

ARTICLE 85-04
SURFACE LAND MANAGEMENT

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CHAPTER 85-04-06
LAND EXCHANGE

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85-04-06-01. Approval of land exchange. The board may approve an exchange of trust lands, 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 _____

General Authority: N.D. Constitution article IX, § 6; NDCC 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 numbered one through six in any land exchange. Land exchanges are not required to satisfy all six criteria outlined below.

1. Equal or greater value.
 - 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 grazing but the land is in the path of urban or commercial development, the trust

lands to be exchanged must be appraised for the highest and best use for residential or commercial development rather than its current use as grassland.

- c. The department 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 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 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 may, however, consider receiving less acreage in return for substantially higher value or income, or both.
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 North Dakota Constitution article IX, § 5, subject to applicable law.
5. Potential for long-term appreciation. The proposed exchange land must have similar revenue potential as 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.

History: Effective _____

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

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

85-04-06-03. Application for land exchange. An applicant shall submit a written letter of application to the commissioner to request a land exchange. The application must include:

1. Legal description of the trust lands to be exchanged;
2. Legal description of the proposed exchange land;
3. Applicant's estimated valuation of the proposed exchange land;
4. The most recent tax assessment for the proposed exchange land;
5. Statement of ownership of the proposed exchange land, including owners' names and ownership interest;
6. Purpose of exchange request; and
7. A non-refundable application fee as determined by the board.

History: Effective _____

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

Law Implemented: NDCC 15-06-19.1

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 sections 85-04-06-02(1) and (2); 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.

History: Effective _____

General Authority: N.D. Constitution article IX, § 6; NDCC 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 the application covers a tract the board is willing to exchange, the department shall post on the department's website a notice of the application for land exchange, any supporting documentation, and instructions for submitting public comments. The department shall also 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. 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 exchange land and proposed trust lands to be exchanged 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.
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.
3. 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 _____

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

Law Implemented: NDCC 15-06-19.1

85-04-06-06. Exchange report. Following the department's application evaluation, the board's determination that the application covers a tract the board is willing to exchange, and expiration of the public comment period, the department shall prepare an exchange report to be presented to the board, which will include the following:

1. A summary discussion of how the exchange meets or exceeds any of the six criteria for land exchange under section 85-04-06-02;
2. A summary of public comments received on the proposed exchange;
3. The department's concerns or opinions of the merits of the proposed exchange;
4. The department's recommendations for board direction regarding further review, if needed, of the proposed exchange; and
5. The applicant's commitment to fund the costs of the department's detailed review, including appraisals, title examinations, advertising costs, recording fees, and other costs as may be necessary to complete an exchange as determined by the department. The applicant shall be responsible for payment of all costs, unless payment of the costs is otherwise waived by the board or shared by the parties to the exchange.

History: Effective _____

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

Law Implemented: NDCC 15-06-19.1

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.

Where 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.

History: Effective _____

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

Law Implemented: NDCC 15-06-19.1