

SUBJECT: A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING THE LAND AND RESOURCE MANAGEMENT DIVISION POLICY AND PROCEDURES MANUAL.

AGENDA OF: MARCH 21, 2023

Assembly Action:

*Approved under the Consent Agenda.*

*3/21/23.  
(SP)*

AGENDA ACTION REQUESTED: Present to the Assembly for consideration.

Route To Department/Director	Signature	Comments
Originator	<i>John Richard for N.S.</i>	JA for Mike Brown
Community Development Director	<i>E. Paul</i>	
Finance Director	<i>Chapman</i>	
Borough Attorney	<i>KS</i>	
Borough Manager	<i>WWS</i>	
Borough Clerk	<i>Chapman 3/14/23</i>	<i>g</i>

ATTACHMENT (S) : Fiscal Note: YES \_\_\_\_\_ NO x  
 Resolution Serial No. 23-025 (2 pp.) and Attachment  
 Title 23 Policy and Procedure Manual, Part 5,  
 § 4.1, C.2 (3 pp.)

#### SUMMARY STATEMENT:

#### BACKGROUND

On November 22, 2022, the Matanuska-Susitna Borough Assembly approved Resolution Serial No. 22-105 and Informational Memorandum No. 22-224 to authorize changes to the Title 23 Land and Resource Management Division Policy and Procedure Manual.

Subsequent to Assembly approval, it was noticed that a portion of the policy erroneously included an appeal clause. The change to

Title 23, and specifically *Land and Resource Management Division Policy and Procedure Manual*, Part 5, § 4.1, C.2 should be corrected as indicated in the attachment hereto.

The deletion of this clause is important because the decision to transfer or not transfer an interest in real property is legislative, not quasi-judicial, as further described in the accompanying attachment.

**RECOMMENDATION OF ADMINISTRATION:**

The Land and Resource Management Division recommends Assembly approval of the change to Title 23 by deleting the appeal clause as shown.

**TITLE 23**  
**LAND AND RESOURCE MANAGEMENT DIVISION**  
**POLICY AND PROCEDURE MANUAL**

<b>Agricultural Land Sales: 1977, 1981, 1982 and 1983 Borough Conveyance of the Fee Simple Title</b>	
<b>PART 5</b>	<b>Effective Date: __ - __-2023</b>

- 1.1 Authority: 23.05.025 Public Notice  
23.05.030 Ownership & Method of Disposal  
23.10.230 Agreements by Application
- 2.1 Purpose Statement. This voluntary program applies to Borough lands classified and sold as “agricultural lands” under former MSB Title 13 as an agricultural rights interest only, with the development rights retained by the Borough.
- The purpose of these procedures is to outline the application process for an agricultural rights owner to convert and merge their agricultural interest to fee simple title. MSB will convey by quitclaim deed its interest retained under the Title 13 Agricultural Rights programs. The retained rights included the ability to subdivide the original farm unit, or use the property for commercial, industrial purposes, or for multiple residences.
- 2.2 The Agricultural Covenants, Conditions, and Restriction currently used under Title 23 agricultural programs will be imposed and recorded concurrently with the quitclaim deed conveying the Borough’s interest. Some elements of the Covenants, Conditions, and Restrictions used under this program include:
- A. Modified to eliminate the 10 year rule of holding title before subdividing.
  - B. Will not require a farm development plan or continuing farm production under a plan.
  - C. Provide the ability to use the designated Primary Improvement Site (known as the homesite under Title 13) for home-based business uses such as Bed and Breakfast or farm stay business.
  - D. Allows subdivision of up to four (4) parcels created, no less than 40 acres, within the boundary of the original farm unit or sub-unit.
    - 1. Each farm unit or sub-unit created will be eligible to use up to 5 acres for designated improvement sites.
- 3.1 Application submittal and review. The following procedures should be followed in general when preparing for the conveyance of the Borough’s interest under the authorities cited in paragraph 1.1 of this chapter prior to acceptance of the application for processing.

- A. The application:
  - 1. The steps under “Applications: Filing & Acceptance” Part 10 of the Land and Resource Management Division Policy and Procedure Manual shall be followed.
  - 2. Staff will create or update a case file that contains the application and any pertinent enclosures or inclusions.
  - 3. Staff will provide a comprehensive review of the property status and check the land for any current uses, reservation, or prohibited uses to determine if the property is subject to any existing restrictions or area plans.
  - 4. Financial and interdepartmental review is initiated upon submittal of the application.
- 4.1 An applicant must be deemed a qualified applicant pursuant to MSB 23.10.090.
  - A. Prior to Borough acceptance of the application for processing, an application conference is held to present to the applicant findings from the financial and interdepartmental review and:
    - 1. The application processing steps are discussed with the applicant;
    - 2. Any other conditions or Borough code considerations are discussed with the applicant; and
    - 3. The applicant pays the processing fee, which includes, but not limited to the following:
      - a. Title report;
      - b. Document preparation, including but not limited to adoption of legislation;
      - c. Assist owners with the “Notice of Designated Improvement Sites” form as required under the new Covenants, Conditions and Restrictions in accordance with Title 23;
      - d. The processing of consents or approvals from lenders or lien holders (if any), excepting therefrom any additional fees associated with the process outside of fees a lender or lien holder may charge an owner;
      - e. Recording fees for the Covenants, Conditions and Restriction, quitclaim deed, and Notice of Designated Improvements Sites.
    - 4. The MSB will not be responsible for any public notice or advertising costs or costs not anticipated which are associated with the conveyance of the Borough’s interest.

- B. Legislation is prepared and provided to the applicant, MSB Agriculture Advisory Board, and Borough Assembly as required by MSB 23.10.020, Assembly Approval of Disposal.
  - C. Based on the outcome of the decision, the MSB Land and Resource Management Division will prepare a package to the applicant as follows:
    - 1. If approved, a purchase agreement as appropriate will be prepared and shall incorporate the terms and conditions as approved, and shall set out the remaining steps and monies required to close, if applicable. Original documents will be provided to the applicant with instructions that the applicant execute and return the original(s).
    - ~~2. IF DENIED, THE APPLICANT WILL BE NOTIFIED BY CERTIFIED MAIL WITH A SUMMARY OF THE REASON FOR DENIAL. THE DECISION OF THE BOROUGH ASSEMBLY MAY BE APPEALED TO THE SUPERIOR COURT WITHIN 30 DAYS IN ACCORDANCE WITH THE ALASKA STATE RULES OF APPELLATE PROCEDURE.]~~
- 5.1 Should the owner decide not to complete the conversion, the applicant may continue to occupy the property under the title of that particular agricultural sale program and the borough will continue to hold the development rights of the property.