

CHAPTER 85-04-06 LAND EXCHANGE

Section

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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 January 1, 2021; amended effective April 1, 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 must be considered in a cumulative manner. Meeting certain criteria may not guarantee approval.

1. A land exchange 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 the trust lands' highest and best use as well as the current use. The department may consider features not reflected in the market price to which it is 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. A land exchange must result in the board receiving equal or greater income to the trusts. The projected income for the proposed exchange land must be estimated using the board's minimum lease rate. The minimum lease rate for the proposed exchange land must 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. Land exchanges must result in the board receiving equal or greater acreage, except the board may consider receiving less acreage in return for 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. The proposed land exchange may not fragment trust land holdings by creating isolated parcels of trust land.
5. The proposed exchange land must have similar as or greater than income and value potential compared to the trust lands to be exchanged.

6. A land exchange may not diminish access to trust lands. Accessible trust lands must be exchanged with lands that offer equal or improved access.
7. In connection with any exchange of trust land, 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 April 1, 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

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 nonrefundable application fee as determined by the board.

History: Effective January 1, 2021.

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 if the application:
 - a. Does not meet the requirements of subsections 1 and 2 of section 85-04-06-02; or
 - b. 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 April 1, 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. 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. 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) 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.
 - 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.
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 April 1, 2026.

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

Law Implemented: NDCC 15-06-19.1

85-04-06-06. 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 is 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 January 1, 2021.

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.

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 April 1, 2026.

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

Law Implemented: NDCC 15-06-19.1