

ARTICLE 85-04
SURFACE LAND MANAGEMENT

Chapter

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

Section

<u>85-04-07-01</u>	<u>Sale of Original Grant Lands</u>
<u>85-04-07-02</u>	<u>Sale Procedure</u>
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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 land after the original grant land has 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 is high value land;
2. The tract's potential for mineral development, including sand, gravel, clay, and scoria;
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;
4. If the tract and adjacent trust land tracts total less than eighty acres in size, more or less, for grassland and less than forty acres, 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. If the tract and adjacent trust land tracts exceed eighty acres in size, more or less, for grassland or more than forty acres in size, more or less, for cropland, the commissioner may bring to the board an application for purchase which complies with one of the following:
 - a. The proposed sale would result in no net loss of leasable original grant land; and
 - b. The applicant agrees to donate accessible and leasable land equal or greater in acres and value to the trust from which the original grant land was sold.

History: Effective _____

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

Law Implemented: NDCC 15-06, 15-08

85-04-07-02. Sale procedure.

1. A letter of application for purchase of original grant land meeting the criteria in section 85-04-07-01 may be accepted at any time. An application must include a non-refundable application fee in an amount set by the board. Upon board approval, a sale of original grant land must be conducted in conformance 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 sold even though no letter of application has been received. If the commissioner or board determines it is in the best interests of the trusts to proceed with the sale, the sale may proceed without the requirement of a public comment period.

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 shall also 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. Should publication of any notice be inadvertently omitted 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.
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.
 5. The board shall review all appraisals, any public comments, other relevant information, 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.
 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 15-06.
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. Land must be advertised for sale at public auction under North Dakota Century Code chapter 15-06.
11. 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.
12. The sale of any tract under this chapter may be by:
 - a. Contract under article IX, section 6 of the Constitution of North Dakota; or
 - b. A cash sale 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: Effective _____

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

Law Implemented: NDCC 15-06, 15-08

85-04-07-03. Payment of costs. The purchaser shall be responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective _____

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

Law Implemented: NDCC 15-06, 15-08

85-04-07-04. 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 if board review is warranted.

History: Effective _____

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

<u>85-04-08-01</u>	<u>Sale of Acquired Lands</u>
<u>85-04-08-02</u>	<u>Sale Procedure</u>
<u>85-04-08-03</u>	<u>Payment of Costs</u>
<u>85-04-08-04</u>	<u>Board Review</u>

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 has been evaluated by the commissioner for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1.

History: Effective

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

Law Implemented: NDCC 15-07, 15-08

85-04-08-02. Sale procedure.

1. A letter of application for sale of acquired lands may be accepted at any time. An application must include a non-refundable application fee in an amount set by the board. 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. If the commissioner or board determines it is in the best interests of the trusts to proceed with the sale, the sale may proceed without the requirement of a public comment period.
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 shall also 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. Should publication of any notice be inadvertently omitted 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 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.
6. 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.
7. 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.
8. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.
9. 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.
10. 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.
11. 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.
12. 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.
13. The sale of land may be by:
 - a. Contract under article IX, section 6 of the Constitution of North Dakota; or
 - b. A cash sale 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.
14. Acquired lands 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 _____

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

Law Implemented: NDCC 15-07, 15-08

85-04-08-03. Payment of costs. The purchaser shall be responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective _____

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

Law Implemented: NDCC 15-07, 15-08

85-04-08-04. 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 if board review is warranted.

History: Effective _____

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

Law Implemented: NDCC 15-07, 15-08

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

Section

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

85-04-09-01. Sale of lands for public or quasi-public purpose. The department shall consider the following criteria when reviewing an application for sale under North Dakota Century Code chapter 15-09:

1. The tract is required for the purposes stated in the application and issuance of the patent or deed must not have a significant negative impact on the remainder of the trust lands;
2. Environmental impacts are minimal or are required to be mitigated in an acceptable manner;
3. Impacts on the value of the remainder of the trust lands are minimal or are required to be mitigated in an acceptable manner;
4. Impacts to significant archaeological and historical sites are minimal, or are required to be mitigated in an acceptable manner;
5. The sale must produce a positive financial return to the trusts;
6. There is no known significant controversy regarding the project;
7. The surface lessee has been notified of the project; and
8. If the application is for a sale of land for use as a landfill by a public entity, the following requirements must be met:
 - a. Applicants shall work with the state department of environmental quality to ensure the operation of the proposed landfill is in accordance with state and federal laws, rules, and regulations;
 - b. Before final approval of a sale is given, the applicant shall submit evidence that the site meets appropriate geological, hydrological, and other requirements established by the state department of environmental quality and the United States environmental protection agency. A permit for feasibility testing may be issued prior to final approval of a sale.
 - c. When determining the purchase price, the board shall consider the following additional factors:
 - (1) The unique geological and hydrological characteristics which make the site suitable for use as a landfill;
 - (2) The effect on the value of adjacent state properties caused by using the site as a landfill; and

(3) The price paid by other purchasers for similar landfill sites.

History: Effective _____

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

Law Implemented: NDCC 15-09

85-04-09-02. Sale procedure.

1. An application for purchase of land may be accepted and the land sold in conformance with North Dakota Century Code chapter 15-09. An application must be submitted using a paper application provided by the department upon request and be completed and signed by authorized personnel and must include a non-refundable application fee in an amount set by the board unless waived by the commissioner. 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.
2. If the land is leased, 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. Should publication of any notice be inadvertently omitted 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 is authorized to 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.

85-04-09-03. Payment of costs. The purchaser shall be responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective _____

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

Law Implemented: NDCC 15-09

85-04-09-04. Fencing. A no-fencing clause may be added to the conveyance in order to keep trust lands from being severed.

History: Effective _____

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

Law Implemented: NDCC 15-09

85-04-09-05. Reversion clause. Any conveyance must contain a reversion clause stipulating that if the property is at any time not used for its stated purpose at the time of purchase, the board may terminate the estate created by the conveyance and repossess the property. The power of termination and re-entry may be exercised by the board without reimbursement to the purchaser of any part of the purchase price, and without payment of any other consideration.

History: Effective _____

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

Law Implemented: NDCC 15-09

85-04-08-06. 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 if board review is warranted.

History: Effective _____

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

Law Implemented: NDCC 15-09