

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY CONVEYING AND MERGING THE BOROUGH'S DEVELOPMENT RIGHTS INTEREST WITH THE AGRICULTURAL RIGHTS TITLE FOR FEE SIMPLE TITLE WITH AGRICULTURAL COVENANTS TO JAMES AND AMBER MCDONOUGH (MSB007985).

AGENDA OF: April 18, 2023

ASSEMBLY ACTION:

*Adopted without objection
5-2-23*

AGENDA ACTION REQUESTED: Introduce and set for public hearing.

Route To Department/Director	Signature	Comments
Originator	<input checked="" type="checkbox"/> <i>JAB</i>	
Department Director	<input checked="" type="checkbox"/> <i>E. Phil</i>	
Finance Director	<input checked="" type="checkbox"/> <i>Chapman</i>	
Borough Attorney	<input checked="" type="checkbox"/> <i>BS</i>	
Borough Manager	<input checked="" type="checkbox"/> <i>WJ</i>	
Borough Clerk	<input checked="" type="checkbox"/> <i>from 4/10/23</i>	<i>gy</i>

ATTACHMENT (S): Fiscal Note: YES ☒ NO ☐

Vicinity Map (1 pp)

Declaration of Covenants Conditions and Restrictions (5 pp)

Ordinance Serial No. 23-035 (2 pp)

Agriculture Advisory Board Reso (2 pp)

SUMMARY STATEMENT:

Matanuska-Susitna Borough Land & Resource Management Division received an application from James and Amber McDonough (formerly Goldberg) to acquire the remaining interest in the land estate of Lot 4, Section 3, Township 18 North, Range 1 East, Seward Meridian (Tax ID 18N01E03B006). This request would merge the Borough's development rights with the agricultural rights title for a fee simple estate and would implement the covenants, conditions, and restrictions used under Title 23 agricultural programs. This

request is allowed under MSB 23.10.230(A)(1)(g).

DISCUSSION:

The subject property, approximately 40 acres, was originally part of a 360-acre parcel that was sold under former Title 13 in 1977. Under former Title 13, when the Borough conveyed land in agricultural land sale programs, it conveyed the "agricultural rights" to the buyer and retained the "development rights". MSB 13.30.120(H) defined the rights conveyed as "All rights except mineral rights and development rights. Development rights are the rights to subdivide or use the surface of the land for residential, commercial or industrial uses which are not part of the farming enterprise conducted on the land."

Title 13 was replaced by Title 23 in 1994. Under Title 23, when the Borough sells agricultural properties, it conveys fee simple estate and imposes covenants, conditions, and restrictions on the fee simple title. The covenants, conditions, and restrictions are designed to maintain the agriculture potential of the land without requiring certain clearing or production requirements as necessary under former Title 13.

In November of 2022, the Borough Assembly approved Resolution Serial No. 22-105 and Informational Memorandum No. 22-224 authorizing changes to the Title 23 and the Land & Resource Management Policy and Procedures Manual. These changes created a voluntary program that allows agricultural land sales under former Title 13 to convert and merge the Borough's development interest to create fee simple title with agricultural covenants under Title 23. The McDonoughs are the first agricultural rights owners to take advantage of the newly created conversion program.

Inter department review was conducted with no objection from Borough departments. Public notice was provided in accordance with MSB 23.05.025 and no public comments were received.

Pursuant to MSB 23.10.230(A)(1)(g) the Manager may, with the approval of the Assembly by ordinance, approve a sale of Borough-owned real property by application for disposal of the Borough's interest in the agricultural land sales conducted in 1977, 1981, 1982, and 1983. James and Amber McDonough have submitted an application and qualify to purchase the remaining interest in a land estate in accordance with MSB Title 23 and Land and Resource Management Policy and Procedures.

RECOMMENDATION OF ADMINISTRATION:

Matanuska-Susitna Borough Assembly approval to convey the Borough's remaining interest in the land estate of Lot 4, Section 3, Township 18 North, Range 1 East, Seward Meridian (Tax ID # 18N01E03B006) to James and Amber McDonough pursuant to MSB

23.10.230 Agreements by Application; implement the covenants, conditions, and restrictions under Title 23 Agricultural Programs; and authorizes the Manager to complete the transaction.

MATANUSKA-SUSITNA BOROUGH

FISCAL NOTE

Agenda Date: April 18, 2023

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY CONVEYING AND MERGING THE BOROUGH'S DEVELOPMENT RIGHTS INTEREST WITH THE AGRICULTURAL RIGHTS TITLE FOR FEE SIMPLE TITLE WITH AGRICULTURAL COVENANTS TO JAMES AND AMBER MCDONOUGH (MSB007985).

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <input checked="" type="radio"/> YES <input type="radio"/> NO
AMOUNT REQUESTED \$	FUNDING SOURCE Tax Revenue
FROM ACCOUNT #	PROJECT
TO ACCOUNT : XXX.XXX.XXX 311.XXX	PROJECT #
VERIFIED BY: <i>[Signature]</i>	CERTIFIED BY:
DATE: 4/6/23	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL						
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REVENUE		\$				
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FUNDING:

(Thousands of Dollars)

General Fund		\$				
State/Federal Funds						
Other		\$				
TOTAL		\$				

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary) \$FY24 revenue tax will be adjusted for fee simple title.

PREPARED BY: _____ PHONE: _____

DEPARTMENT: *Chapenne Skerf* DATE: _____

APPROVED BY: _____ DATE: 2/16/23

**MATANUSKA-SUSITNA BOROUGH
AGRICULTURE ADVISORY BOARD
RESOLUTION NO. 23-01**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH AGRICULTURE ADVISORY BOARD RECOMMENDING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPT ORDINANCE SERIAL NO. 23-035, CONVEYING THE BOROUGH'S DEVELOPMENT RIGHTS INTEREST TO JAMES AND AMBER MCDONOUGH FOR FEE SIMPLE TITLE WITH AGRICULTURAL COVENANTS (MSB007985).

WHEREAS, the Borough Agriculture Advisory Board was enacted by Matanuska-Susitna Borough Ordinance 15-050 to review issues specifically related to and affecting Borough agriculture lands, and advise the Assembly and Manager on such matter; and

WHEREAS, the Agriculture Advisory Board asked Land and Resource Management staff to develop a program to convert and merge the Borough's development rights held in deeds for the 1977, 1981, 1982, and 1983 agricultural land sales programs; and

WHEREAS, on November 22, 2022, the Matanuska-Susitna Borough Assembly approved Informational Memorandum No. 22-224 and Resolution Serial No. 22-105, amending Title 23 Real Property and the Land and Resource Management Policy and Procedures Manual Part 5, for the Agricultural Land Sales under former Title 13 that occurred in 1977, 1981, 1982, and 1983 and merge the Borough's development right with the agricultural rights title for fee simple title with agricultural covenants; and

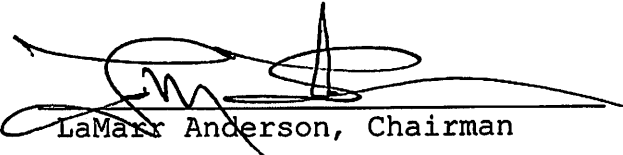
WHEREAS, the Matanuska-Susitna Borough Land and Resource Management Division received an application from James and Amber McDonough to acquire the remaining interest in the land estate of

Tax ID 18N01E03B006; and

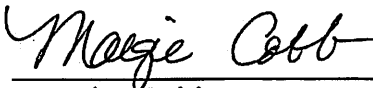
WHEREAS, James and Amber McDonough qualify to purchase the remaining interest in a land estate in accordance with MSB Title 23 and Land and Resource Management Policy and Procedures.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Agriculture Advisory Board recommends the Matanuska-Susitna Borough Assembly hereby adopt Ordinance Serial No. 23-035, conveying the Borough's development rights interest to James and Amber McDonough for fee simple title with agricultural covenants.

ADOPTED by the Matanuska-Susitna Borough Agricultural Advisory Board this 19th day of April 2023.


LaMar Anderson, Chairman

ATTEST:



Margie Cobb,
Department Administrative Specialist

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

The Matanuska-Susitna Borough, a municipal corporation organized and existing under the laws of the state of Alaska (hereinafter "Declarant"), as owner of real property classified as "Agricultural lands," does hereby declare and impose these covenants, conditions, and restrictions on the real property described in "Exhibit A" attached hereto, in order to promote the agricultural use and development of the subject real property. This declaration of covenants, conditions and restrictions so declared are perpetual and shall run with the land and be binding on all parties coming under them hereafter, including all successors and assigns.

DEFINITIONS

Farm Unit: The individual parcels described in this declaration, each to be conveyed as a single farm unit.

Farm Sub-Units: The parcels later created within the boundary of a Farm Unit.

Improvement Sites: The areas within a Farm Unit, or subsequent Farm Sub-Unit, that must be designated as the location for all real property improvements and the non-agricultural development permitted by this declaration.

Primary Improvement Site: The one (1) designated improvement site within a Farm Unit, or subsequent Farm Sub-Unit, in which the farm headquarters, residential use, and home-based business use, including associated well and septic systems, shall be located.

Real Property Improvements: Any structural improvement that is built or located upon the land in a fixed, permanent, or immovable state. For the purposes of this declaration, farm fencing, irrigation wells and systems, utility service lines (aerial or buried), farm field roads, and public infrastructure located in public use easements or right-of-ways are not considered as real property improvements that must be located within the designated Improvement Sites.

Agricultural Development: The development of the land for Agricultural Purposes.

Agricultural Purposes: The production and harvest, for commercial or personal use, of plants, animals, birds, fish, bees, and other organisms by humans to provide food, fuel, fiber, shelter, clothing, energy and aesthetics, and including:

Real property improvements used in the care, housing, processing, and storage of the agricultural assets, EXCEPT that kennels and catteries are not considered an agricultural purpose;

Other land improvements that are reasonably required for or related to agricultural development;

The personal use of gravel resources located within the Farm Unit for development within the Farm Unit boundary; and

The removal and disposition of timber located within the Farm Unit in order to bring the land into agricultural production.

Residential Use: Any Real Property Improvement that is used as living quarters by the landowner(s) or farm laborers employed on the Farm Unit, and including members of their immediate family residing with them.

Home-Based Business Use: A business activity carried out on the same Improvement Site as a Residential Use, being located in a residential structure or a detached appurtenance, that is clearly incidental and subordinate to the agricultural development. Examples of such a use may include professional service businesses, bed and breakfast or farm-stay businesses, and kennel and cattery businesses for boarding or breeding.

LAND USE RESTRICTIONS

1. The farm headquarters, residential use, and home-based business use, including associated well and septic systems, shall be located within one (1) Improvement Site that is identified as the Primary Improvement Site. Additional Improvement Sites may be indicated within the Farm Unit but are strictly limited to facilities necessary to the agricultural development of the Farm Unit and shall not include residential or home-based business uses as defined herein. The aggregate area of all Improvement Sites may not exceed five (5) acres, unless specifically authorized by the Matanuska-Susitna Borough Manager.
2. The Borough Manager may authorize designated Improvement Sites in an aggregate area larger than five (5) acres when the additional area is needed for unusual or larger scale real property improvements necessary for agricultural development of the parcel.

The designated Improvement Site(s) must be identified prior to construction of the real property improvement(s) by the Farm Unit purchaser/owner submitting location map(s) on a form, approved by the borough manager that is acceptable for recording. The location and size of each designated Improvement Site, including the Primary Improvement Site, shall be indicated on the map. A "Notice of Designated Improvement Sites" that includes a copy of the location map(s) as approved by the Borough Manager shall be recorded in the office of the district recorder at the expense of the Farm Unit purchaser/owner. The Notice of Designated Improvement Sites, most recently accepted by the Borough Manager and recorded, may be used as a basis for enforcing the covenants, conditions and restrictions herein. The size and location of the Improvement Sites may be amended prior to construction of improvements within designated Improvement Sites. An "Amended Notice" shall be recorded in the same manner as the original "Notice".

3. Requests to amend or enlarge the designated Improvement Sites, including the fees to process such a request shall be submitted to the Matanuska-Susitna Borough, Land Management Division. The Borough Manager may impose such conditions of use on the additional acreage authorized as deemed prudent and necessary based on a review of the intended uses. A notice of the authorization of sites larger than five (5) acres aggregate and any special conditions of use shall be recorded as a part of the original "Notice" or as an "Amended Notice" in the records of the district recorder in the same manner as the "Notice".
4. The development of condominiums or co-operatively owned apartments within any area of the Farm Unit is prohibited.

5. The excavation or removal of any natural deposits of gravel, sand, rock, peat or similar natural resource materials located within the Farm Unit for the purposes of sale, trade, barter, or exchange is prohibited.
6. All development and uses within the Farm Unit shall conform to all federal, state, and local laws, regulations, and codes.

SUBDIVISION RESTRICTIONS

1. A Farm Unit larger than 80 acres in size may be subdivided. The Farm Unit may not be divided into parcels less than 40 acres in size. No more than a total of four (4) parcels may result within the boundary of the Farm Unit. Parcels created from the Farm Unit by subdivision may not be further subdivided and will be identified as Farm Sub-Units.
2. A parcel subdivided from the Farm Unit will continue to come under this Declaration of Covenants, Conditions, and Restrictions.
3. Subdivision of the Farm Unit must meet the subdivision code and regulations in place at the time such subdivision occurs.
4. Each Farm Sub-Unit shall be authorized to designate not more than an aggregate of five (5) acres for Improvement Sites that may include one (1) Primary Improvement Site. The five (5) acre limit shall include any designated Improvement Sites located within the boundary of the Farm Sub-Unit previously existing under the rules for the Farm Unit, unless such site has not been utilized and its location is released by an approved amendment.

DEVELOPMENT REQUIREMENTS

The Farm Units have been classified under MSB 23.05.100 as "Agricultural Lands" because they are recognized as land that "because of soils, location, physical or climatic features, or adjacent development are presently or potentially valuable for the production of agricultural crops". Any agricultural potential of the Farm Units shall be enhanced by land and water stewardship practices that minimize adverse environmental impacts. An implementation schedule for the development of each Farm Unit is not required and will not be enforced.

WASTE

Development methods shall not waste the topsoil and other natural resources of the Farm Unit nor shall it diminish the agricultural potential of the Farm Unit.

AMENDMENT OR MODIFICATION

This Declaration of Covenants, Conditions, and Restrictions is intended to be perpetual. The Matanuska-Susitna Borough Assembly having imposed these conditions under Ordinance Serial Number 23-035 may amend or modify the Covenants, Conditions and Restrictions by subsequent ordinance upon written petition, signed by the owners of record of no less than 70 % of the existing Farm Units and Farm Sub-Units affected by this Declaration at the time the petition is presented, and upon a public hearing, provided the amendment or modification shall apply equally to all Farm Units and Farm Sub-Units.

INTERPRETATION

The provisions of these covenants, conditions, and restrictions shall be liberally construed to effect the purpose of encouraging agricultural development. Failure to enforce any provision shall not constitute a waiver of the right to enforce such provision or any other provision herein. Any conflicts in interpretation arising between this declaration and other covenants, conditions, and restrictions of record or zoning that may affect a Farm Unit or Farm Sub-Unit shall be adhered to based on the more restrictive interpretation.

ENFORCEMENT

This Declaration of Covenants, Conditions, and Restrictions may be enforced only by a civil action brought by the Matanuska-Susitna Borough, its successors or assigns. A civil action may be filed after the plaintiff has notified the Farm Unit or Farm Sub-Unit owner(s), in writing by certified mail or personal service, of the particular violations of this Declaration at least 90 days before the civil action is undertaken. Enforcement under this section shall not limit the ability of a party to seek injunctive relief on an expedited basis when life, health, or safety is an issue.

IN WITNESS WHEREOF, this declaration is made and executed on this _____ day of _____, 2023 by the undersigned on behalf of the Matanuska-Susitna Borough under authority granted by the laws of the State of Alaska and the Matanuska-Susitna Borough.

ATTEST:

MATANUSKA-SUSITNA BOROUGH

Lonnie McKechnie, Borough Clerk

Michael Brown, Borough Manager

Seal:

STATE OF ALASKA)
)ss.
Third Judicial District)

On _____, _____, 2023, Michael Brown, Borough Manager of the Matanuska-Susitna Borough, who is personally known to me, appeared and acknowledged before me that he signed the Declaration of Covenants, Conditions and Restrictions on behalf of the municipal corporation.

Seal:

Notary Public for State of Alaska
My commission expires: _____

EXHIBIT A

Lot 4, Section 3, Township 18 North, Range 1 East, Seward Meridian, in the records of the Palmer Recording District, Third Judicial District, State of Alaska (Tax ID # 18N01E03B006).