must not diminish access to trust lands. The no net loss land should provide equal or improved access.
- 3. ~~Any land acquired pursuant to a sale of original grant lands, subject to no net loss, shall be treated by the board as "original grant lands" In connection with any no net loss sale the department may use any available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment.~~
 - 4. In all no net loss sales and subject to applicable law, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-03. No net loss Sale procedure.

- 1. ~~A letter of application for purchase of original grant lands meeting the criteria in section 85-04-07-01 may be accepted at any time. An application must include:~~
 - a. ~~A nonrefundable application fee in an amount set by the board;~~
 - b. ~~A legal description of the trust lands; and~~
 - c. ~~A legal description of the lands to be provided to ensure no net loss.~~~~Upon board approval, a sale of original grant lands must be conducted in accordance with North Dakota Century Code chapter 15-06.~~
- 2. ~~Upon receipt of a letter of application to purchase a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.~~
- 3. ~~The commissioner may recommend to the board that a tract meeting the criteria of section 85-04-07-01 may be offered for sale even though no letter of application has been received. Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:~~
 - a. ~~Name and address of the interested person;~~
 - b. ~~Applicant's name and address;~~

- ~~e. The legal description of the proposed tract for sale as shown on the published notice; and~~
 - ~~d. A detailed statement as to whether the interested person supports or opposes the sale.~~
- 4. ~~The board shall review all appraisals, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price.~~
- 5. ~~If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.~~
- 6. ~~The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.~~
- 7. ~~The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-06.~~
- 8. ~~If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.~~
- 9. ~~Land must be advertised for sale at public auction under North Dakota Century Code chapter 15-06.~~
- 10. ~~If no bids are received on a tract for which no formal application was received, the tract may be sold for the board established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.~~
- 11. ~~The sale of any tract under this chapter may be by:~~
 - ~~a. Contract under section 6 of article IX of the Constitution of North Dakota; or~~
 - ~~b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.~~
- 1. The department may recommend a tract of land that meets the criteria of section 85-04-07-02 to the commissioner for consideration for a no net loss sale.
- 2. Board Preliminary Review. If the commissioner determines to proceed with the sale, the commissioner shall present to the board the proposed no net loss land sale for preliminary review. Upon a determination that the board is willing to sell, the department shall conduct the following:
 - a. Notify the lessee if the lands are leased.
 - b. Publish a notice of sale, that includes a request for bidders, pursuant North Dakota Century Code chapter 15-06. The notice of sale must contain:
 - (1) the legal description of the proposed trust land tract to be sold;
 - (2) Instructions on how to register to bid; and
 - (3) deadline for bidders to register.
 - c. The department shall procure all appraisals from a certified appraiser for tract(s) to be sold and for lands provided for consideration.
 - (1) Appraisals shall be obtained in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23.
 - (2) Appraisals for trust lands and the proposed no net loss sale land shall be appraised by the same certified appraiser.
 - (3) If the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

d. Solicit public comment regarding the proposed sale. All comments must be in writing and include the following:

- (1) Name and address of the interested person;
- (2) The legal description of the proposed tract for sale as shown on the published notice; and
- (3) A detailed statement as to whether the interested person supports or opposes the sale.

3. Bidder Registration Process.

a. Bidders shall provide the following:

- (1) A nonrefundable application fee; and
- (2) A legal description of the lands to be provided for consideration.

b. Bidders shall agree to an offer to purchase that contains the following:

- (1) Bidder is subject to all costs associated to the bidder review and sale process, including:
 - (a) Appraisal costs;
 - (b) Title examination; and
 - (c) Legal survey, if deemed necessary by the commissioner.

(2) Bidder agrees to allow the department and its agents access to the lands offered for consideration or shall procure access on department's behalf.

c. The department shall review the lands proposed by each potential bidder to determine if they meet the criteria under 85-04-07-02.

4. Board Final Review. The board shall review all approved registered bidders including appraisals and land offered for consideration, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price and the following shall be conducted:

a. If the land is leased, the commissioner shall notify the lessee within the months of October through January of the intent to sell the property.

b. The commissioner shall conduct an auction pursuant to North Dakota Century Code chapter 15-06.

c. A purchase agreement shall be executed with the winning bidder at the closing of the sale. The purchase agreement must require:

- (1) That the purchaser pay twenty (20) percent of the purchase price at the time the purchase agreement is executed; and
- (2) That the purchaser convey the land used as consideration within sixty calendar days after execution of the agreement. The commissioner may extend the deadline to convey, at the commissioner's sole discretion, up to a maximum of one hundred eighty days after execution of the purchase agreement.

d. If no bids are received at auction, the tract may be sold for the board established minimum acceptable sale price to the first interested party at a private no net loss sale during the six

months following the date of the auction.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-04. Payment of costs.

The purchaser is responsible for payment of ~~all~~ costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~ determine if board review is warranted.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-06, 15-08

ARTICLE 85-04 SURFACE LAND MANAGEMENT

Chapter	
85-04-01	Leasing Trust Lands for Agricultural Use
85-04-02	Construction Aggregate
85-04-03	Permanent Improvements
85-04-04	Encumbrances of Trust Lands
85-04-05	Public Access and Use [Repealed]
85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

CHAPTER 85-04-08 LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-07

Section	
85-04-08-01	Sale of Acquired Lands
85-04-08-02	Requirements of Sale
85-04-08-03	Sale Procedure
85-04-08-04	Payment of Costs
85-04-08-05	Board Review

85-04-08-01. Sale of acquired lands.

The board shall retain and manage acquired lands to produce revenue consistent with the long-term maintenance of the acquired lands' income producing potential and ecological health until sold. The commissioner may propose, ~~or accept a letter of application for,~~ the sale of acquired lands if the ~~department has reviewed its potential for mineral development and the acquired~~ lands have been evaluated ~~by the commissioner~~ for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If a tract is acquired through foreclosure or deed in lieu of foreclosure from the board's loan pool account, established under North Dakota Century Code section 15-03-04.1, after January 1, 2020;
2. If the tract has been zoned or has high potential to be zoned residential, commercial, ~~or industrial~~ or similar zoning type;
3. ~~The tract's potential for mineral development, including sand, gravel, clay, and scoria;~~
- 4 3. If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;
- 5 4. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or
- 6 5. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-02. Requirements of no net loss sale.

Any sale of acquired lands, with the exception of tracts provided in subsections 1, 2, 3, and 2 4 of section 85-04-08-01, is subject to the following:

1. The proposed sale would result in no net loss of leasable acquired lands; and
2. The ~~applicant agrees to land provided as consideration must~~ provide accessible and leasable land equal or greater in acres (unless otherwise provided in this section) and value to the trust from which the acquired lands were sold, for which the department then shall consider the criteria listed below ~~in subdivisions a through f in~~ for any no net loss sale. Land provided for a no net loss sale is not required to satisfy all ~~six~~ criteria outlined below. Criteria will be considered in a cumulative manner and meeting certain criteria may not guarantee approval.
 - a. Equal or greater value. A no net loss sale must result in the board receiving equal or greater asset value to the trusts. Any appraisals considered by the department must include appraised values for both the trust lands highest and best use as well as the current use.
 - ~~(1) In connection with any no net loss sale, the department may use consider all available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.~~
 - ~~(2) The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.~~
 - b. The department ~~shall~~ may consider features not reflected in the market price that are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.
 - c. Equal or greater income to the trusts. A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected agricultural income for the proposed no net loss sale land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land will be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.
 - e d. Acreage. A no net loss sale should result in the board receiving equal or greater acreage.

The board may, however, consider receiving less acreage in return for one or more of the following:

- (1) Improved dedicated access;
 - (2) Substantially higher value in relation to the amount of acres lost; or
 - (3) Substantially higher income in relation to the amount of acres lost.
- d e. Consolidation of trust lands. The proposed no net loss sale must not fragment trust land holdings by creating isolated parcels of trust land. ~~In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.~~
- e f. Potential for long-term ~~appreciation~~ increase in income and value. The proposed no net loss sale land must have similar ~~revenue~~ income and value potential as the trust lands.
- f g. Access. A no net loss sale must not diminish access to trust lands. The no net loss land should provide equal or improved access.
3. In connection with any no net loss sale, the department may consider all available information, including information provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment.
4. In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-03. No net loss Sale procedure.

1. ~~A letter of application for purchase of acquired lands meeting the criteria in section 85-04-08-01 may be accepted at any time. An application must include:~~
 - a. ~~A nonrefundable application fee in an amount set by the board;~~
 - b. ~~A legal description of the trust lands; and~~
 - c. ~~A legal description of the lands to be provided to ensure no net loss.~~~~Upon board approval, a sale of acquired lands must be conducted in conformance with North Dakota Century Code sections 15-06-25 and 15-07-04.~~
2. ~~Upon receipt of a letter of application for sale of a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.~~
3. ~~The commissioner may recommend to the board that a tract be sold even though no letter of application for sale has been received.~~
4. ~~Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:~~
 - a. ~~Name and address of the interested person;~~

- ~~b. Applicant's name and address;~~
 - ~~c. The legal description of the proposed tract for sale as shown on the published notice; and~~
 - ~~d. A detailed statement as to whether the interested person supports or opposes the sale.~~
- ~~5. The board shall review all appraisals, public comments received, and any other relevant information, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall use the appraisal to establish a sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.~~
- ~~6. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.~~
- ~~7. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.~~
- ~~8. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-07.~~
- ~~9. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.~~
- ~~10. The department shall determine if acquired lands will be advertised for sale at public auction or by sealed bids, with the sale price set by the board as the minimum bid. If no bids are received on property for which an application has been received, the acquired lands may be sold to the applicant at the minimum bid.~~
- ~~11. If no bids are received on property for which no formal application was received, the property may be sold for the board established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.~~
- ~~12. The sale of land may be by:~~
 - ~~a. Contract under section 6 of article IX of the Constitution of North Dakota; or~~
 - ~~b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.~~
- 1. The department may recommend a tract of land that meets the criteria of section 85-04-08-02 to the commissioner for consideration for a no net loss sale.
- 2. Board Preliminary Review. If the commissioner determines to proceed with the sale, the commissioner shall present to the board the proposed no net loss land sale for preliminary review. Upon a determination that the board is willing to sell, the department shall conduct the following:
 - a. Notify the lessee if the lands are leased.
 - b. Publish a notice of sale, that includes a request for bidders, in accordance with the procedures set out in North Dakota Century Code chapter 15-06. The notice of sale must contain:
 - (1) The legal description of the proposed trust land tract to be sold;
 - (2) Instructions on how to register to bid; and
 - (3) Deadline for bidders to register.
 - c. The department shall obtain all appraisals from a certified appraiser for tract(s) to be sold and for lands provided for consideration.

- (1) Appraisals shall be obtained in accordance with the procedures set out in North

Dakota Century Code sections 15-06-22 and 15-06-23.

- (2) Appraisals for trust lands and the proposed not net loss sale land shall be appraised by the same certified appraiser.
- (3) If the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

d. Solicit public comment regarding the proposed sale. All comments must be in writing and include the following:

- (1) Name and address of the interested person;
- (2) The legal description of the proposed tract for sale as shown on the published notice; and
- (3) A detailed statement as to whether the interested person supports or opposes the sale.

3. Bidder Registration Process.

a. Bidders shall provide the following:

- (1) A nonrefundable application fee; and
- (2) A legal description of the lands to be provided for consideration.

b. Bidders shall agree to an offer to purchase that contains the following:

(1) Bidder is subject to all costs associated to the bidder review and sale process, including:

- (a) Appraisal costs;
- (b) Title examination; and
- (c) Legal survey, if deemed necessary by the commissioner.

(2) Bidder agrees to allow the department and its agents access to the lands offered for consideration or shall obtain access on department's behalf.

c. The Department shall review the lands proposed by each potential bidder to determine if they meet the criteria under 85-04-07-02.

4. Board Final Review. The board shall review all approved registered bidders including appraisals, land offered as consideration, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price and the following shall be conducted:

a. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property.

b. The commissioner shall conduct an auction pursuant to North Dakota Century Code chapter 15-07.

c. A Purchase Agreement shall be executed with the winning bidder at the closing of the sale. The purchase agreement must require:

(1) That the purchaser pay twenty (20) percent of the purchase price at the time the purchase agreement is executed; and

(2) That the purchaser convey the land used as consideration within sixty calendar

days after execution of the agreement. The commissioner may extend the deadline to convey, at the commissioner's sole discretion, up to a maximum of one hundred eighty days after execution of the purchase agreement.

- d. If no bids are received at auction, the tract may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.

- 43 5. Acquired lands acquired after January 1, 2020, may be sold to any mortgagor or a member of the mortgagor's immediate family under North Dakota Century Code section 15-07-10. The sale must be for cash only with twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective January 1, 2021; amended effective, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-04. Payment of costs.

The purchaser is responsible for payment of ~~all~~ costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021; amended effective, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~ determine if board review is warranted.

History: Effective January 1, 2021; amended effective, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-07, 15-08

**ARTICLE 85-04
SURFACE LAND MANAGEMENT**

Chapter	
85-04-01	Leasing Trust Lands for Agricultural Use
85-04-02	Construction Aggregate
85-04-03	Permanent Improvements
85-04-04	Encumbrances of Trust Lands
85-04-05	Public Access and Use [Repealed]
85-04-06	Land Exchange <u>with the United States</u>
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

**CHAPTER 85-04-09
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-09**

Section	
85-04-09-01	Sale of Lands for Public or Quasi-Public Purpose
85-04-09-02	Sale Procedure
85-04-09-03	Payment of Costs
85-04-09-04	Fencing
85-04-09-05	Reversion Clause
85-04-09-06	Board Review

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85-04-09-02. Sale procedure.

1. ~~The commissioner may accept an application for to purchase of land may be accepted and the land sold in conformance in accordance~~ with North Dakota Century Code chapter 15-09.
2. An application must be submitted ~~using a paper application provided on a form prescribed by the department upon request and be.~~
 - a. The application must:
 - (1) Be completed and signed by authorized personnel;
 - (2) ~~and must~~ Include a nonrefundable application fee in an amount set by the board unless waived by the commissioner; and
 - (3) ~~The application must~~ Meet the requirements of North Dakota Century Code section 15-09-01, ~~and may require, depending on the land to be purchased, the following:~~
 - ~~a. A siting and environmental review completed by the department; and~~
 - ~~b. A "metes and bounds" survey of the land to be purchased, including both a plat and written narrative of the survey completed by the applicant. The narrative must include the distances and angles between points of intersection and points of entry and exit tied into the section corners, quarter section corners, or lot corners, and a breakdown of the acreage in the parcel for each separate quarter section or lot included in the purchase.~~

b. The department may request additional supporting documents.

- ~~3. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.~~
- ~~3. Upon receipt of an application for sale of lands for public or quasi-public purpose and a determination that the application covers a tract the commissioner is willing to consider for sale, the department shall post on the department's website a notice of the application for sale of lands for public or quasi-public purpose, any supporting documentation, and instructions for submitting public comments. All comments must be in writing and contain the following:~~
 - ~~a. Name and address of the interested person;~~
 - ~~b. Applicant's name and address;~~
 - ~~c. The legal description of the proposed tract as shown on the published notice; and~~
 - ~~d. A detailed statement as to whether the interested person supports or opposes the sale.~~
- ~~4. The department shall secure a real property appraisal in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23 and may secure additional appraisals from certified appraisers. Appraisals must consider the matter of severance of adjacent trust lands caused by the sale and the effect on the value of adjacent trust lands, which may reflect a higher appraisal.~~
- ~~5. The department shall provide the board a report of all appraisals, public comments, and any other relevant information to allow the board to determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.~~
- ~~6. The board shall obtain fair market value for all land sold under North Dakota Century Code chapter 15-09 and must consider its "highest and best use" as defined in North Dakota Century Code section 15-02-05.1.~~
- ~~7. The department shall notify the applicant, if any, of the price set by the board, which must be the approved sale price.~~
- ~~8. The notice of the application and the board approved sale price must be published and a hearing must be held in conformance with North Dakota Century Code section 15-09-03. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled hearing if it appears the omission or error is not prejudicial to the department's interest.~~
- ~~9. Any comments made at the hearing must be brought to the board, along with the department's recommendations regarding those comments.~~
- ~~10. If the applicant desires to purchase the property at the price set by the board and pays full purchase price, the commissioner may complete the sale on the board's behalf. If an agreement as to price cannot be reached, the applicant may proceed under North Dakota Century Code section 15-09-05.~~
4. Commissioner Review. If the commissioner determines to proceed with the sale, the department shall conduct the following:
 - a. Notify the lessee if the lands are leased.
 - b. Obtain all appraisals from a certified appraiser for tract(s) to be sold. The commissioner may require additional appraisals be conducted by different certified appraisers.

- c. Obtain from the applicant a "metes and bounds" survey of the land to be purchased, including both a plat and written narrative of the survey. The narrative must include the distances and angles between points of intersection and points of entry and exit tied into the section corners, quarter section corners, or lot corners, and a breakdown of the acreage in the parcel for each separate quarter section or lot included in the purchase.
- 5. Board Review. The commissioner shall present to the board the proposed land sale including appraisals public comments, and any other relevant information. Upon a determination by the board that it is willing to sell:
 - a. The board shall set a minimum acceptable sale price.
 - b. The department shall:
 - (1) Publish a notice of sale that includes a request for bidders. The notice of sale must include:
 - (a) The legal description of the proposed trust land tract to be sold;
 - (b) Instructions on how to register to bid; and
 - (c) The deadline for bidders to register.
 - (2) Notify the lessee of the intent to sell the property within the months of October through January if the land is leased.
 - (3) Conduct a hearing according to the North Dakota Century Code section 15-09-03. Any comments made at the hearing must be brought to the board, along with recommendations regarding the comments.
- 6. If the applicant desires to purchase the property at the price set by the board and pays full purchase price, the commissioner may complete the sale on the board's behalf.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-09

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85-04-09-06. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review, and the commissioner shall ~~recommend~~ determine if board review is warranted.

History: Effective January 1, 2021; amended effective _____, 2026.

General Authority: N.D. Constitution article IX, § 6; NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-09

ARTICLE 85-06 MINERALS MANAGEMENT

Chapter	
85-06-01	Oil and Gas
85-06-02	Coal

CHAPTER 85-06-01 OIL AND GAS

Section	
85-06-01-01	Oil and Gas Lease Nomination
85-06-01-02	Advertisement for Public Auction
85-06-01-03	Public Auction
85-06-01-04	Rejection of Nomination and Bids
85-06-01-05	Form and Term of Oil and Gas Lease
85-06-01-06	Assignment, Amendment, or Extension
85-06-01-07	Voluntary Release
85-06-01-08	Royalties
85-06-01-09	Disputed Title Royalty Escrow Account
85-06-01-10	Breach <u>Cancellation</u> of Oil and Gas Lease
85-06-01-11	Board Review
85-06-01-12	Reports of Lessee - Delinquency Penalty
85-06-01-13	Audit and Examination
85-06-01-14	Request for Shut-In Status for Oil or Gas
85-06-01-15	Offset Obligations for Vertical Oil and Gas Wells

85-06-01-01. Oil and gas lease nomination.

The department ~~shall~~ may accept an oil and gas lease nomination for a tract not already under an oil and gas lease as reflected in department records and may accept a nomination for a tract under an oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

1. The department ~~shall~~ may accept a nomination for an oil or gas lease either electronically through the department's website or in writing. The nomination period for an oil and gas lease must be the period set by the commissioner during which the department ~~shall~~ may accept oil and gas lease nominations.
2. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection 3, or by the board.
3. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as "more or less" and may be adjusted by the board within each quarter section.

History: Effective January 1, 2020; amended effective April 1, 2024; , 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 61-33-06, 61-33.1

85-06-01-02. Advertisement for public auction.

The department shall publish notice of an oil and gas lease auction ~~in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune~~ on the department's website. The notice must be published ~~once~~, at least ten days prior to the day of the auction. The advertisement must specify the date, time, and place of the auction, and how an interested person may obtain a list of the tracts to be auctioned. ~~Should~~ If publication of any notice is inadvertently omitted by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled leasing if it appears the omission or error is not prejudicial to the department's interest.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 38-09-15

85-06-01-03. Public auction.

The board may issue an oil and gas lease by public auction. Public auctions may be hosted either live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

1. The successful bidder at an auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, the lease auction administration fee, and any processing fees via automated clearing house or wire transfer, by five p.m. central prevailing time, ten days after the date the auction closed. ~~The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.~~
2. If no bids are received, the nominator is the successful bidder.
3. The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.

History: Effective January 1, 2020; amended effective April 1, 2024; _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

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85-06-01-06. Assignment, amendment, or extension.

A lessee shall submit ~~a written request~~ an application to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. ~~A request must include~~ The lessee shall provide any documents requested by the department. The lessee shall submit a fee, in an amount set by the board, to the department with the ~~request~~ application.

1. Assignments. All oil and gas lease obligations must be current at the time the assignment is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the assignment is approved by the department. Upon approval of the assignment, the assignee is bound by all the terms and conditions of the

oil and gas lease, board rules and policies, and applicable laws. The assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.

2. Extensions. If, at the expiration of the primary term, production of oil or gas or both has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, the lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of ~~this the~~ oil and gas lease, such application to be accompanied by a payment of ten dollars per acre, and the commissioner, in writing, shall extend ~~this the~~ oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil or gas or both is produced in commercial quantities; the lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, such application to be accompanied by a payment of twenty dollars per acre, and the commissioner, in writing, shall extend ~~this the~~ oil and gas lease for an additional one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil or gas or both is produced in commercial quantities; ~~this the~~ oil and gas lease must not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.
3. Amendments. A lessee may request an amendment to an oil and gas lease for a specific purpose. A request for an amendment must state the specific grounds for the request. Approval of a request is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the request is approved.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-15

85-06-01-07. Voluntary release.

To request a voluntary release of an oil and gas lease, a lessee shall submit a written request to the department for the voluntary release of an oil and gas lease, or portion of an oil and gas leased premises, ~~utilizing the form available on the department's website~~ and shall provide all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify the lessee in writing whether ~~or not~~ the voluntary release is approved. All oil and gas lease obligations must be current at the time the voluntary release is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the voluntary release is approved by the commissioner.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09

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85-06-01-10. ~~Breach~~ Cancellation of oil and gas lease.

1. Other than as provided in subsection 7, an oil and gas lease may be canceled for:

- a. Nonpayment of any sum due under the oil and gas lease;
 - b. Breach of any oil and gas lease terms or conditions; or
 - c. A violation of applicable laws, rules, or board policies.
2. Before an oil and gas lease is canceled, the department shall send a notice of intention to cancel the lease specifying the reason for cancellation to the lessee listed in the records of the department by certified or registered mail ~~requiring a signed receipt~~ to the lessee's address as shown in the records of the department.
3. A lessee may file with the commissioner a request for a waiver, or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within thirty days after the date the notice of intention to cancel the oil and gas lease is postmarked. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner may allow the lessee time to cure the breach, or may waive any breach, except a breach of oil and gas lease terms required under North Dakota Century Code. Any waiver must be limited to the particular breach waived and does not limit the board's right to cancel the oil and gas lease for any other breach. If, after review of the request, the commissioner determines cancellation of the lease is still warranted, the commissioner shall request board approval of the cancellation. An oil and gas lease cancellation under this section is exempt from the requirements of section 85-06-01-11.
4. If the lessee has not filed a release of the oil and gas lease with the applicable county recorder's office or requested a waiver or commissioner review within thirty days after the postmark date of a notice of intention to cancel the lease, the commissioner may cancel the lease.
5. Release of the oil and gas lease by the lessee or cancellation of the lease does not release the lessee from liability for any sum due to the board or from any damages caused by a breach of the lease.
6. Upon cancellation of the oil and gas lease, the department shall file a notice of cancellation of oil and gas lease with the applicable county recorder's office.
7. An oil and gas lease automatically terminates for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

History: Effective January 1, 2020; amended effective April 1, 2024; _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

85-06-01-11. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall ~~recommend~~ determine if a board review is warranted.

History: Effective January 1, 2020; amended effective _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-12. Reports of lessee - Delinquency penalty.

Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:
 - a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
 - b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.
2. For oil:
 - a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
 - b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.
3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty-day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6. For leases issued after July 31, 2021, any penalty must be calculated pursuant to subsection 3 of North Dakota Century Code section 15-05-10.
5. Unpaid royalties bear interest under subsection 2 of North Dakota Century Code section 15-05-10 and said interest shall be due for each thirty-day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6.
6. A lessee has thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.
 - a. A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.
 - b. The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
 - c. A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

History: Effective January 1, 2020; amended effective April 1, 2022; _____, 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10, 47-16-39.2

85-06-01-14. Request for shut-in status for oil or gas.

1. A lessee requesting shut-in status of an oil or gas well, without canceling the lease, shall submit a written ~~request~~ application to the department utilizing the form available on the department's website. The ~~request~~ application must contain the following information:
 - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
 - b. The township, range, and section of the surface location of the well;
 - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;
 - d. The name and address of the operator of the well;
 - e. The cumulative production and the number of days of production for the three months immediately preceding the request;
 - ~~f. The written approval of the request from the operator;~~
 - ~~g~~ f. The grounds for the request and the anticipated length of time the well will be shut-in; and
 - ~~h~~ g. Any additional information requested by the department.
2. An application fee, in an amount set by the department, must be submitted with the application. Upon approval of the shut-in ~~request~~ application, the applicant shall promptly submit to the department a shut-in well payment. The shut-in well payment must be the same amount for oil or gas wells and must be calculated on a per-lease, per-well basis.
3. An application is deemed filed when the department receives the application form, application fee, shut-in well payment, and any additional information requested by the department.
4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:
 - a. The application is approved and the terms of the shut-in approval;
 - b. The application is denied;
 - c. An additional fifteen day period is necessary to consider the application; or
 - d. The application requires board approval.
5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.
6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.
7. The commissioner may revoke a shut-in approval if the commissioner determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department shall provide notice to the lessee by certified mail. Within sixty days from the date

of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10.

History: Effective January 1, 2020; amended effective April 1, 2024; , 2026.

General Authority: NDCC 15-01-02, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

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