

CHAPTER 85-01-01
DEFINITIONS AND GENERAL PROVISIONS

Section 85-01-01-01 is amended as follows:

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:

....

3. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, and haying, ~~and honey bee pasture or meadow.~~

....

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

General Authority: NDCC 15-05-05, 15-07-20, 15-08.1-06, 28-32, 61-33-06

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

CHAPTER 85-03-04
EXAMINATIONS

Section 85-03-04-03 is amended as follows:

85-03-04-03. Entrance conference.

1. Once an examination is assigned and written notice of examination is provided to the person subject to examination, an entrance conference will be scheduled with the auditor and representatives of the person subject to examination. A representative of the administrator may participate in an entrance conference.

2. During the entrance conference, the auditor shall, to the extent practicable:
 - a. Identify the types of property that will be subject to the examination and the time period covered by the examination;

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 - h. Explain that, unless otherwise agreed to in writing by the administrator, the person subject to examination shall remit to the examiner any unclaimed property identified during the examination that is owed to the State of North Dakota.

History: Amended effective April 1, 2022; _____, 2024

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-58, 47-30.2-61, 47-30.2-62

CHAPTER 85-04-01
LEASING TRUST LANDS FOR AGRICULTURAL USE

Section 85-04-01-03 is amended as follows:

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 temporary out of livestock business or unable to properly stock the surface land leased premises. Being temporarily out of livestock business means no longer owning or leasing the livestock and personally providing for their day to day care, with intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable for 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.~~
 - eb. 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.

History: Amended effective January 1, 2020; _____, 2024

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

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

Section 85-04-01-08 is amended as follow:

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

1. Failure to comply with the surface land lease terms, board rules and policies, and applicable laws 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~~ provide notice of intent to terminate the surface land lease ~~specifying the reason for termination~~ by certified mail to the lessee's last known address on file with the department.
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 waive any breach except those terms required under applicable laws, or the commissioner may allow the lessee time to cure the breach.
3. Not less than ten business days after the notice of intent to terminate the surface land lease is ~~served on~~ received by 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,~~ provided by certified 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.
4. When a surface land lease is terminated, the former lessee is 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 three additional calendar years.

History: Amended effective January 1, 2020; _____, 2024

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

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

Section 85-04-01-13 is amended as follows:

85-04-01-13 Cost-share payments

Cost-share payments may be made ~~upon receipt of an invoice~~ for allowable expenses.

History: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

CHAPTER 85-4-02
CONSTRUCTION AGGREGATE

Section 85-04-02-07 is amended as follows:

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: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

Section 85-04-02-08 is amended as follows:

85-04-02-08. Royalties.

Royalties must be received by the department by five p.m. central standard 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. 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.

History: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

CHAPTER 85-04-03
PERMANENT IMPROVEMENTS

Section 85-04-03-03 is amended as follows:

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 nondepartment sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from nondepartment 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. 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: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 28-32-02

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

CHAPTER 85-04-04
ENCUMBRANCES OF TRUST LANDS

Section 85-04-04-01 is amended as follows:

85-04-04-01. Application.

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

1. Encumbrance. An applicant may request an encumbrance for a specific purpose. ~~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. Amendment. 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. Consent to Assignment. An applicant may request consent to assign an encumbrance. An application for a consent to assignment must be received by the department prior to assignment between applicable parties. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. ~~An~~ A consent to assignment must be is not valid unless 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. All encumbrance obligations must be current at the time the consent to assignment is approved. 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. Extension or renewal. 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.

History: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 28-32-02

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

Section 85-04-04-02 is amended as follow:

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

1. Prior to assessing trust land 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.
2. 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.
- ~~2-3.~~ 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.
4. 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.

History: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 28-32-02

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

CHAPTER 85-04-07

LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-06

Section 85-04-07-01 is amended as follows:

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 letter of application for,~~ the sale of original grant lands after the original grant lands have been evaluated 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;
- ~~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: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-06, 15-08

Section 85-04-07-02 is amended as follows:

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

Any sale of original grant lands, ~~with exception of~~ excluding sale of tracts meeting the criteria provided in ~~subsection~~ subsections 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;

2. The applicant agrees to land provided as consideration must provide accessible and leasable land equal or greater in acres 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 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.

(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~~ to include both the values for the trust lands highest and best use and the current use.

(3) 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. Equal or greater Income to the trust. 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.

- c. 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 number of acres lost; or
 - (3) Substantially higher income in relation to the number of acres lost.
- d. 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. 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. 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" The board shall reserve all minerals underlying the trust lands in all no net loss sales pursuant to section 5 of article IX of the Constitution of North Dakota and subject to applicable law.~~

History: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-06, 15-08

Section 84-04-07-03 is amended as follows:

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;~~
- ~~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.~~

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 to 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) The 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.

- 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
 - (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:
 - i. Appraisal costs;
 - ii. Title examination; and
 - iii. Legal surveys if warranted.
 - (2) Bidder agrees to allow the department and its agents access to the lands offered for consideration
 - 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. 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. Board Final Review. The board shall review all approved registered bidders including 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 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 15-06;
 - c. A Purchase Agreement shall be executed at the closing of the sale with the winning bidder which includes:

- (1) The purchaser shall pay twenty percent of the purchase price at the time the agreement is executed; and
 - (2) The balance shall be paid sixty calendar days after execution of the agreement. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days after execution of the 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.
- ~~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.~~

History: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-06, 15-08

Section 85-04-07-04 is amended as follows:

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: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-06, 15-08

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

Section 85-04-08-01 is amended as follows:

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 after if after ~~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;
- ~~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: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-07, 15-08

Section 85-04-08-02 has been amended as follows:

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

Any sale of acquired lands, ~~with the exception of excluding sales of tracts provided meeting the criteria in subsections 1, and 2, 3, and 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 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 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.
 - (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, 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 to include both values for the trust lands highest and best use and the current use.~~
 - (3) 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. 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.
 - c. 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 number of acres lost; or
- (3) Substantially higher income in relation to the number of acres lost.
- d. 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. 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. 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. The board shall reserve all minerals underlying the trust lands for all no net loss sales pursuant to section 5 of article IX of the Constitution of North Dakota and subject to applicable law.

History: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-07, 15-08

Section 85-04-08-03 is amended as follows:

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.~~

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, including a request for bidders, pursuant to North Dakota Century Code chapter 15-07. 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) The 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.
- 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) That the bidder is subject to all costs associated to the bidder review and sale process, including:
 - i. Appraisal costs;
 - ii. Title examination; and
 - iii. Legal surveys if warranted.
 - (2) That the bidder agrees to allow the department and its agents access to the lands offered for consideration
- c. The Department shall review the lands proposed by each potential bidder to determine if they meet the criteria under 85-04-08-02.

~~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.~~

4. Board Final Review. The board shall review all approved registered bidders including 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 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 at the closing of the sale with the winning bidder which includes:

(1) The purchaser shall pay twenty percent of the purchase price at the time the agreement is executed.

(2) The balance shall be paid sixty calendar days after execution of the agreement. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days after execution of the 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-month following the date of the auction.

~~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.~~

~~13.—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: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-07, 15-08

Section 85-04-08-05 is amended as follows:

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: Amended effective January 1, 2021; _____, 2024

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

Law Implemented: NDCC 15-07, 15-08

CHAPTER 85-06-01
OIL AND GAS

Section 85-06-01-01 is amended as follows:

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

The department shall 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 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 accept oil and gas lease nominations. ~~A nomination must be accompanied by a nonrefundable fee, in an amount set by the department, and the fee must be submitted to the department prior to the published deadline for each nominated period.~~
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: Amended effective January 1, 2020; _____, 2024

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

Law Implemented: NDCC 15-05-09, 61-33-06, 61-33.1

Section 85-06-01-03 is amended as follows:

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 ~~online~~ auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, the auction administration fee, and any processing fees via automated clearing house or wire transfer, by five p.m. prevailing central ~~standard~~ time, ten days after the date the auction closed.
2. If no bids are received, the nominator shall be deemed the successful bidder.

- ~~3. The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.~~
- ~~2. The successful bidder at a live auction shall pay the bonus, at least one year of rental payments, and the advertising fee via automated clearing house or wire transfer, by five p.m. central standard time ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.~~
- ~~3. If no bids are received, the nominator is deemed the successful bidder and shall pay the bonus, at least one year of rental payments, the advertising fees, and any processing fee via cash, check, automated clearing house, or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.~~

History: Amended effective January 1, 2020; _____, 2024

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

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

Section 85-06-01-08 is amended as follows:

85-06-01-08. Royalties.

If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the oil and gas leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due the lessor are as follows:

1. On any gas produced and marketed, except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons, or other products; the royalty, as determined by the board, is based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided the maximum pressure base in measuring the gas under an oil and gas lease at any time may not exceed fourteen and seventy-three hundredths (14.73) pounds per square inch absolute, and the standard base temperature shall be sixty degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the balance method or by the most approved method of testing being used by the industry at the time of testing.

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History: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 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

Section 85-06-01-10 is amended as follows:

85-06-01-10. Breach 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 of the oil and gas lease terms or conditions ~~provided such cancellation must not release the lessee from liability for any sum due the lessor or from any damages due to the breach;~~ or
 - c. A violation of ~~the board rules and policies, and applicable laws~~ applicable laws, rules, and board policies.
2. Before an oil and gas lease is canceled, the department shall mail a notice of intention to cancel the oil and gas lease specifying the reason for cancellation to the lessee listed in records of the department by mail requiring a signed receipt at to the lessee's address of the lessee as shown in the records of the department. ~~If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the oil and gas leased premises is located.~~
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 of the notice of intention to cancel the oil and gas lease is ~~received or the date of publication postmarked~~. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner or the board may waive any breach except a breach of oil and gas lease terms required under North Dakota Century Code, or the commissioner or the board may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and may not limit the commissioner's or the board's right to cancel the oil and gas lease for any other breach.
4. If the lessee has not filed a release of the oil and gas lease with the applicable county recorder's office or requested waiver or commissioner review or remedied the default within thirty days after ~~receipt~~ the date of the postmark of a notice of intention to cancel the lease or the date of publication, the commissioner shall cancel the oil and gas lease.
5. Release of the oil and gas lease by the lessee or cancellation of the oil and gas lease does not release the lessee from liability for any sum due to the board, other than as provided in subsection 7, or from any damages from a breach of the oil and gas lease.
6. Upon cancellation of the oil and gas lease, the department shall file a ~~satisfaction notice of cancellation~~ of oil and gas lease with the ~~register of deeds~~ applicable county recorder's office in the county where the oil and gas leased premises is located.
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: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 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

Section 85-06-01-14 is amended as follows:

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 ~~oil and gas~~ lease, shall submit a written request to the department utilizing the form available on the department's website. The request 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 ~~oil~~ 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. The grounds for the request and the anticipated length of time the well will be shut-in; and
 - h. Any additional information requested by the department.
2. An application fee, in an amount set by the department, and the shut-in ~~royalty well~~ payment must be submitted with the application. The shut-in well payment shall be the same amount for oil or gas wells and shall be calculated on a per-lease, per-well basis. If the application is denied, the shut-in ~~royalty well~~ payment ~~will~~ must be refunded by the department.
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: Amended effective January 1, 2020; _____, 2024

General Authority: NDCC 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