

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

<b>AGRICULTURAL LAND SALES:    Disposal</b>
<b>PART 5</b>

- 1.1 Authority:    23.05.030  
                      23.10.070  
                      23.10.150
  
- 2.1 Classification. The land shall first be classified per classification procedure as “Agricultural lands.”
  
- 3.1 Sale Notice. The offering of borough-owned land in an agricultural disposal will be published in a descriptive brochure containing at a minimum:
  - A. the date, time and place of awarding/naming the successful bidder/buyer for the parcel(s) in the disposal; and
  
  - B. the period during which bids/applications will be accepted; and
  
  - C. a statement of the interest to be conveyed, terms and conditions of disposal, the terms of payment and length of contract, purchaser and borrower qualifications required, contract performance requirements, and any other special conditions or limitations; and
  
  - D. maps for each parcel identifying the vicinity where the parcel is located and the immediate area; and
  
  - E. additionally the following information will also be provided for each parcel:
    - 1. approximate size in acres;
  
    - 2. minimum sale price;
  
    - 3. any special reservations and conditions, such as easements or non-development buffers, which will be imposed upon the parcel at time of conveyance; and
  
    - 4. land capability soils information, if available.
  
- 4.1 Purchaser qualification.

- A. In addition to meeting the qualifications of applicants and bidders required by MSB 23.10.090, in order to be eligible to purchase property at an agricultural sale, a prospective purchaser must register prior to the sale and must sign a statement worded substantially as follows:

“I hereby acknowledge and affirm that if I am the successful purchaser, I will use the land acquired at this sale for agricultural purposes as required by the sale program set forth in the covenants, conditions and restrictions and all agricultural land use district regulations in which boundary the parcel is located and which have been disclosed to me. I further acknowledge and affirm that I will abide by the provisions of applicable federal, state and borough laws, and regulations. I understand that if I am the successful purchaser, I will be required to submit information required by the program and meet the borough’s lending requirements to qualify for any financing offered by the borough to purchase the parcel. I further understand that the classification of the property as “agricultural land” only identifies the land as being “presently or potentially valuable for production of agricultural crops.”

The borough makes no warranties, either express or implied, nor assumes any liability whatsoever regarding the social, economic, or environmental aspects of the property, to include without limitation, the soil conditions, water drainage, physical access, availability of personal use wood supplies now or in the future, or natural or artificial hazards, which may or may not exist, or merchantability, suitability, or profitability of the property for any use or purpose.”

- B. The borough manager may require a prospective purchaser to provide evidence that would establish the purchaser’s:
1. ability to obtain financing and repay debt, including credit reports and income verification if borough financing is requested; or
  2. evidence of Alaska residency by providing the physical location of Alaska residence and by submitting a copy of one of the following:
    - a. current Alaska voter registration card issued for more than 30 days; or
    - b. current Alaska driver’s license issued for more than 30 days; or
    - c. current Alaska hunting or fishing license issued for more than 30 days; or
    - d. current year Alaska permanent fund filing receipt; or

- e. an affidavit signed by two individuals who swear and attest they have known the individual to be a resident of Alaska for more than the 30 previous days.
3. United States citizenship by submission of a copy of one of the following:
- a. certified copy of certificate of birth in U.S. or U.S. possession; or
  - b. U.S. passport; or
  - c. U.S. Immigration Service issued form for one of the following:
    - i. certificate of U.S. citizenship; or
    - ii. certificate of naturalization; or
    - iii. U.S. citizen ID card; or
  - d. certification of birth abroad issued by U.S. Department of State; or
  - e. Native American tribal document; or
  - f. current voter's registration card.
- C. The borough manager will require proof of the authority to conduct business in the state of Alaska if the prospective purchaser is a corporation, partnership, limited liability company, joint venture, or some other entity which is not acting in the capacity of an individual, and proof that the individuals have authority to act on behalf of the entity.
- D. The borough manager may refuse to approve borough financing based on the analysis of the prospective purchaser's ability to repay debt, which may take into consideration prior delinquency in payment of taxes, rents, default in payments toward any contracts or loans, or for other good cause.
- 5.1 Sale Method. Agricultural land sales may be by outcry or sealed bid auction, lottery or any other method allowed by law. The sales will be conducted according to the relevant procedure for the particular disposal method. Parcels that have been offered in a competitive agricultural disposal program and have not been sold may be placed in an over the counter sale. The method of conducting the sale will change to the over the counter process. However, the terms and conditions attaching to the parcel under the agricultural land sale program and financing qualifications will remain the same as the competitive agricultural land sale program.

## 6.1 Right to Farm Statute and Farm Conservation Plan.

- A. All agricultural property sold by the borough is intended to maximize agricultural capability to the extent feasible and practical and to protect existing agricultural development pursuant to Alaska Statute 9.45.235 and borough code. The prospective purchasers will be informed that technical planning assistance is available through the local soil and water conservation district in cooperation with the United States Department of Agriculture, Natural Resource Conservation Service.
- B. Purchaser shall submit a Borough Farm Conservation Plan for inclusion in the case file that will run with the land until/unless specifically changed.
- C. Continuous fallow is recognized as an agricultural use for the protection of the long-term viability of the nation's food supply by preventing conversion of soils of local importance for agricultural uses to non-agricultural uses. Fallow provides a mechanism to prevent the inappropriate conversion of agricultural land into sprawling, low-density development to safeguard against a "no net loss" of agricultural lands.
  - 1. Recognized fallow uses and activities are defined as:
    - a. land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; and
    - b. land used for agricultural activities to lie dormant because of adverse agricultural market conditions; and
    - c. allowing naturally occurring grasslands and nonindustrial private forestland.

## 7.1 Construction of Real Property Improvements.

- A. Each agricultural land sale program includes terms and conditions under which construction of real property improvements will be authorized. The agricultural land sale programs will encourage responsible development and may authorize the construction of fixed, permanent, or immovable structures reasonably required for or related to agricultural production, within designated areas. This designated improvement area(s) must be identified by the purchasers or owners who shall submit a location map(s) on a form approved by the manager and acceptable for recording, prior to construction of any such improvements within the area(s); however, the purchasers or owners shall not be required to designate the area(s) by a specific time frame under the terms and conditions of the sale.

- B. The designated areas when calculated together may not exceed five (5) acres in size, except as set forth below. The areas may include home site(s), well and septic location(s), and the farmstead areas normally required for yards, driveways, parking, barns, animal pens, outbuildings, and other similar uses.
- C. Areas larger than five (5) acres may be authorized by the borough manager and designated if unusual or large scale real property improvements are necessary for agricultural development of the parcel conveyed.
- D. Changes in the location or size of the designated real property improvement area are subject to approval of the borough manager. The borough manager may approve a change if the change is consistent with the agricultural use of the property.
- E. The method for designating and amending the real property improvement sites will be set out in the terms and conditions of the agricultural land sale program and will be enforced by covenants, conditions, and restrictions.
- F. Processing and recording fees may be charged to the owners that request the designated improvement sites be amended.

#### 8.1 Sale.

- A. Borough-owned property 10 acres or greater where 50% or more of the soils are classified by Natural Resource Conservation Service as land capability class II, class III, class IV, or Natural Resource Conservation Service classified soils of local importance; and where other lands adjoining the property are either classified agricultural lands or in agricultural production, shall be considered for an agricultural classification and an agricultural sale program.
- B. Lands sold with an agricultural classification may be sold:
  - 1. As a conveyance of only agricultural rights.
    - a. Agricultural rights for parcels will be valued under MSB 23.10.060 with a minimum of \$250 an acre.
    - b. Under an agricultural rights conveyance, development rights will be retained by the borough to protect and promote the agricultural use and development of the land in perpetuity.

- c. The assembly may establish other conditions of sale which are best designed to promote the agricultural use and development of the subject lands.
    - 2. As a fee simple conveyance with agricultural covenants.
      - a. Fee simple conveyance for parcels with agricultural covenants will be valued under MSB 23.10.060 with a minimum of \$500 an acre.
      - b. The agricultural covenant will be perpetual, run with the land, and restrict or limit the use of the land for agricultural purposes.
      - c. The assembly may establish other conditions of sale which are best designed to promote the agricultural use and development of the subject lands.
  - C. A farm unit may consist of more than one parcel of record and is to be considered a single farm unit.
  - D. The terms and conditions of financing offered by the borough to purchase agricultural parcels shall include, among other things, a prohibition against the transfer of ownership during the term of the loan without the specific written consent of the borough.
- 9.1 Subdivision of the farm unit previously conveyed by the borough, which includes only agricultural rights land or lands sold with agricultural covenants, conditions and restrictions.
- A. Parcels greater than 80 acres and classified as agricultural property shall not be subdivided to less than 40 acres.
    - 1. A farm unit may be subdivided no more than one time with no more than four parcels created from the original farm unit. Any such subdivision must meet the subdivision code and regulations of the Matanuska-Susitna Borough Platting Division.
    - 2. A farm unit consisting of a total aggregate of 40 acres or less may not be subdivided.
    - 3. The terms and conditions of the financing offered by the borough to purchase agricultural parcels shall include, among other things, a prohibition against subdivision or the transfer of ownership without the specific consent of the borough during the duration of the loan term.

9.2 Subdivision of a farm unit previously conveyed by the borough with only agricultural rights for creation of a five (5) acre home site.

- A. Parcels sold in a borough agricultural land sale are to be considered a single farm unit as delineated in the sale brochure and accompanying documents.
- B. Subdivision is allowed for a home site if the assembly grants a release from the terms of the sale and shall be for an amount of land sufficient for a farm residence and/or farm related facilities, with a maximum of no more than five (5) contiguous acres, provided that the land is situated and conforms to all planning, platting, subdivision, and other regulations of the borough.
- C. If assembly approval is provided for subdivision, all subdivided home sites shall include a restriction such that any subsequent sale shall require the home site and parcel from which it was created to be sold jointly in order to avoid an agricultural rights only property from having no home site. This provision shall be implemented through the use of covenants and deed restrictions for the home site and remainder parcel.
- D. If assembly approval for subdivision is obtained, the manager shall have the authority to approve applications for the subdivision of agricultural property be submitted to the platting authority and the recording thereof.
- E. The land for the subdivided home site(s) shall then be sold and granted to the purchaser as fee simple for an amount determined by an estimated fair market value appraisal of the fee simple estate (land only) minus the estimated fair market value of the agricultural rights (land only) indicated by the fee appraisal.
- F. Upon subdivision of the farm unit, designated real property improvement areas will remain in the location and size most recently authorized by the borough manager unless amended as provided under the terms and conditions of the agricultural sale program.

9.3 Subdivision of a farm unit previously conveyed by the borough with agricultural covenants, conditions and restrictions.

- A. Parcels sold in a borough agricultural land sale are considered a single farm unit as delineated in the sale brochure and related documents and shall not be subdivided for a period of ten years from the date the sale documents are recorded.
- B. After ten years, the farm unit may be subdivided provided no parcel so subdivided is less than 40 acres in size and no more than four parcels are to be created from the original farm unit boundary. Any such subdivision

must meet the subdivision code and regulations of the Matanuska-Susitna Borough Platting Division.

- C. Upon subdivision of the farm unit, designated real property improvement areas will remain in the location and size most recently authorized by the borough manager unless amended as provided under the terms and conditions of the farm sale program.

9.4 Property classified agricultural land and sold prior to December 3, 2019, shall adhere to the subdivision policies by the instrument that conveyed title, the contractual covenants, conditions, and restrictions, governing legislation and the land sale brochure for the parcel.

#### 10.1 Enforcement of Agricultural Use and Program Requirements.

- A. The requirements of agricultural use and the terms and conditions of the agricultural land sale programs will be enforced by the instrument that conveys title, contractual covenants, conditions, and restrictions, by adoption of an agricultural land use district for the area prior to the sale, or any combination of methods deemed appropriate for the particular program.
- B. The requirements of any financing offered by the borough to purchase the agricultural parcels will be enforced based on the terms and conditions of the deed of trust and secured note.
- C. In the event the parcel is located within the boundary of an agricultural land use district, or such other zoning which may exist, all development, including construction of real property improvements, shall conform to the regulations applicable to the district or zone within which it is located.



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**AGRICULTURAL LAND SALES: Grazing / Range Management Lease**

**PART 5**

- 1.1 Authority: 23.05.030 (A) & (E)
- 2.1 Classification. Grazing/range land shall first be classified per the classification procedure.
- 3.1 Notice. Before offering a grazing/range management lease, the Land & Resource Management Division will publish a descriptive notice containing:
- (1) the date, time and place of offer;
  - (2) the period during which applications will be accepted;
  - (3) a statement of terms and conditions of offer, including the terms of payment and length of lease, lessee qualifications, lease performance requirements, and any other special conditions or limitations; and
  - (4) for each parcel:
    - (A) size;
    - (B) appraised value;
    - (C) interests to be conveyed;
    - (D) range management plan requirements, if any; and
    - (F) any special conditions that may be imposed upon the conveyance.
- 4.1 Lessee qualification.
- (a) The borough manager or his/her designee may require a prospective lessee to qualify by providing evidence that would establish the lessee's:
    - (1) ability in farm or range management;
    - (2) ability to obtain financing;
    - (3) agricultural or range management training and experience;
    - (4) financial ability;

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- (b) The borough manager may disqualify a prospective lessee for prior delinquency in payment of taxes or rents, for default in payments toward contracts or loans, including any loan under the Alaska Agricultural Revolving Loan Fund, or for other good cause,
- (c) The prospective lessee shall demonstrate how improvements, especially barbed wire, will be removed at the end of the lease.
- (d) The lessee shall be required to indemnify the borough, hold the borough harmless from events related to the activities of the lease, and hold insurance naming the borough as an additional insured.

5.1 Lease Method. Grazing/range management leases may be by auction, sealed bid, lottery or any other method prescribed by law. The lease offer will be conducted according to the relevant procedure for the particular disposal method.

6.1 Range Management Plan.

- (a) An approved range management plan will be required as a condition of the lease. The successful lessee must submit an approved plan before the lease is executed. For each lease offer, the borough manager may accept, reject, or modify the plan after consultation with the local soil and water conservation district.
- (b) If the successful lessee submits an acceptable range management plan within the time specified in the offer notice, the plan will be incorporated into the lease as a covenant and a subsequent condition, and will be recorded in that form.
- (c) If a successful lessee fails to provide an acceptable range management plan within the time specified in the sale notice, or within an extension of time granted by the borough manager for good cause shown, he forfeits his bid deposit and the tract may be offered to the next highest bidder, or next qualified applicant, with the secondary award conditioned upon the submission of a range management plan, within a time period equal to the time originally allowed.
- (d) A previously approved range management plan may be modified at the request of the lessee. The borough manager may approve, reject, or modify the range management plan modification after consultation with the local soil and water conservation district.

7.1 Contents of Range Management Plan. The range management plan must include:

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- (1) a map of the proposed range/grazing lease area showing:
    - (A) the planned location of any clearing and breaking of ground;
    - (B) location and size of any real property improvements (if authorized);
    - (C) location of windbreaks, ponds, and similar conservation measures and improvements;
    - (D) location points of passage for the general public;
  - (2) planned soil conservation measures.
- 8.1 The borough manager may require a schedule of planned development where such performance is in the borough's best interest. The borough manager may require evidence that the plan is economically sound. A minimum stocking amount will be required.
- 9.1 Construction of Real Property Improvements.
- (a) In conjunction with an executed lease of a parcel, the borough manager will authorize the construction of fixed, permanent, or immovable structures reasonably required for or related to range management, within designated areas not over one acre. Fencing will not be counted against the one acre allotment.
  - (b) All real property improvements must be depicted and described in the range management plan and must be incorporated into the lease.
  - (c) Changes in the location or size of the area designated for real property improvements are subject to approval of the borough manager. The borough manager may approve a change if:
    - (1) the maximum area specified under (a) of this section is not exceeded; and
    - (2) the change is consistent with an approved range management plan.

**AGRICULTURAL LAND SALES: Grazing / Range Management Lease**

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- 10.1 Assignment. No assignment of a grazing/range management lease is allowed without the approval of the borough assembly ordinance upon recommendation of the borough manager

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<b>APPLICATIONS: Filing &amp; Acceptance</b>
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<b>PART 10</b>
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- 1.1 Authority: 23.05.060  
23.10.080
- 2.1 This section outlines the process to make application to use or purchase borough real property.
- 3.1 Prior to making application, the interested person should request a pre-application conference with the land & resources management division staff.
- 4.1 The applicant will be responsible for completion of the appropriate application form, qualified bidder/buyer statement, and applicant questionnaire.
- 5.1 The applicant must submit the completed documents and application fee to the land & resource management division.
- 6.1 The documents will be reviewed for adequate location description, clear explanation of use of request, and contact address and phone numbers.
- 6.2 The documents will be date stamped and logged in.
- 6.3 The Community Development Director will review the application and assign it to a staff person for cursory review. An interdepartmental review is initiated and items to be researched include:
- a. verification of borough ownership;
  - b. current classification if any;
  - c. competing applications for same property;
  - d. verification that applicant is qualified bidder/buyer at time application is received;
  - e. requested use or purchase meets disposal or uses permitted under borough code;

**APPLICATIONS: FILING & ACCEPTANCE**

**PART 10**

- f. Applicants proposing a use of borough-owned property, which is not for commercial purposes or will not generate a profit, and is in the public's interest may qualify for the Land & Resource Management application fee to be waived. The purpose of waiving the application fee is to increase the funding available for the proposed public interest project.
  - 1. Eligible applicants will typically be non-profit organizations, trail groups, community councils, schools, and homeowner's associations.
  - 2. The Borough Manager, in accordance with MSB 23.05.060(B), hereby authorizes the Community Development Director to waive an application fee required under these policies and procedures when an applicant meets the criteria in 6.3 (f) and eligibility requirements in 6.3 (f)(1) of this Section.

7.1 Based on the cursory review the staff person will make recommendation to the community development director to accept or reject the application.

7.2 Notification of acceptance or rejection of the application will be sent to the applicant 30 days after receipt of the application, or as otherwise provided in code.

8.1 The manager may delegate the authority to accept or reject the application.

9.1 Acceptance of an application shall not in any way vest any right to the applicant in the real property or to use of the real property applied for.

10.1 Accepted applications will be processed according to the policies and procedures adopted for the method of disposal or use as required by code.

11.1 Rejected applications will be held in a common administrative file for a period of one year in an alphabetical file by applicants' name.

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<b>BEST INTEREST FINDING</b>
<b>PART 15</b>

1.1 Authority: 23.05.030

2.1 The purpose of a best interest finding is to: (1) determine if borough land should be sold or leased; (2) identify if a proposed use is a public purpose that should be engaged in by the borough; and (3) determine the appropriate classification of the land.

3.1 This policy and procedure is divided into four sections.

Section A: Determination if the proposed use is a public purpose in the best interest of the borough.

Section B: Determination of the highest and best use of the parcel proposed.

Section C: Preparation of a best interest finding document.

Section D: Recommendation.

4.1 Section A. Public Purpose:

In making a decision to dispose of land at less than fair market value, the proposed purpose as provided by the applicant must be equal to or greater than the loss of potential public revenue and benefit otherwise achieved.

4.2 The benefit derived from an applicant's proposal is the purview of the manager and the assembly. The Land & Resource Management Division must first collect all pertinent information from the applicant so the manager and assembly can determine if the public purpose provided by the applicant is in the borough's best interest. The application is used to collect this information as it applies.

5.1 Section B. Determination of Highest and Best Use, and Determination of Appropriate Land Use Classification:

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Highest and best use is the reasonably probable and legal use of vacant land, or an improved property or borough resource which is physically possible, appropriately supported, financially feasible, and results in the highest value.

- 5.2 Land use classification is a planning and zoning determination and is accomplished by approved ordinance.
- 6.1 Section C. Preparation of the Best Interest Finding Document. The following is a suggested outline for a best interest finding:
- 6.2 Heading: Identify the proposed action type and project name, name of the applicant, prospective grantee or recipient; MSB number, and document titled "Best Interest Finding and Decision".
- 6.3 Proposed Action: Clearly state the reason a best interest finding is needed, cite the section of code requiring a best interest finding, identify the applicant and the requested action; and the location of the proposed action.
- 6.4 Authority: List all relevant parts of the borough code that apply to the adjudication of the proposed action. Include where the authority lies to make the decision (check the delegations of authority).
- 6.5 Discussion: The following items should be addressed if applicable under one heading titled "Discussion":
- A. Location: Identify the location of the subject action by its general geographic area, the community council or city, if applicable; the USGS map coverage and the complete legal description. A location map or sketch map should be included in the attachment section.
  - B. Title: List how the borough obtained title to the parcel, the title status, any restrictions including federal and state of Alaska patent reservations and exceptions, and any third party conflicts or pending interests. This information is obtained from a title report and/or status plats, borough land records, district recorder's office records, and state LAS.
  - C. Background: Give a brief chronological background or history of the case. Emphasize the procedural history of the case and timing of



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significant actions. Be sure to include dates for all pertinent applications, decisions, etc.

- D. **Planning and Classification:** List planning and classification status of the parcel. At a minimum, this section should address the following:
1. If a state land use plan or adopted borough plan is in effect for the proposed action, identify the plan, unit, and sub-unit (if applicable), and discuss how the proposal is consistent or inconsistent with the plan's designations, prohibited uses, management intent and applicable guidelines. If the request is determined inconsistent, address possible remedies.
  2. What is the current land classification. If the area is not classified or the project is inconsistent with the current classification, does the parcel need to be classified or reclassified. What is the recommended classification.
  3. Is the parcel closed to mineral entry. If not, is a mineral closing order needed.
  4. Is platting required and if so does it meet current platting requirements.
  5. If the parcel is within a city or community council boundary, is the proposal consistent with the comprehensive plan and/or zoning. If not consistent, what is required to obtain approval or consistency.
- E. **Waterbodies:** Identify all public, or anadromous waterbodies within or bordering the boundaries of the subject parcel.
- F. **Access:** Address if the parcel has legal access, and its potential for development.
1. Reference existing waterbody and public access easement(s), and those which need to be reserved, including width. If a reduction or waiver of the easement is required, state the reasons.

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2. Discuss projected use of easement and allowable uses, including any limitations as to type of vehicle or ability to construct.
- G. **Comments:** Summarize all borough and non-borough agency comments and responses. Also include a summary of any public comments through public noticing. All comments received during the review are to be considered in the finding.
- H. **Performance Guaranties and Insurance:** Address whether bonding and/or insurance will be required.
- I. **Public Health Safety and Welfare:** Describe the proposed action's potential impact on the public health, safety and welfare. Consider whether or not the proposed action could potentially create: environmental hazards, pollution to atmosphere, soil, groundwater or surface water, excessive noise or harm important view sheds.
- J. **Public Convenience:** Public convenience is a measure of the public's ability to travel efficiently and effectively. In this section the proposed action's potential impact on the public's ease and cost of travel (both money and timeliness) is addressed.
- K. **Development Pattern:** Describe any existing development pattern of the immediate area in which the proposed action is to occur. Consider type of development, density, transportation routes, etc. After describing the existing development pattern then describe the proposed action's impact on the existing pattern of development.
- L. **Direct Costs/Revenues:** Indicate whether or not the proposed action will have any direct costs to the borough associated with it. Also estimate any revenues that the borough may receive or lose if the proposed action is approved. A revenue loss could be from donated land or natural resources thereon with no compensation received.
- M. **Important Public Domain Lands:** State whether or not the borough lands where the proposed action is to take place are important to retain or remain unencumbered. For example, has the parcel been identified as a future fire hall, school, or library site. Is the parcel the last or almost last amount of borough land in the area.

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- N. **Public Nuisance:** Indicate whether or not the proposed action may create a public nuisance. Public nuisance is defined as an action that may or may not cross a parcel's boundary line and that creates annoyance, discomfort, inconvenience or damage to the owners of other property. Examples of nuisance include noise, smells, fumes, dust, and other offensive conditions.
- O. **Economic Impact:** Describe the proposed action's potential impact on the borough's economy. Will the borough participate in the project and at what cost. The applicant shall be required to justify the economic impact.
- P. **Survey and Appraisal:** This section should address whether the proposed disposal will require survey and appraisal.
- Q. **Alternatives:** In determining a recommendation, the division shall consider and address alternatives most beneficial to the borough. At a minimum, discuss: terminating the proposed action; modifying the proposal; moving the proposed action to another location, if applicable; and proceeding with the action as proposed. If the proposal is for a lease, discuss alternatives for the lease term (duration) and lease compensation method. Discuss whether another program could provide a good alternative: Could the land be sold outright instead of being leased. Could sites be offered at auction instead of under the homestead program.

Address how the proposed disposal is in the public's best interests, including broader public benefit. Address supporting and derogatory factors.

- 7.1 **Section D. Recommendation:** Identify the preferred alternative (if any) for the proposed action. List any special stipulations and reservations proposed to be included in the authorization or conveyance document; if not already done in the discussion section, explain why these terms and conditions are necessary to serve the public's best interest.
- 7.2 If the recommendation for the preferred alternative is to deny the application, see step number 8.1.
- 8.1 **Denial:** Denial of an application does not require a special finding. However, an applicant must be advised about the specific reasons for the denial and advised of the appeal process under MSB 23.05.090.

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- 9.1 Execution: The finding and decision is forwarded to the borough assembly or other appropriate authority. Include any attachments such as a map of the project area, the full legal description, and any other relevant information. Attachments should be clearly labeled Exhibit "A" "B" etc. and referenced as such in the body of the finding.

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<b>CLASSIFICATION OF BOROUGH LAND</b>
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<b>PART 20</b>
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- 1.1 Authority: 23.05.100
- 2.1 This section addresses the process required to classify borough land. The classification must be a use as defined in MSB 23.05.100 and processed as required by [MSB 23.10.030 AND] these established procedures. Classification of borough land must meet the public notice requirements of Title 23.
- 3.1 The assembly classifies land by ordinance. A change in classification also takes place by ordinance.
- 4.1 It is the policy of the borough to encourage and facilitate the agricultural use of land, when such land is suitable or potentially suitable for agricultural purposes, and to assure to the extent feasible that such land is put to no use that will diminish its agricultural worth. To implement this policy in the classification process, a Best Interest Finding shall be completed by the land and resource management division and submitted to the Agriculture Advisory Board for their review and comment. The board's comments with the division report will then be forwarded to administration and the assembly.
- 5.1 Nothing in these policies and procedures prohibits the classification of land to take place concurrently with other actions involving the same land requiring the same review process for approval.
- 5.2 Procedure for classifying borough owned land is as follows:
- A. The land and resource management division shall complete a Best Interest Finding which will result in a recommended classification.
  - B. When developing the Best Interest Finding, parcels will first be evaluated for their present and future agricultural uses. The borough policy of encouraging and facilitating agriculture will be based on the following criteria:
    - (1) soil conservation service capability classes;
    - (2) probable type of agriculture use;

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- (3) future agriculture needs to maintain potential regional agriculture subsistence for the maximum potential population;
  - (4) physical accessibility;
  - (5) existing plans, regulations and nearby development patterns;
  - (6) market value of land based on borough assessment or third party appraisal if available;
  - (7) borough goals and objectives for the land to be classified;
  - (8) physical characteristics;
  - (9) historical use of the subject parcel, if any;
  - (10) potential public uses;
  - (11) public infrastructure within one mile of the subject parcel;
  - (12) other pertinent information.
- C. The land and resource management division shall prepare a review packet and submit the recommended classification for interdepartmental review. Public notice is initiated in accordance with adopted policy and procedures.
- D. Based on the comments received, the land and resource management division will prepare a packet and submit it to the planning commission for review and consideration.
- E. The land and resource management division will prepare an assembly memorandum. The assembly memorandum will include planning commission recommendations and all public comments received. An ordinance approving the recommended classification will be included in the assembly packet.

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

<b>PRIVATE EASEMENTS AND RIGHTS-OF-WAY: Purchases</b>
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<b>PART 25</b>
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- 1.1 Authority: 23.05.030  
23.05.060  
23.10.060  
23.10.080  
23.10.110
  
- 2.1 This section applies to the granting of private easements or rights-of way on borough lands.
  
- 3.1 Requests for easements or rights-of-way shall be in writing pursuant to the application procedure.
  
- 4.1 The borough may require a legal description approved by a registered surveyor, and illustration or as-built drawing of the easement location as necessary.
  
- 5.1 Easements or rights-of-way shall be granted in the best interest of the borough.
  
- 6.1 The location or alignment of easements or rights-of-way shall be according to commonly accepted industry practice, and in a manner that will cause the least impact to borough lands and resources. The borough will seek to promote locations that provide the greatest public good with the least private harm. The community development director may require that an alignment study be completed and approved by the borough prior to the granting of an easement. A best interest finding may be required.
  
- 7.1 Easements or rights-of-way shall be granted at fair market value (FMV) as determined by the adopted fee schedule.
  
- 7.2 An interdepartmental review is initiated and public notice of the action shall take place in accordance with the public notice procedure.
  
- 7.3 Easements or rights-of-way which impact a larger parcel may be required to be valued by an appraisal as determined necessary by the community development director.

<b>PRIVATE EASEMENTS AND RIGHTS-OF-WAY: Purchases</b>
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<b>PART 25</b>
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- 7.4 Violation of this section or failure to obtain prior approval of the community development director shall result in recording of a notice of non-compliance or lien against the affected taking.



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

<b>PUBLIC EASEMENTS AND RIGHTS-OF-WAY</b>
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<b>PART 25</b>
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- 1.1 Authority: 23.05.030  
23.10.080  
23.10.110  
23.10.250
  
- 1.2 This procedure addresses the dedication of easements and rights-of-way. Easements and rights-of-way may be issued for a specific length of time and all are conditional on continued use, and may be charged a fee based on a fee schedule adopted by the assembly.
  
- 1.3 The word “dedicate” is synonymous with “grant,” “convey,” or “reserve.” Specific language is needed to dedicate an area to public use. The designation of a public area on a plat is sufficient to dedicate it to public use.
  
- 2.1 An easement is the public’s right to make use of borough land. It is a right to use for a specific purpose rather than a right to possess. An easement may be established for such uses as rights-of-way, airstrips, log transfer facilities, water pipelines, etc.
  
- 2.2 To vacate an easement means to void it and to extinguish the right to use the land.
  
- 2.3 The borough’s policy regarding the vacation of section line easements during subdivision is to vacate the easement only within lot lines of subdivided parcels, where alternate access to adjoining lands is provided by the subdivision design, or in areas where topography makes the section line impossible to utilize.
  
- 3.1 It is the policy of the borough that a public easement reserved or granted on borough land is not a disposal of an interest in land.
  
- 3.2 The vacation of an easement is a disposal of borough interest where the easement crosses non-borough land. When the borough is the underlying landowner, the vacation of an easement is not a disposal of an interest in land.

## PUBLIC EASEMENTS AND RIGHTS-OF-WAY

### PART 25

The requirement of due process requires notice to protect those persons who may be affected by the vacation of the easement.

- 3.3 Unless prohibited by Title 43 of the borough code, the centerline survey required in 4.1 (I) may be waived by the manager based on consideration of the following:
- A. the cost of monumentation necessary to tie into existing surveys; and
  - B. other methods of describing the location of the easement, such as existing property lines, preliminary survey, description using angles and distances, etc.; and
  - C. the likelihood of conflicts with existing or proposed land uses; and
  - D. proposed length of use; and
  - E. proximity to other monuments; and
  - F. population density; and
  - G. development patterns within one mile of the proposed action.

If the centerline survey is waived, a sketch map of the easement showing the approximate location of corner ties as the easement crosses survey lines is substituted at a minimum.

- 3.4 In order to qualify for a public easement, the applicant must state that exclusive use of the easement is not required and that he understands that the easement may subsequently be vacated through normal Title 43 procedures.
- 3.5 It is the policy of the borough to provide for an integrated network of easements, rights-of-way, trails, etc. The interconnecting of proposed easement to existing and future easements shall be considered when adjudicating the application.
- 3.6 Although the borough reserves the right to grant access across leased lands, it is the borough's policy to exercise this right only when there is no

## PUBLIC EASEMENTS AND RIGHTS-OF-WAY

### PART 25

other way to solve an access problem. The borough encourages the applicant for such an easement to work with the lessee to minimize loss to utility of the parcel. The borough's commitment to the lessee may require the applicant to bear additional costs such as placing the easement along the perimeter of the leased parcel rather than directly across it or constructing the improvements in a certain manner.

- 3.7 The borough assumes no responsibility for maintenance of structures constructed within public easements on borough lands, and it assumes no liability for injuries or damages attributable to construction or the presence of structures within public easements. The borough also makes no warranty that dedicated lands are suitable for the proposed use.
- 3.8 An easement that is identified for "public access" without further use limitations (i.e., pedestrian, dog sled, snow-machine, etc.) may be used for any mode of transportation commonly employed for access purposes.
- 4.1 The following procedures are used to dedicate a public easement.
- A. When the application is received by the Land and Resource Management Division, it is reviewed to verify borough ownership and that application is made on the proper form. If in the judgment of the reviewer the application is complete and accurate pursuant to the application procedure, and is accompanied by any required fee, it is considered proper and accepted.
1. The application is serialized by assignment of an MSB number. If an application is not received or otherwise approved by the community development director, establishment of an easement shall be considered in violation of this section.
  2. A case file is created which contains the original application and any pertinent enclosures or inclusions.
  3. Interdepartmental review is initiated.
- B. The land under application is researched to identify any restrictions resulting from title documents, area or management plans,

## PUBLIC EASEMENTS AND RIGHTS-OF-WAY

### PART 25

classification, cooperative agreements, other land actions, or any surveys in progress. Surrounding land status is also checked to make sure the easement does not duplicate an existing or proposed dedication and to trouble shoot any potential problems involved with access during construction.

- C. If construction is to take place, the applicant will be required to obtain a construction permit from the borough.
- D. The site of the easement and construction access is inspected and the volume of any timber and/or materials to be removed is estimated and a decision is made regarding their disposition.
- E. The public is notified of the proposal pursuant to the public notice procedure.
- F. The borough manager approves or denies the application through a Manager's Decision document. If the application is denied, notification is provided to the applicant stating the reason for denial. If the application is approved notification shall be provided to the applicant, including any requirements and conditions, and that the permit will result in dedicated easement upon submission of a description or as-built of a centerline location survey acceptable to the borough.
- G. The applicant provides a bond if necessary to ensure compliance with stipulations in the Manager's Decision.
- H. When the signed permit and bond are returned by the applicant, the permit is signed by the borough manager and the information is added to the land and resource management division file system.
- I. When the applicant submits the description or as-built centerline location survey, it is reviewed by borough staff for accuracy and completeness. If satisfactory, the bond is returned to the applicant. Violation of this section or failure to obtain prior approval of the community development director shall result in recording of a notice of non-compliance or lien against the affected land.

## PUBLIC EASEMENTS AND RIGHTS-OF-WAY

### PART 25

- J. The dedication document is completed and executed by the borough manager and added to the land and resource management division's file system. The applicant and pertinent borough departments are provided copies of the recorded documents.

5.1 Floating easements may be reserved or granted for the purpose of providing public access; however, these types of easements should only be approved when there is specific public need for reserving access, and when specific easement location has not been determined, and when a survey of the easement is not eminent. When floating easements are reserved or granted, the following procedures will be followed:

- A. The proposed easement area must be reviewed by an engineer or surveyor to determine the suitability of on-the-ground location based upon topography, current and future use of the land, and suitability for construction.
- B. Whenever possible, the floating easement shall be described using the centerline of an existing trail, road or other visible and delineated pathway for the basis of the easement to be reserved or granted (i.e. legal description "a floating easement" being 60 feet in total width, lying 30 feet either side of the centerline of the {existing} trail).
- C. A floating easement shall have a defined width and point of beginning and ending, defined by actual survey or at a minimum, GPS coordinates which shall be included in an exhibit drawing of the easement's location.

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

<b>PUBLIC RIGHT-OF-WAY ACQUISITION PROCEDURES</b>
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<b>PART 25</b>
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1.1 Authority: MSB 23.05.030

The Matanuska-Susitna Borough (MSB) in desiring to improve public right-of-way and public use easements for roads, trails and other related public transportation purposes, shall comply with the following procedures and in accordance with Title 23 for acquisition of real property or interest therein. Failure to comply with this section or obtaining prior approval of the community development director shall result in recording of a notice of non-compliance of the affected land.

- 2.1 This section shall apply to the Community Development Department's acquisition of Public Right-of-Way and Public Use Easements, and provides authorization for acquisition by fee, license, permit, or other interest.
- 3.1 Property to be acquired by the borough under this section will be surveyed or otherwise described based on an engineered design and a value established prior to commencement of any negotiation with a property owner.
- 4.1 Valuation of Right-of-Way or Public Use Easement shall follow Title 23 procedures for determining fair market value. If a fee appraisal is required, the appraiser will contact the owner and extend an invitation for the owner to accompany the appraiser during the inspection of the property. Whenever reasonable, appointments should be made at the owner's convenience.
- 5.1 The borough will establish just compensation from the estimate of fair market value before negotiating with any owner. Any amounts paid over just compensation for the Right-of-Way or Easement will be documented as to the justification used in arriving at the amount of the settlement and shall be approved by the borough manager and require the approval of the assembly prior to the transaction.
- 6.1 During the appraisal or valuation process, the borough will not consider any factors of the project that would influence the valuation of the property except physical deterioration wherever appropriate.

## PUBLIC RIGHT-OF-WAY ACQUISITION PROCEDURES

### PART 25

- 7.1 During acquisition of a portion of the owner's property, the borough will not leave an uneconomic remnant without offering to acquire the entire property from the owner.
- 8.1 If a fee appraisal is completed, the borough will give to the owner at the initiation of negotiation a written statement known as the "fair offer letter." That statement will be the amount of just compensation based on a review and analysis of an appraisal(s) made by a qualified appraiser with a summary thereof, showing the basis for just compensation. Included in the fair offer letter will be identification of the real property to be acquired, including the estate or interest being acquired. There will be, when appropriate, the identification of the improvements and fixtures considered to be part of the real property to be acquired. The fair offer letter will show that portion of the just compensation considered the amount of damages to the remaining property. At the initiation of negotiation with the owner, the borough will give to the owner an acquisition brochure which contains information and procedures regarding public right-of-way acquisition.
- 9.1 The borough will not require the owner or tenant to surrender possession of the property before 90 days after the agreed purchase price has been paid or the approved amount of compensation has been paid into court. The 90 day notice may be reduced only in the event the property being acquired is unimproved, contains no personal property, and is not being utilized by the owner or tenant.
- 10.1 Every reasonable effort will be made to acquire real property by negotiations without exercising the right to eminent domain. No action will be taken to advance condemnation, defer negotiations or condemnation, or take any other action coercive in nature in order to compel an agreement on the price to be paid for the property.
- 11.1 No eminent domain or condemnation process may proceed without prior approval by the assembly under the terms and conditions of Resolution Serial No. 05-098.
- 12.1 When any interest in real property is acquired, at least an equal interest will be acquired in all buildings, structures, or other improvements located upon the real property so acquired and which is required to be removed from such real property or which will be adversely affected by the use to which such real property will be put.

**PUBLIC RIGHT-OF-WAY ACQUISITION PROCEDURES**

**PART 25**

- 13.1 The borough will pay direct or reimburse the owner for expenses necessarily incurred in the acquisition for:
- A. Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring borough;
  - B. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property;
  - C. The pro-rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring borough, or the effective date of possession of such real property by the acquiring borough, whichever is the earlier.
- 14.1 A donation or gift of real property will be accepted only after the owner has been fully informed of their right to receive just compensation.



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

<b>TRAIL DEDICATION</b>
<b>PART 25</b>

1.1 Authority: 23.05.030  
23.05.060  
23.10.110  
23.10.250

2.1 Policy:

- A. A trail is a 10' to 200' wide right-of-way and recorded dedication of the trail provides a legal right to pass across the land, property, or interest therein, usually acquired for or dedicated for recreation or transportation purposes.
- B. A trail is acknowledged and eligible for legal dedication when it is included, recognized and supported by the MSB Recreational Trails Plan or an Assembly adopted Comprehensive Plan.
- C. Trails on borough land may be eligible for dedication if they were previously documented or illustrated by State or Federal Agencies prior to conveyance to the Borough.
- D. Trails may also be eligible if they are located within borough dedicated parkland or borough land classified for public recreation and have been authorized by the Community Development Director in writing.
- E. A remote area is defined to be those places of the MSB meeting the following criteria:
  - 1. real property outside of recorded subdivision; or
  - 2. real property outside a city; or
  - 3. a special or unique area as determined by the community development department.

## TRAIL DEDICATION

### PART 25

- F. Non-remote areas are defined to be those places located within a recorded subdivision or within any municipality within the borough.
- G. Commercial use of trails requires a permit and fee as established by the adopted fee schedule.
- H. As a general policy the borough will not pursue establishing prescriptive rights for trails across private lands.
- I. A donation or gift of real property for purposes of a trail will be accepted only after the Borough has determined a public need for the trail, and inspected the proposed trail location to assure its suitability for a trail, and has not discovered any negative aspects to accepting such a donation such as, junk and trash, visible hazards, or other physical features that would preclude use of the gift for trail purposes. Donations of land regardless of purpose shall be in accordance with MSB 23.05.030 and LRM Policy and Procedures, Part 45, Ownership, Section 4.4.

#### 3.1 Procedures:

- A. A trail is legally dedicated on Borough land when it has been described in a recorded easement or right-of-way document prepared and filed by the MSB or acknowledged by the MSB.
- B. Trail eligibility on borough land should be determined by reviewing appropriate borough plans (e.g. Recreational Trails Plan, Comprehensive Plans, and Recreation Area Management Plans) and the appropriate plans listed under MSB Code 15.24.030. Trails not included in plans adopted in MSB Code may be illustrated on USGS or BLM maps, recorded survey documents, and historic aerial photographs. Documentation of a trail not in an adopted plan may make it eligible for legal dedication.
  - 1. Trails listed in the Matanuska-Susitna Borough Recreational Trails Plan, or in comprehensive development plans as adopted under MSB Title 15 are acknowledged though they may not be legally dedicated.

## TRAIL DEDICATION

### PART 25

2. Trails previously authorized by the Borough prior to adoption of this procedure are acknowledged to exist and may be eligible for dedication.
- C. Trail location on borough land must be determined and accepted by the borough prior to trail dedication. An acceptable manner includes GPS coordinates, survey, or drawing which provides clear location of the trail.
  - D. A trail may be described by metes and bounds description on the easement document, or reflected on a recorded subdivision plat or similar instrument, or by angle point survey with chains, i.e. remote areas, or by centerline description of an existing trail that can be tied to existing surveyed monumentation (example: being 15 feet either side of the centerline of the existing trail and tied by reference to GLO monuments).
  - E. Remote Areas. In remote areas, a Public Recreational Use Easement may be recorded through the Alaska Department of Natural Resources in accordance with AS 34.17.100 Public Recreational Use Easements.
  - F. Non-Remote Areas. In non-remote areas the standard requirement for location prior to dedication of a trail shall be an approved survey conducted by a professional land surveyor. A professional land surveyor is any person meeting the Alaska state licensing requirement.
  - G. Trails on borough land may be acknowledged within dedicated borough parkland or borough lands classified for public recreation as part of the normal development of park land.
1. The following is the process for authorizing a trail on land dedicated for parks or classified for public recreation:
    - a. A Land and Resource Management application must be submitted by the group or individual advocating for the trail.
    - b. The application shall be routed for internal review.
    - c. Review shall include adopted borough plans.

## TRAIL DEDICATION

### PART 25

- d. The Manager or designee may approve or disapprove the application.
  - e. Upon approval, a trail dedication document is recorded in the office of recorder where the trail is located.
- H. The MSB Parks, Recreation and Trails Advisory Board shall review the proposed trail dedication and advise the manager.
- I. Trails shall be open to the public but may be temporarily restricted for certain purposes, (weight limits, closures for maintenance, maintain the integrity of the trail, etc.), if the restriction has been approved and / or posted by the borough. When it is determined a restricted use is required to maintain the integrity of the trail, a Manager's Decision document will be drafted for consideration and temporary approval by the Borough Manager. Long-term restrictions to certain uses (e.g. equestrian, pedestrian, mountain bike, dog mushing, snow machines, etc.) may be approved by the Assembly as recommended by the MSB Parks, Recreation and Trails Advisory Board.

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

<b>FEE SCHEDULE</b>
<b>PART 30</b>

1.1 Authority: 23.05.060

1.2 The fees herein stated are in accordance with MSB Resolution 19-027, adopted on December 3, 2019, and cannot be changed without assembly approval.

2.1 An application and processing fee of \$500.00 is required with every application submitted for using borough land unless this charge is inapplicable by the terms of an adopted program or permit procedure.

3.1 In addition to the application and processing fee, the following Permit Fees shall apply:

A. Designated special use and management area permits will be issued based on a schedule for each area.

B. Commercial Land Use Permits;

Base Rates	
7-12 months	\$1,000.00
6-month or less (seasonal)	\$ 500.00
One round trip crossing	\$ 250.00
Plus Per person / per day for one round-trip crossing (this fee is in addition to Base Rates)	\$ 2.00

Per acre charge for exclusive use of borough land:  
If a commercial permittee requests exclusive use of borough land, an additional fee shall be charged per acre or square foot of exclusive use (whichever is appropriate), said fee shall be no less than twelve percent (12%) of the assessed parcel value per acre, or ten percent (10%) of fair market value as determined by third party appraisal.

C. Non Commercial Land Use Permits: \$ 500.00

D. Deshka Seasonal Camp Permits: \$ 75.00

E. Christiansen Lake Float Plane Dockage/Sealed Bid \$ 500.00

<b>FEE SCHEDULE</b>
<b>PART 30</b>

F. Event Permits:

This fee is a daily use fee and applies to 'not-for-profit' organizers.

20 people or less, no participant entry fee	\$ 10.00
20 people or less, with participant entry fee	\$ 25.00
21-50 people regardless of participant entry fee Borough must be named as "additionally insured"	\$ 50.00
51-100 people regardless of participant entry fee Borough must be named as "additionally insured" Event organizer must provide minimum of one (1) porta-can	\$ 100.00
100 people or more, whether non-commercial or commercial, regardless of size or participant entry fee must name the Borough as "additionally insured." Event organizer must provide minimum of two (2) porta-cans + one (1) additional porta-can per every additional 100 attendees	\$ 250.00

G. Filming Production Permits: \$ 500.00  
 This fee is a daily use fee. Borough must be named as "additionally insured."  
 Minimum of two-week advance request required.  
 (Excludes MSB Recreation Services trails or recreation facilities which are authorized by MSB rec services division)

H. Roving Vendor Permit \$ 150.00  
 Annual Permit Fee

6.1 Easement and Rights of Way Fees:

A. Public Utility Easements:

Utility Transmission/Distribution Across borough owned land for service to non-borough property	FMV by sq.ft. of easement area, or 125% of assessed value of easement area
Utility service to borough owned land	No Charge

B. Private Utility Easements FMV by sq.ft. of easement area

**FEE SCHEDULE**

**PART 30**

- C. Roads, Driveways, and Trails:
  - Private FMV by sq.ft. of easement area
  - Public No Charge

7.1 Commercial timber resource, vegetation harvest, and earth material extraction fees:

- A. Minimum prices shall be based on Fair Market Value (FMV) for:  
all timber sales, including salvage and stumpage contracts; and  
earth material extraction contracts; and harvest of natural vegetation and non-  
wood product contracts.
- B. A \$500.00 fee is due for each timber sale, earth material and natural  
vegetation/non-wood products contract extension.

8.1 For Over-the-Counter land sale programs, a processing fee pursuant to terms of the  
specific offering is required with the submission of each bid.

9.1 Personal Use Firewood and Earth Material Extraction: \$25.00 per household

- A. Firewood Per Cord \$25.00 / cord  
(10 cord max / household / year)
- B. Earth material, gravel & peat \$3.00 / cubic yd.

10.1 Assignments of Alaska Division of Land leases.  
In addition to other application fees, a document fee of \$250.00 for a title report will be  
due upon acceptance of the application.

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

<b>GENERALLY ALLOWED USES</b>
<b>PART 31</b>

1.1 Authority: 23.10.010

2.1 The purpose of this section is to describe those uses and activities on borough-owned land which do not require specific borough authorization. It is the borough's desire to provide consistency with the state of Alaska Administrative Code regarding generally allowed uses on public land whenever practical and when in the best interest of the borough.

2.2 Generally allowed uses and activities on borough-owned land shall not be construed as a means to create legal access or assume legal access exists; nor shall it be construed that unauthorized use on said lands is allowed; nor shall it be construed as a transfer of rights or ownership in borough lands by assumption or by adverse possession.

2.3 The following uses and activities, alone or in combination, are generally allowed on borough-owned land without prior authorization. These allowed uses and activities may not apply when such land is encumbered through an existing exclusive use, is prohibited by the borough, or are otherwise utilized for parks, school sites or other borough facilities.

Before beginning any activity on borough-owned land a user is solely responsible to verify that the use or activity is allowed for the area of interest and should contact Land & Resource Management Division for confirmation of use on a particular parcel.

A user of these generally allowed uses and activities shall also be solely responsible to comply with any applicable local, state and federal requirements, and for the safety of self and members of their group.



## GENERALLY ALLOWED USES

### PART 31

Generally allowed uses include:

A. Travel across borough-owned land.

Hiking, backpacking, skiing, climbing and other foot travel; bicycling; travel by horse or dogsled or with pack animals. Use of highway vehicles, or recreational off-road vehicles and snow machines if use does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance or thermal erosion. Landing of aircraft or watercraft without damaging the land, shoreline, tideland and submerged land.

B. Removal or use of borough resources.

(1) Hunting, fishing or trapping that complies with applicable borough, state and federal statutes and regulations on the taking of fish and game.

(2) Harvesting small amounts of wild plants, mushrooms, berries and other plant material for personal, non-commercial use, including use of dead and downed trees for cooking or a warming fire, unless the area has been closed for such uses.

(3) Adjacent private property owners may limb, brush, and thin vegetation on vacant borough land, that is not for sale, within 100 feet of private structures as part of overall FireWise measures without requiring special permission from the Land Management Division. It is the landowner's responsibility to ensure they are working on eligible borough-owned land. The following diagram illustrates the allowed vegetation removal in accordance with FireWise practices.

a) Spruce trees must be removed from the forest. Any trees removed from borough land may only be utilized for non-commercial purposes and may not be sold or bartered. Debris may not be left in or along existing trails.

## GENERALLY ALLOWED USES

### PART 31

- (4) Adjacent private property owners may remove standing trees from vacant borough land, that is not for sale, that pose a direct threat of damaging private property by falling, such as beetle kill spruce along fence lines, driveways, or near buildings, without requiring special permission from the Land Management Division. It is the landowner's responsibility to ensure they are working on eligible borough-owned land.
- a) Spruce trees must be removed from borough property. Any trees cleared from borough land may only be utilized for non-commercial purposes and may not be sold or bartered. Debris may not be left in or along existing trails.

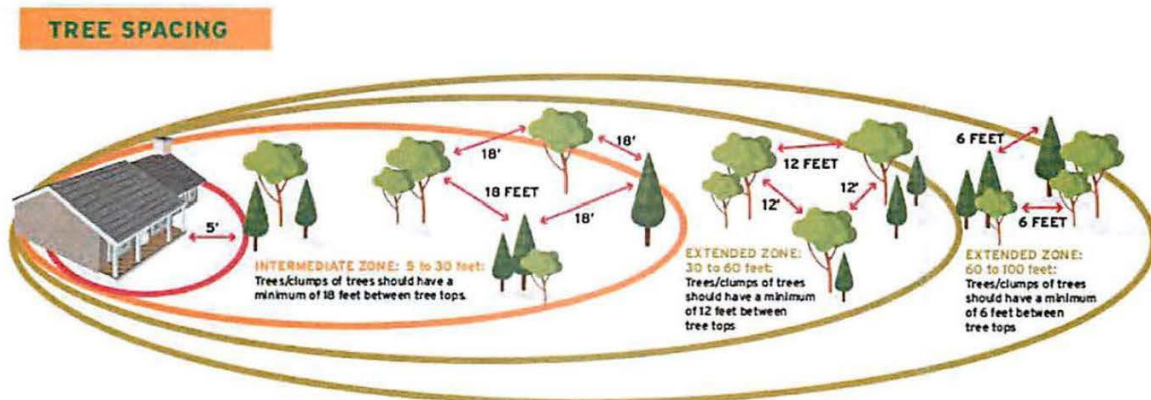


Diagram illustrating vegetation clearing allowed in accordance with FireWise best management practices.

#### C. Improvements and structures on borough-owned land.

Camp sites are allowed for personal, non-commercial recreational purposes; or to survey a permanent official marker; or to survey and explore mineral oil or gas for no more than 14 days at one site using a tent platform or other temporary structure that can readily be dismantled and removed. Moving the entire camp at least two miles in

## GENERALLY ALLOWED USES

### PART 31

distance will start a new 14-day period. A camp must be removed immediately if the Land and Resource Management Division determine it may interfere with public access, other public uses or other borough interests. Cabins or other non-permanent improvements including foundations are not allowed.

#### 2.4 General Conditions.

To comply with these generally allowed uses of borough-owned land the following conditions shall also apply:

- (1) activities employing wheeled or tracked vehicles must be conducted in a manner that minimizes surface damage;
- (2) vehicles must use existing roads and trails whenever possible;
- (3) activities must be conducted in a manner that minimizes:
  - a. disturbance of vegetation, soil stability, or drainage systems;
  - b. changing the character of, polluting, or introducing silt and sediment into streams, lakes, ponds, water holes, seeps, and marshes; and
  - c. disturbance of fish and wildlife resources
- (4) cuts, fills, and other activities causing a disturbance listed in (3)(a-c) of this title must be repaired immediately, and corrective action must be undertaken as may be required by the borough;
- (5) trails and campsites must be kept clean; garbage and foreign debris must be removed; combustibles may be burned on site unless the borough has closed the area to fires during the fire season, or for any other reason;
- (6) all reasonable efforts must be made to prevent, control, and suppress any fire in the operating area; uncontrolled fires must be immediately reported to the authorities and the borough;

## GENERALLY ALLOWED USES

### PART 31

- (7) survey monuments, witness corners, reference monuments, mining location posts, homestead entry corner posts, and bearing trees must be protected against destruction, obliteration, and damage; any damaged or obliterated markers must be re-established as required by law;
- (8) holes, pits, and excavations must be repaired as soon as possible; holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, or mining leasehold locations may be left open but must be maintained in a manner that protects public safety;
- (9) on lands subject to a mineral or non-exclusive interest, entry by a person other than the holder of a property interest, or their representative, must be made in a manner that prevents unnecessary or unreasonable interference with the rights of the holder of the property interest.

3.1 **Restricted Areas.** There are areas within the borough which have special land use designations or are otherwise restricted. Generally allowed uses as provided for in this section do not apply in designated areas.

Designated areas are:

- a) Active timber sales (personal use and salvage)
- b) Active material sales (such as gravel pits)
- c) Wetland Mitigation Bank lands if use degrades the natural land
- d) Public facilities (such as schools, fire stations, libraries)
- e) Parks (restricted usages are typically listed at park entrances)
- f) Campgrounds
- g) Trails (may be restricted to motorized, non-motorized, pedestrian, equestrian, or bike)
- h) Recreation management areas
- i) Parcels encumbered by lease, permit, management agreement, commercial, or residential use
- j) Special Use Districts (SpUD)
- k) Port MacKenzie Port District
- l) Exclusive use areas
- m) Tax/LID Foreclosed Property

<b>GENERALLY ALLOWED USES</b>
-------------------------------

<b>PART 31</b>
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- 4.1 The borough manager shall retain authority to prohibit or restrict any specific use under these generally allowed use provisions when in conflict with 23.05.010.

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

<b>ABANDONED JUNK, TRASH, VEHICLES</b>
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<b>PART 32</b>
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1.1 Authority: MSB 10.12  
AS 23.05.050

2.1 Unclaimed personal property on Borough-owned land is recognized as a general liability of the Borough.

The Community Development Director is responsible for the proper disposition of abandoned junk, trash, and vehicles discovered on Borough-owned land.

2.2 Abandoned Junk, Vehicles and Trash.

Junk vehicles, junk vehicle parts, junk, and trash, as defined by MSB 8.50.005(A), as amended, includes tangible property other than real property, such as motor vehicles not currently registered, discarded parts of vehicles, discarded manmade materials, or damaged material treated as waste.

Abandoned “junk,” “trash,” or “junk vehicles” means any property meeting the definitions in MSB 8.50, to which the owner has voluntarily relinquished all right, title, claim, and possession, without vesting ownership in any other person.

“Unclaimed” means any junk, trash, or junk vehicles found on Borough-owned land that is deserted by evidence of its location and disposition, is discarded and treated as waste, or for which ownership is not claimed or identified. “Unclaimed” junk, trash, or junk vehicles shall be deemed abandoned if observed on Borough-owned land and left unattended for more than 24-hours.

Junk vehicles, as defined by MSB 10.12, as amended, are any vehicle that:

(A) is not currently registered, except for a vehicle used exclusively for competitive racing;

(B) is stripped, wrecked, or otherwise inoperable due to mechanical failure;

(C) has not been repaired because of mechanical difficulties or because the cost of repairs required to make it operable exceeds the fair market value of the vehicle; or

(D) is in a condition that exhibits more than one of the following elements:

- (i) broken glass;
- (ii) missing wheels or tires;
- (iii) missing body panels or parts; or
- (iv) missing drive train parts.

The Borough may dispose of the abandoned junk, trash, and junk vehicles, by public auction, destruction, or at the landfill. Proceeds from the auction shall be deposited into the Land Management Fund. The rightful owner shall bear any expense of removing the abandoned property from the Borough-owned land if ownership is identified. The Borough shall attempt to recover any costs associated with removal or cleanup of abandoned personal property.

### 2.3 Reporting Abandoned Junk, Junk Vehicles and Trash.

Borough staff, finding abandoned junk, junk vehicles or trash on Borough-owned land should notify the Community Development Director in writing, including the date the property was observed on the Borough-owned land. The report should include sufficient information and photographs to characterize the property and location.

Staff should inspect the property left on Borough land to determine if ownership can be identified.

If the rightful owner makes a valid claim to the abandoned property and pays for the costs to remove it from the Borough land, then the Borough shall return the property to the rightful owner.

All abandoned junk, junk vehicles, and trash that remains unclaimed more than 24-hours after notification of the Community Development Director shall be deemed unclaimed property and will be disposed of in accordance with Borough code and this policy. Junk and trash left on Borough-owned property is subject to removal and disposal at the cost of the rightful owner.

## 2.4 Reporting Abandoned Motor Vehicles, Aircraft, and Watercraft

A vehicle, that does not meet the definition of a junk vehicle, that is currently registered or titled as required under AS 28.10, that has been left on Borough-owned land for more than 72-hours is considered abandoned.

Staff shall attempt to notify the owner of record to inform them that the abandoned vehicle will be impounded in place and may be disposed of no sooner than 20-days after notice. Notification will be by certified mail, return receipt requested.

The Borough shall notify the last known registered owner of the abandoned motor vehicle and the lien-holder recorded. Notice shall also inform the owner and lienholder of the right to claim the abandoned motor vehicle not later than the 20th day after the date of the notice, upon receipt of payment of any applicable expenses, such as mailing costs, towing, preservation, and storage charges. Notice must also state that failure of the owner or lienholder to claim the item during the 20-day period is a waiver of all right, title, and interest in the item; and consent to the sale, disposal, and destruction of the item.

All notice for abandoned motor vehicles or lost or abandoned property shall be mailed by first-class, certified mail with return receipt requested.

## 2.5 Abandoned Motor Vehicles, Aircraft, and Watercraft

A motor vehicle, aircraft, or watercraft is considered abandoned if it meets the definition in MSB code for junk vehicle (e.g., is inoperable due to mechanical failure) and when it has been left unattended on Borough-owned land for more than 24-hours.

The Borough may remove or have removed any abandoned vehicle on Borough-owned or controlled land to a place of impound.

Staff shall submit to the Community Development Director a memorandum, email, or site investigation report, that documents the unauthorized presence of a vehicle on Borough-owned land. The report should include sufficient photographs to characterize the vehicle, its location on Borough-owned land, and clearly show an impound notice affixed to the vehicle. Staff shall determine if the vehicle meets the definition of junk vehicle.

Staff shall also contact the Alaska State Troopers non-emergency dispatch at 352-5401 to inform them of the location of the abandoned vehicle, its make, model, and license plate number. The license plate number can be retrieved from



INGENS.com using the Vehicle Identification Number. This online service also provides the name and address of the owner of record as well as any lien holder.

The Borough may contract with a commercial business to impound an abandoned motor vehicle, aircraft, or watercraft taken into custody by the Borough.

A commercial business impounding and taking custody of an abandoned motor vehicle, water craft, or aircraft, shall store the vehicle in a safe manner for 30 days. If an owner fails to make a claim to the vehicle within the 30-day period and fails to reimburse the Borough for the costs of towing, preservation and storage, the Borough and commercial business may make arrangements to dispose of the vehicle and use of the value to offset the costs.

A written report of the motor vehicle removal shall be made by the Community Development Director immediately following the removal. The report shall describe the vehicle, the date, time and place of removal, the grounds for removal, and the place of impoundment of the vehicle. A copy of the report shall be sent to the state of Alaska Department of Public Safety and to the entity who stores the vehicle.

An abandoned vehicle, water craft, or aircraft, may be disposed of when:

- (A) it has been documented to have been on Borough-owned property for more than 20-days;
- (B) the owner of record has been noticed in accordance with this policy and procedure. A return receipt or return to sender of the certified mailing to the owner of record is sufficient notice per this policy and Borough code; and
- (C) the Borough has published notice in the Frontiersman of the auction or disposal by auto wrecker. Disposal of the abandoned vehicle cannot occur until 20 days after publication in the Frontiersman.

If the vehicle is not registered in the state, or the name and address of the registered or legal owner or lienholder cannot be ascertained, notice shall be given by publication of an advertisement in the Frontiersman detailing the make, model, VIN or plate number, and location of the vehicle will be placed. A copy of the advertisement will be kept with the impound tag receipt for the vehicle.

## 2.6 Destruction or Disposition of Abandoned Personal Property.

The Borough may utilize Borough personnel and equipment to collect and transport abandoned junk, junk vehicles, and trash to a solid waste transfer station or the central landfill. The Borough may also contract for assistance with collection

and disposal. Junk vehicles may only be disposed of when the notice requirements have been documented.

### 3.1 Land and Resource Management Division Response to Notification of Abandoned Property, Junk, and Trash

Determine the nature and degree of dumping. Does it appear to be a single truck load, deposited one time, or does it appear to be multiple truck loads that have been deposited over months or years.

#### A. Collect available facts, including:

1. Verify land in question is owned or managed by the Borough.
2. Determine if the dumping has occurred within right-of-way. Abandoned property, junk, and trash within the right-of-way is handled by the Borough Community Cleanup Specialist.
3. Determine if dumping was a one-time occurrence or something that has been on-going. Evaluate the likelihood of the dumping continuing in the future.

B. Obtain maps that illustrate the location of property boundaries, easements, rights-of-way, leases, land use permitted activities etc., which may be applicable to the dumping.

### 4.1 Perform a site visit.

A. Invite a MSB Code Compliance Officer to participate with or conduct the site visit.

B. Collect GPS data to determine approximate location of dumping, take sufficient photographs to document the abandoned property, junk, and trash and any negative effects to Borough-owned land and resources, and take note of any other information that may assist in identifying the owners of record.

C. Document any items dumped or abandoned on Borough-owned land. Take photographs of illegally deposited material and vehicle identification numbers and license plates of any abandoned vehicles, if applicable. Retrieve any discarded documents that may have personal identification that could lead to the perpetrator of the dumping.

D. Determine the nature of the vehicular access (i.e., off-highway vehicles, several pieces of heavy equipment, highway vehicles) and evaluate if a

single entity or person may be responsible or if the general public is also involved. Evaluate how access can be effectively blocked. Will jersey barriers, gates, or trench and berms work?

- 5.1 Prepare a written site visit report including relevant facts and photographs for review by the Community Development Director. Determine if the nature of the dumping warrants a discussion with the affected community council, the Alaska Department of Environmental Conservation, Environmental Protection Agency or other appropriate agency.
- 6.1 Collect information on possible perpetrators of the dumping. Activities may consist of but not be limited to:
  - A. Installation of cameras;
  - B. Contacting neighboring residents and property owners;
  - C. Starting a community dialogue on the dumping;
  - D. Sending a notice of trespass with a request for information to neighboring property owners; and
  - E. Install a gate or barricades across the access points.
- 7.1 Staff in partnership with the Code Compliance Officer, if applicable, makes a determination regarding the dumping or abandonment. Staff will contact the potential owners of record by certified, return receipt mail if possible. In addition, staff will attempt to negotiate a reasonable amount of time for the responsible party to correct the problem. Solutions may include the responsible party paying for a contractor to collect and dispose of the abandoned property, junk or trash, or retrieve it themselves for disposal.
  - A. If negotiated agreements for compliance, letter requesting compliance, or warning notices do not result in compliance, a citation can be issued. The citation will state the violation and the fines imposed in accordance with the adopted fee schedule. A citation can be contested and the instructions are provided on the back of the citation. Alaska Statute 29.25.070(a) authorizes the Borough to fine a person violating Borough Code. MSB 1.45.090(A) provides citation authority to a Borough administrative official upon authorization from the Borough manager.
    1. If the citation is not contested, a default judgment is entered and the fines must be paid.

B. Enforcement Orders are generally issued when more than one option is being made available. Enforcement Orders may be appealed to the Board of Adjustments and Appeals, see MSB 15.39.

1. Appeal must be filed with the Borough Clerk as required under MSB 15.39.140 Appeals Commencement.

- 8.1 Staff may collect and dispose of abandoned personal property, junk, and trash if they can do so without injury or damage to Borough personnel and equipment. Contract assistance can be authorized by the Community Development Director in instances where staff retrieval and disposal is not practical.

When ownership can be determined based on information contained in or on the abandoned property, junk, or trash, then staff shall attempt to notify the potential owner via telephone, email, or mail. The owner shall be given a minimum of 72-hours to retrieve their property. The property may be disposed of after 72-hour notice has expired.

When ownership cannot be determined because there are no identifying marks or information, the abandoned property, junk, or trash may be disposed of after 24-hours.

- 9.1 Staff observing an abandoned motor vehicle, aircraft, or watercraft should note its license plate number, tail number, or hull number. Staff should use the number to identify the owner of record. The owner should be called, emailed, texted, or mailed a notice that their property will be impounded within 72-hours. Affix a completed Impound Notice form to the vehicle, aircraft, or watercraft and photograph the notice. The 72-hour Impound Notice timeframe begins once the Community Development Director has been notified as required in Section 2.2 of this Policy.

Motor vehicles, aircraft, and watercraft must be available for retrieval by the rightful owners for 30-days from the date of notice. Title to an abandoned vehicle not reclaimed by the registered owner or other person entitled to possession within 30-days from the notice given to the owner of record vests with the borough.

When there are no identifying marks, license plates, or numbers, the abandoned vehicle, aircraft, or watercraft may be towed or retrieved and disposed of after the 72-hour notice has expired.

A public notice must be placed in the local newspaper that informs reader that the abandoned vehicle, aircraft, or watercraft will be disposed and provide contact information for the owner to make their claim and pay the associated costs to retrieve it.

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

<b>REAL PROPERTY: Leases</b>
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<b>PART 35</b>
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- 1.1 Authority: 23.05.030  
23.10.180
- 2.1 This chapter addresses policies and procedures for leases, excluding material leases.
- 2.2 “Lease” in this chapter means a contract for the use and possession of the surface estate for a specified period of time and under specific terms. Because a lease conveys a property interest in land, it is necessary to prepare a recommendation for assembly approval. Applications for leases must undergo interdepartmental review prior to public notice procedures provided in MSB 23.05.025. Borough-owned land must be classified prior to leasing. Classification must be completed in accordance with Part 20 of this Manual.
- 2.3 A “development plan” shall be provided stating proposed development and use of the leased land. Incorporated in the development plan shall be performance benchmarks which at the discretion of the borough will become conditions of the lease. A development plan will be consistent with the classification of the land, and it becomes a binding part of the lease contract.
- 2.4 A “local comprehensive plan” means a plan adopted by a municipality upon which it exercises its zoning authority. It does not mean studies, proposals or spot zoning.
- 3.1 Generally, all borough lands are available for surface lease. However, classifications may limit the types of activity for which property may be leased.
- 3.2 The question of permit versus lease is generally decided on the basis of the applicant’s stated intentions. If the applicant requests the use of borough land for not more than five years the person applies for a land use permit. If the person wishes exclusive use for more than one year, or if the person wishes to construct permanent improvements, the person applies for a lease.

## REAL PROPERTY: Leases

### PART 35

- 3.3 Where land use patterns are congested or when competitive interest exists, the Community Development Director may decide to offer a lease of any term by competitive bid or by other means allowed under code.
- 3.4 All persons to be named in the lease document must sign the lease application.
- 3.5 In all competitive offerings in which a development plan is required, the legal publication will stipulate that in order for a person to enter into the lease, a development plan meeting the requirements of the regulations and the community development director must be submitted to the land & resource management division on or before the date stipulated in the legal publication.

No later than 30 working days following the last date the development plan is received, the person submitting a development plan will be given notice of the division's approval or disapproval of the plan, in whole or in part, and the reason therefore.

- 3.6 Lease disposal of unclassified land may be made only when in conformance with a local comprehensive plan or special use district.
- 3.7 The awarding of a lease for whatever purpose does not constitute a waiver of any requirement for permits or other authorizations as may be required for certain uses, whether it be state, federal, or municipal entity. A lease may be revoked if necessary permits are not acquired by the lessee.
- 3.8 A lease made at less than fair market value annual rental will require a best interest finding and will provide for unrestricted public use and access.
- 3.9 All leases of land which are made at less than fair market value shall terminate if the use changes from the approved development plan or if the use is not consistent with the use approved for the lease, and shall be conditioned upon unrestricted public enjoyment of the benefits of the project. For instance, public access through a hydropower site may be restricted for safety reasons, but if the benefit of the project (electricity) will be made available through a public utility, a lease may be negotiated for less than fair market value.

The Community Development Director shall determine whether or not a lease by application at fair market value to an eligible person may contain the reverter clause or the requirement for public access.

## REAL PROPERTY: Leases

### PART 35

- 3.10 A lease of borough land is preferred to a sale when one of the following conditions apply:
- A. The long-term management strategy for the land has not yet been decided or has been determined to best be achieved by retention in borough ownership;
  - B. The proposed use of the land is contingent upon the possession of other permits not under the control of the borough, (i.e., guiding area permits);
  - C. The nature of the proposed use requires that the borough retain the greatest control over the long-term development and operation of the facility (i.e., oil and gas industrial lease tracts);
  - D. The facility, although owned and operated by a private interest, provides an important public service (i.e. power generation site).
- 4.1 The filing of an application vests no rights in the applicant to a lease or to use of the land while under application. Unauthorized use constitutes trespass. Upon becoming aware of a verified trespass, the land and resource management division shall serve notice, both by regular and certified/return receipt mail when practical upon the known trespasser and thereafter proceed with appropriate action, including terminating processing the application.
- 4.2 The trespasser shall be notified of the trespass violation and that all unauthorized improvements placed on the premise are to be removed within 60 days of noticing. If notice is not complied with, the case is then turned over to the Borough Attorney's office for action.
- 5.1 Competitive leases are offered via sealed bid, outcry auction, or request for proposal, per applicable procedure. The location of the offering is determined by the purchasing officer on the basis of convenience to the anticipated bidders as well as other factors considered to best serve the interests of the borough. A prospective bidder must attend in person or be presented by an agent. An agent may not represent more than one bidder.
- 6.1 All leases shall be guided and enforced by 23.10.010, 23.10.020, 23.10.030, 23.10.040, 23.10.060 23.10.080 and 23.10.090.

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

<b>LEASES: Nonexclusive Broker Agreements</b>
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<b>PART 35</b>
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- 1.1 Authority: 23.10.180
- 2.1 This section outlines the requirements and compensation for a real estate broker hired by the borough for recruitment of parties interested in leasing borough-owned real property.
- 2.2 The objective is to solicit business for new leases on borough-owned land, and specifically within the Port District, from the following categories: Transportation and logistical support, fabrication, industrial businesses, low-level manufacturing, bulk material storage, warehousing, water and wastewater, and power generation.
- 2.4 Definitions:  
A real estate broker is a person currently licensed by the state of Alaska as a real estate broker in accordance with Alaska state law as defined under AS 8.88.171.
- An associate broker or real estate salesperson is a person currently licensed by the state of Alaska as an associate broker or real estate sales person in accordance with Alaska state law as defined under AS 8.88.171, employed by and operating under the direction and authority of a real estate broker.
- Nonexclusive Broker Agreement (Agreement) means a nonexclusive professional services contract specifying the services to be performed by a broker, duration of contract, and the method and amount of compensation for those services rendered.
- 2.5 Land and resource management division may request broker services to assist with securing potential lease clients for borough-owned real property which may include one or more parcels throughout the borough.
- 3.1 Periodically, the land and resource management division may solicit a request for broker services and provide interested applicants an information packet outlining the qualifications needed, services to be performed, time frame for said performance, and compensation to be received for said services rendered.



## LEASES: Nonexclusive Broker Agreements

### PART 35

- 3.2 Applicants must be currently licensed by the State of Alaska as defined under 2.4 of this section, must carry insurance limits as required by the borough, and must be in good standing with the borough in accordance with MSB 23.10.090.
- 3.3 Applicants will be evaluated for meeting Agreement criteria.
- 3.4 Successful applicants will be notified by mail and provided an Agreement for review and acceptance. The Agreement shall be considered effective as of the date of executed signature by the borough.
- 4.1 The Agreement will identify any forms, fees, and procedures which the broker agrees to use and comply with in providing services under this title.
- 4.2 The Agreement will specify the terms of services to be performed, time frame for said performance, and compensation to be received. Compensation shall be paid as a percentage of the lease price on a fixed payment schedule.
- 4.3 Compensation shall only be paid to a broker under an executed borough broker agreement.
- 4.3 Payment for broker services is approved by the assembly at the time of lease approval and payable in accordance with the Agreement. In the event assembly approval is not required for lease approval, payment for broker services shall be approved by the manager in accordance with the Agreement.
- 5.1 Land and resource management division will provide property specifications and monitor performance of the Agreement with the selected broker(s).
- 6.1 Brokers under the Agreement shall not negotiate a lease on behalf of the borough, nor shall a broker under this Agreement be compensated by the borough for work involving a current borough lease.
- 7.1 The borough reserves the right to hire multiple brokers to provide the professional services as outlined in the Agreement.

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

<b>LEASES: TERMINATION AND CANCELLATION</b>
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<b>PART 35</b>
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1.1 Authority: 23.05.080

2.1 Definitions:

Lease: A written and recorded document in which the rights to use and occupancy of land and/or improvements transferred by the owner to another for a specified period of time in return for a specified rent, conditions, and/or performance standards.

Lessor: The Matanuska-Susitna Borough (borough).

Lessee: The tenant.

3.1 The borough issues leases with terms and conditions that are agreed to by the tenant at the time the lease is signed by the tenant. Should the tenant default on lease payments or not comply or fulfill the terms and conditions of the lease, the borough may terminate the lease. Conditions under which the lessor may terminate the lease are contained in the lease document.

3.2 When a tenant is in default, notice is sent to the tenant contained in the lease or agreement informing them of the default and intent and time-frame for termination.

4.1 Lease default notification and/or termination is conducted and documented as follows:

A. *Notice of Default* is sent by certified mail and regular mail providing information to the tenant, including the nature of the default, what steps are necessary to cure the default, and contact information for borough personnel whether it is 'payment' default, or 'performance standard' default.

B. Tenant is allowed 30 days to cure the default. A title report is ordered at this time to determine if any other person(s) or entity(ies) can claim an interest against the property (such as liens, transfers,

## LEASES: TERMINATION AND CANCELATION

### PART 35

etc.). Notification of the default is mailed to any security assignee or other entity with a lien.

- C. If the default is cured, no further action is needed.
- D. If the certified *Notice of Default* is unclaimed and the tenant is still in default at the end of the 30-day period, a *Notice of Termination* is sent by certified mail and regular mail stating termination is in process. The tenant has 30 days to remove all personal property from the premise. The removal of personal property 30 day time period begins at the end of the initial 30-day default notice period. If there is claimed interest against the property, a security assignment must be signed by the tenant and *Notice of Termination* is then mailed by certified mail and regular mail to both the tenant and to any security assignee or entity with a lien.
- E. If the default is cured, no further action is needed.
- F. If after the initial 30-day notice period and subsequent 30-day notice to remove personal property have passed (a total of 60 days has passed) and if default is still not cured, an *Affidavit of Termination* is prepared, signed by the borough manager, and recorded in the district where the property is located.
- G. A letter is sent by certified mail and regular mail to the now-defaulted tenant with a copy of the recorded *Affidavit of Termination*. The letter notifies the tenant of the lease termination and provides notice that 60 days are allowed for removal of personal property, and that any property left after the 60 days becomes the property of the borough. A specific end date is included in the letter (for example: "Sixty (60) days are allowed for the removal of personal property, ending May 15, 2015." (in essence, the defaulting tenant will have been provided 60 days to cure the default and another 60 days to remove personal property from *Affidavit of Termination*.)
- H. All costs associated with the termination, to include but not be limited to, title report, assignments, and recording fees are charged to the tenant as costs incurred. These costs may be pursued in civil proceedings.

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<b>LEASES: TERMINATION AND CANCELATION</b>
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<b>PART 35</b>
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- 5.1 A borough issued lease may also be terminated by mutual agreement, in which case either the borough or the tenant may initiate termination of the lease. Termination of a lease will be accomplished when all parties to the lease agreement have signed an agreement to terminate the lease and an *Affidavit of Termination* is recorded. The borough manager will sign the termination of lease on behalf of the borough.
- 6.1 Copies of the *Affidavit of Termination* are provided to Finance and Assessment departments.

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

<b>MANAGEMENT AGREEMENTS: General</b>
<b>PART 40</b>

1.1 Authority: 23.05.030  
23.10.160

2.1

A management agreement is an agreement between the borough and person(s) or organized group wherein the borough transfers some or all of its management authority over borough-owned real property to the other party.

2.2

This section describes the method by which a borough real property asset or facility may be managed and operated by a non-borough entity.

3.1

Management agreements are an appropriate vehicle to manage certain borough-owned real property assets and public facilities. The applicant shall demonstrate its ability to utilization and provide expertise and services at an equivalent or superior standard, but in a more cost effective manner than the borough could provide on its own.

3.2

Management Agreements may be executed between the borough and other governmental agencies, private individuals or agencies, or organized groups for the purpose of managing borough real property.

3.3

Management agreements shall at a minimum address the following terms and conditions, as applicable:

- |   |   |
|---|---|
| <p>_____ Right-of-way</p> <p>_____ Subleasing</p> <p>_____ Breach of agreement</p> <p>_____ Notice of default</p> <p>_____ Sanitation</p> <p>_____ Removal or forfeiture of improvements or chattels</p> <p>_____ Retention of payments</p> <p>_____ Location of structures and improvements</p> <p>_____ Relationship of parties</p> | <p>_____ Assignments</p> <p>_____ Modification</p> <p>_____ Notice</p> <p>_____ Responsibilities</p> <p>_____ Written waiver</p> <p>_____ Terms</p> <p>_____ Violations</p> <p>_____ Environmental impairment</p> <p>_____ Issuance</p> <p>_____ Management fee</p> |
|---|---|

**MANAGEMENT AGREEMENTS: General**

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- |  |  |
|--|--|
| <p>_____ Facility use standards and termination</p> <p>_____ Default, right to cure</p> <p>_____ Compliance with laws</p> <p>_____ Choice of law</p> | <p>_____ Severability</p> <p>_____ Amendment</p> <p>_____ Force majeure</p> <p>_____ Integration</p> |
|--|--|

Other terms and conditions may be included in management agreements.

3.4 Any management agreement term that exceeds five years requires assembly approval by ordinance.

4.1 Following is the procedure for issuance of management agreements:

- A. The application and required fee is received at the borough and reviewed for accuracy and completeness. A joint use or cooperative management agreement may not require an application and/or fee if the proposal is being initiated by the borough.
- B. Land status is checked for borough ownership and for any reservations or prohibited uses. If an existing land classification, zoning use, or regulation is inconsistent with the proposed use, the application may be rejected.
- C. The application, if consistent with authorized land uses and regulations, is given an MSB case number and a case file prepared.
- D. An interdepartmental review of the application is initiated for up to ten days for the purpose of identifying problems or conflicting plans which other borough departments may have with the proposed assessment and area of use. Upon end of review period, and if there are no issues to address, 30-day public notice is initiated.
- E. If the application affects the jurisdiction of another agency notice shall be provided.
- F. Any proposed use which may be potentially damaging to the environment or hazardous to the health, safety or welfare of the public shall be reviewed in consultation with other primary affected

<b>MANAGEMENT AGREEMENTS: General</b>
<b>PART 40</b>

agencies which, by law or other authority, share jurisdiction over the use. Examples of these types of activities include storage of flammable or explosive materials, activities in zones of suspected geological hazards, use of a material site for target practice, and activities which may significantly affect anadromous fish habitat.

Review and approval by the appropriate agency is mandatory when the activity applied for is within a game refuge, critical habitat area, or other area designated "special use."

In cases where an application is sent to other agencies, the applicant is notified that additional review time will be required. The application is forwarded to the appropriate agency for review with a request for response within 15 working days. If agency review is mandatory, no agreement will be entered into without concurrence and failure of the agency to respond must be deemed non-concurrence. Where a review is elective, the notice will give the agency 15 calendar days to respond, and a non-response will be deemed a non-objection. Comments are reviewed and appropriate special conditions added to the agreement.

- G. The agreement is either executed, denied or the review is extended as needed. The agreement of application or denial is signed by the borough manager or his designee with any necessary stipulations or conditions.
- H. If the application is denied, the applicant must be informed of the reason for denial. The applicant then has the right to appeal such denial according to MSB 23.05.090.

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

<b>MANAGEMENT AGREEMENTS: Interagency</b>
<b>PART 40</b>

1.1 Authority: 23.05.030  
23.10.160

2.1 Definitions:

Interagency agreement: Any management agreement between various departments of the borough general government or between the borough general government and the Matanuska-Susitna Borough School District for the sole purpose of assigning day-to-day management of a borough facility.

Agency: A subunit of borough government, such as the school district, which by its function has primary use of the land or facilities owned by the borough.

3.1 All real property owned or leased by the borough is to be managed under an interagency agreement. This includes real property used as parks, property on which a public facility is situated such as a school, library, or fire station, and property leased for borough facilities.

4.1 The borough manager is authorized to manage and control the borough-owned real property. The borough manager may delegate authority and responsibility for real property management functions.

5.1 Authority for the administration of the management, development, and disposal of borough real property resides with the community development department and must be authorized by transfer of delegation before another borough agency can make a management, development, or disposal decision regarding borough real property.

6.1 The borough manager through an interagency agreement can additionally name the primary user of land or a facility for day-to-day management. The responsibility for administration of the management, development, and disposal of borough real property still resides with the community development department. The primary user department, through a fully executed interagency agreement, obtains day-to-day management of a borough asset and responsibility for its proper use and maintenance.



<b>MANAGEMENT AGREEMENTS: Interagency</b>
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- 7.1 The management transfer to the agency or department requires [THAT] the agency or department be responsible for all costs associated with the use of the real property transferred.
- 8.1 An interagency agreement is executed by the director of the community development department , concurred by the director or equivalent position of the agency or department which will manage the real property. Subsequent approval of the execution is by the borough manager.

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

<b>OWNERSHIP: Accepting Deeds in Lieu of Foreclosure on a Deed of Trust</b>
<b>PART 45</b>

1.1 Authority: 23.05.030  
23.05.080

2.1 Definitions:

Deed of trust: A legal instrument similar to a mortgage that, when executed and delivered, conveys or transfers property title to a trustee. A deed of trust can be used in place of a mortgage contract.

Trustee: A person who controls legal title to property under a trust agreement.

Beneficiary of trust deed: The lender, who is one of three parties in a trust deed agreement. The borrower, or trustor, gives the title to a third party, the trustee, who holds the title in trust for the benefit of the borrower and the lender.

Deed of trust note: The document executed by the borrower, which sets forth the principal amount of the loan, interest rate, and interval of payments required of the borrower for which payment is promised. A deed of trust note is secured by a deed of trust, which specifies the real property taken as collateral and creates a lien on the property until the note is paid or otherwise released.

Foreclosure: The legal process in which a lender forces the sale of a property to recover all or part of a loan on which the trustor has defaulted.

Deed in lieu: A deed given by an owner or debtor in lieu of foreclosure by the lender or mortgagee.

Buyer: The debtor, borrower, or trustor.

3.1 When the borough finances real property that it sells, the borough requires that the buyer sign a deed of trust to the real property sold as security and

**OWNERSHIP: Accepting Deeds in Lieu of Foreclosure on a Deed of Trust**

**PART 45**

that the buyer will perform on the terms of the deed of trust note which finances the real property sold. The borough becomes the beneficiary of the trust deed.

- 4.1 Should the buyer default on the deed of trust note, or fail to perform on the deed of trust, the borough as lender and beneficiary of the trust deed may foreclose under the terms of the deed of trust.
- 5.1 At its option, the borough as beneficiary may also accept a deed from the trustor to the real property sold in lieu of foreclosure.
- 6.1 The borough requires that real property conveyed in lieu of foreclosure must be conveyed by warranty deed.
- 7.1 Prior to acceptance of a warranty deed in lieu of foreclosure the borough will require that all conditions contained in the deed of trust be met. The following conditions are not conclusive and are annotated for the purpose of emphasis:

Clear title: Title of the real property to be conveyed to the borough in lieu of foreclosure must be in the same condition as when the borough originally sold the property. The borough's lien must be in first position, and the property cannot be subject to any other liens or encumbrances. The borough shall require an owner's title policy issued at the time of conveyance.

Environmental contamination: The real property to be conveyed to the borough in lieu of foreclosure will be inspected for environmental contamination. The borough may contract for an environmental inspection if site conditions so warrant. Any clean up and remediation of environmental contamination will be the responsibility of the buyer. Necessary remediation must be completed before the deed in lieu of foreclosure is executed.

Environmental affidavit: Executed by grantor prior to accepting deed in lieu.

Waste: The real property to be conveyed to the borough in lieu of foreclosure must be in good condition and repair and must not have suffered waste.

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**OWNERSHIP: Accepting Deeds in Lieu of Foreclosure on a Deed of Trust**

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**Costs:** The owner (trustor) is required to pay all costs associated with the real property to be conveyed to the borough in lieu of foreclosure. Costs may include title reports, payment of real property taxes, preparation of documents, reasonable attorney fees, environmental inspection reports, and site remediation.

**Estoppel Affidavit:** A statement of material facts and conditions, signed by the trustor, that the property is conveyed willingly and without duress, and that it does not constitute a mortgage loan or agreement, and is a complete conveyance of all interest the grantor(s) held in the property.

- 8.1 A deed in lieu of foreclosure must be accepted by the borough manager. A deed in lieu of foreclosure is accepted by the borough only if acceptance is determined to be in the best interest of the borough.

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

<b>OWNERSHIP: Donations</b>
<b>PART 45</b>

- 1.1 Authority: 23.05.030
- 2.1 Donation: The gift of real property to the borough from a person, agency or other entity.
- 3.1 Real property may be gifted to the borough, and the borough manager may accept gifts of real property if accepting the gift of real property is in the best interest of the borough.
- 4.1 Real property may be donated to the borough only for public purposes.
- 4.2 The conveyance shall be in the best interest of the borough without title flaws or encumbrances, liability, environmental contamination, or unreasonable costs associated with the transaction.
- 4.3 When receiving a proposal to donate real property a pre-application conference with the applicant to discuss borough procedures is conducted. Upon submittal of a formal intent to transfer property to the borough, interdepartmental review is initiated. The community development department shall act as the lead department in the case of foreclosed properties.
- 4.4 Upon completion of the interdepartmental review, a recommendation is forwarded to the borough manager regarding the advisability of accepting the real property.

Prior to the borough accepting gifted/donated real property the gifter/donator may be responsible to pay for:

- (1) clear title, including taxes and assessments paid and no other encumbrances;
- (2) environmental assessment acceptable to the borough;

<b>OWNERSHIP: Donations</b>
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<b>PART 45</b>
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- (3) acceptable survey or legal description of property boundaries which complies with borough platting regulations;
- (4) ability of the borough to market, sell, or manage the property.

5.1 Should the borough manager agree with the conveyance of property, the owner executes a warranty deed to the borough which will require the borough's acceptance in the document. A conformed copy of the recorded deed is forwarded to the land management division for filing in the geographical location filing system (TRS).

6.1 In cases where the manager's acceptance is not indicated on any recorded deed received by a borough department, that department shall forward a copy of the deed to the community development department. The community development director will review the conveyance and recommend to the borough manager, after an interdepartmental review is completed, whether or not, the property should be accepted or refused. In cases where the borough refuses to accept the deed, a notice of non-acceptance by the borough will be recorded.

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

<b>OWNERSHIP: Tax and Special Assessment (LID) Foreclosures</b>
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<b>PART 45</b>
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- 1.1 Authority: 2.38.020  
3.15  
23.05.030  
23.10.220  
AS 29.45.290-500

2.1 Definitions:

Tax and Special Assessment (LID) Lien Foreclosure: Delinquent real property taxes and special assessments are a lien against the property. The Borough (municipality) enforces the tax and LID lien by annual foreclosure.

Judgment and Decree of Foreclosure: The court clerk delivers a certified copy of the judgment and decree to the municipal clerk. The certified judgment and decree constitute a transfer to the municipality.

Right of Redemption: Properties transferred to the municipality are held by the municipality for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest, and costs, including all costs incurred under AS 29.45.440(a). A certificate of redemption is issued and recorded.

Right of Repurchase: The record owner, at the time of tax foreclosure of property acquired by a municipality, or the assigns of that record owner or lien holder who forecloses on their lien and assumes the position of the record owner may, within ten years and before the sale or contract of the sale of the tax or LID-foreclosed property by the municipality, repurchase the property.

Tax and LID sale: The sale of a tax and LID-foreclosed property to collect delinquent taxes from the proceeds of sale; conducted when the taxpayer has failed to redeem the property within the statutory period and the borough has been conveyed the property by clerk's deed.

## OWNERSHIP: Tax and Special Assessment (LID) Foreclosures

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Tax and LID deed: A deed that conveys title to a property purchased at a tax and LID sale; which may not convey absolute title, free and clear of all prior claims and liens.

- 3.1 The borough's purpose in selling tax and LID foreclosed properties is to collect delinquent real property taxes and LID and costs which are the combination of the real property tax, LID, penalties, interest, and management costs. The borough does not seek to retain tax or LID-foreclosed property in its ownership, unless a specific and meaningful public purpose can be demonstrated.
- 4.1 The finance department is responsible for filing the tax and LID lien foreclosure case, recording judgment, issuing redemption certificates and requesting and obtaining a clerk's deed as a result of a tax and LID-lien foreclosure.
- 4.2 The land and resource management division is responsible for review of the properties not redeemed which are to go to clerk's deed, including any site inspection prior to finance department requesting clerk's deed. The land management division will be given 60 days' notice in which to conduct any site inspections. Recommendations will be forwarded to finance regarding improvements, hazardous building or materials, etc. The land and resource management division is responsible for the interim management of tax and LID foreclosed properties between the time a Clerk's Deed is issued to the borough and the time the borough disposes of its interest in the tax foreclosed property; the sale of tax and LID-foreclosed properties; and determining which tax and LID-foreclosed properties, if any, should be retained in borough ownership for a public purpose.
- 5.1 Prior to the finance department receiving a Clerk's Deed the land and resource management division will review all properties on the foreclosure list to determine which properties may be improved, which properties may be occupied, and which properties may be contaminated or found to contain hazardous materials from assessment and other public records. Alaska Department of Environmental Conservation records will be checked for underground storage tanks, spills, complaints, etc.
- 5.2 In accordance with 3.15.250 (C) "the borough shall not foreclose against property determined by federal, state, or local agency to be contaminated



## OWNERSHIP: Tax and Special Assessment (LID) Foreclosures

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or found to contain hazardous materials subject to regulation by a federal, state, or local government.”

- 6.1 Upon the borough receiving a Clerk’s Deed, the land and resource management division will proceed to develop and implement an interim management plan for the tax and LID-foreclosed property inventory. All costs associated with the interim management will be accounted for by parcel for adding to the sale price. AS 29.45.470(4) provides that costs of maintaining and managing the property incurred by the municipality include insurance, repairs, association dues, and management fees, that exceed amounts received by the municipality for the use of the property.
- 7.2 The land and resource management division determines which tax and LID-foreclosed properties should be retained for a public purpose. The main retention criteria are if the property cannot be used productively by the private sector. Potential reasons for retention are:
- High water table prevent the use of the land for residential purposes.
  - The property is an unusable remnant with no potential or purchase by an adjacent owner.
  - The property is needed for a public facility site.
- 7.3 The land and resource management division submits a memorandum to the borough manager listing the tax and LID- foreclosed properties to be retained for a public purpose, and those to be sold and their values. The memorandum will also state whether the properties are to be sold by public outcry auction or sealed bid. Upon approval by the borough manager the land and resource management division will prepare an ordinance listing properties to be retained for a public purpose and those to be sold.
- 7.4 A notice of the public hearing on the tax and LID- foreclosure ordinance is prepared by the land and resource management division published in accordance with the borough clerk’s requirements for public hearings for ordinances.

<b>OWNERSHIP: Tax and Special Assessment (LID) Foreclosures</b>
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- 7.5 The clerk or the clerk's designee sends a copy of the published notice of hearing of the ordinance by certified and first class mail to the former record owner of the property as listed on the assessment rolls within five days after the first publication of the notice of the public hearing.
- 8.1 Taxes, LID, penalties, interest, and costs may be paid up to 5 p.m. of the day prior to the tax foreclosure sale.
- 9.1 See respective Policy and Procedures Manual, Part 60, on conducting a public outcry auction or sealed bid for tax and LID-foreclosed properties.

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

<b>PERMITS</b>
<b>PART 50</b>

- 1.1 Authority: 23.05.030  
23.10.100
- 2.1 A permit is an authorization for the temporary use of borough land, assets or the taking, of a specified borough-owned resource. It conveys no right in the land and is essentially a guarantee that so long as the activity is conducted under the terms of the permit the holder of the permit is immune from prosecution for trespass. It does not constitute waiver of any federal, state, or borough laws or regulations. A permit is, by its terms, revocable at will by the borough.
- 2.2 Permits will not be required to cross borough lands by use of historic or dedicated trail systems, public access or use easements and rights of way for non-commercial purposes. Any commercial use or associated use requires a permit through the Land & Resource Management Division.
- A. A historic trail system means trails listed in Alaska Statute 19.30.400(d), the R.S. 2477 trails recognized by the State of Alaska. A dedicated trail system means a system of trails on borough-owned lands within recorded easements, or developed and maintained trails within a dedicated park such as Talkeetna Lakes Park, Settlers Bay Park, etc.
- B. Permits are not required for activities covered under Part 31, Generally Allowed Uses, on land where such uses are allowed.
- 2.3 Commercial use of trails requires a permit and fee as established by the MSB adopted fee schedule.
- 2.4 Where the activity is a duration of five (5) years or less, a permit is the appropriate document.
- 2.5 A permit conveys no interest in the land. It is the borough's policy that a permit may not exceed five years in length. The permit will not be renewed, but it may be reissued upon application by the permit holder. All permits are revocable immediately with cause. Permits are revocable without cause

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upon a thirty-day notice unless otherwise provided in this policy. Permits are not transferable. A written permit is issued on a borough permit form and covers activities and time requested by the applicant.

- 2.6 “Cause” as stated in paragraph 2.4 means any violation of applicable borough code, statutes, regulations or permit stipulations, or a situation in which a continuance of the activity poses a threat to public health, safety, or welfare.
- 2.7 “Special use” is a designation indicating that certain land and asset uses are prohibited or limited. For instance, even though snow machining can be a generally allowed use, it may be necessary to restrict the activity in certain areas. This can be done by designating the conditions of a use area. Other actions may serve to restrict permits. For instance, a commercial salvage timber sale would serve to close the area to generally permitted activities for the duration of the sale. A classification action could prohibit a number of otherwise permitted activities and generally allowed uses.
- 2.8 All applicants for permits must meet the qualified applicant requirements of MSB 23.10.090.
- 2.9 Personal intermittent use permits may be issued to a parent or legal guardian, for the benefit of a minor child, provided the individual assumes all risks and responsibilities for the activities of the minor, accompanies the minor during activities on borough lands, pays the scheduled fee, and if applicable, also holds an individual permit.
- 3.1 Permits may be issued for use of borough real property for a period not to exceed five (5) years under the following categories and the accordance with adopted procedures for each.
- A. PERSONAL INTERMITTENT USE, which is defined as uses of a non-commercial, non-exclusive nature of short duration, is authorized on unimproved borough lands lying outside of special use or management areas not needing permits, or within special use or management areas in accordance with adopted procedures for that specific area.
1. The conduct of any such personal intermittent use activity brings with it several responsibilities on the person under-

<b>PERMITS</b>
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taking the activity including assumption of all liability for their actions and acquisition of all other permits or authorizations required by law or regulation.

2. The use must be of an occasional, infrequent, or intermittent nature, and at no time exceeding 14 consecutive days or 30 days in a 12 month period. The Borough reserves the right to limit duration of use.

B. PUBLIC USE CABIN PERMITS may be issued for the use of designated cabins located on borough owned land.

1. The permits may be issued only to a person 18 years of age or older for a specific period of time.
2. The permittee shall disclose the total number of persons in the group using the cabin. Cabins may be restricted to a maximum number of occupants.
3. An individual will be permitted to use a particular cabin no more than 7 consecutive days or 21 total days in a 12 month period.
4. Permits will authorize use from 12 noon of the check-in date to 12 noon of the check-out date.
5. The permittee may exchange the date of use to another available date if done so at least 5 days in advance.
6. Reservations for cabin use will not be made without the completed cabin use permit application being submitted to, and accepted by, Land and Resource Management.
7. The permittee shall be required to sign and agree to the regulations, terms, and conditions included in the cabin use permit application.

C. DESIGNATED SPECIAL USE AND MANAGEMENT AREA PERMITS may be issued for the use of borough land within a special

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use or management area in accordance with adopted procedures and best management practices for the specific area.

1. Special use/management areas include:
  - a. borough park system lands
  - b. fish and game sanctuaries
  - c. refuges
  - d. critical habitat areas
  - e. Deshka River area
  - f. Palmer Hay Flats area
  - g. Natural Resource Management Units
  - h. Hatcher Pass
  - i. Port MacKenzie Port District
  - j. Port terminal building
  - k. Wetland mitigation bank lands
  - l. any other lands designated by federal, state, or borough as special use/management areas

D. LAND USE PERMITS may be issued for either commercial or non-commercial purposes when it is found to be in the best interest of the borough to do so. In general, an application for a land use permit may be submitted when the use or activity cannot be authorized under another category of permit provided for in this section or MSB 11.10 (encroachment permits, including construction).

1. All land use permits are subject to the following provisions unless inapplicable by the type of use or activity or by additional restrictions required in the permit issued:
  - a. Permitted activities employing wheeled or tracked vehicles shall be conducted in such a manner as to minimize surface damage.
  - b. Existing roads and trails shall be used wherever possible. Existing trail widths shall be kept to the minimum necessary. Trail surface may be cleared of down and dead timber, stumps, and snags. Due care shall be used to avoid excessive scarring or removal of ground vegetation cover.

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- c. All activities shall be conducted in a manner that will minimize disturbance of drainage systems, changing the character, polluting, or silting of streams, lakes, ponds, waterholes, seeps, and marshes, or disturbance of fish or wildlife resources. Cuts, fills, and other activities causing any of the above disturbances, if not restored immediately, are subject to any corrective action as may be required by the borough manager.
- d. The manager may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated areas except at designated stream crossings.
- e. All activities shall be undertaken in a manner which causes the least possible interference with any other authorized and generally permitted use of borough land.
- f. Trails and campsites shall be kept clean. All garbage and foreign debris shall be eliminated by removal and complete burning unless otherwise authorized.
- g. All survey monuments, witness corners, reference monuments, mining claim posts, and bearing trees shall be protected against being severed, removed, damaged, or destroyed. Any severed, removed, damaged or destroyed markers shall be re-established in accordance with accepted survey practices of the division at the expense of the party causing the severing, removal, damage or displacement, if known.
- h. Every reasonable effort shall be made to prevent, control, or suppress any fire in the permitted area. Uncontrolled fires shall be immediately reported to appropriate fire officials and the land and resource management division.

<b>PERMITS</b>
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- i. Holes, pits, and excavations shall be filled, plugged, or repaired. Holes, pits, and excavations necessary to verify geo-technical data or discovery on prospecting sites, mining claims, and mining leasehold locations may be left open, but shall be maintained in such a manner as to minimize erosion and siltation, and shall be consistent with public safety and welfare.
  - j. No person may engage in mineral exploration activity on land open to such use, the surface of which has been granted or leased to third parties by the borough, or on land in which the borough has received the reserved interest of the state of Alaska, until good faith attempts have been made to agree with the surface owner or surface lessee on a settlement for damages which may be caused by such activity. If agreement cannot be reached or the surface lessee or surface owner cannot be located within a reasonable time, operations may be commenced on the land only after specific approval by the manager, and after making adequate provisions for full payment of any damages which the surface owner or lessee may suffer.
- 2. A permit may authorize exclusive use. An exclusive use permit may be revoked at any time by the borough as it deems necessary.
  - 3. Permanent structures are prohibited by a permit. Thus, any structure placed by a permittee must be readily removable. The permittee must be aware that no right nor title to the land is gained by placing an improvement on the land. A permit holder usually will be required to remove any improvements and restore the area upon termination of the permit.
  - 4. Review by non-borough agencies of permit applications is not required except for areas under jurisdiction shared with other agencies. If the activity requested is of a nature as to have substantial impact on the resources of the area or presents a possibility of interference with another agency's responsibilities, then the issuing office is responsible for



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contacting that agency for its comments prior to issuance of the permit.

5. It is the policy of the Borough to periodically field inspect permits, especially prior to term expiration; however, such inspections are limited depending on the necessity, permit location and availability of personnel and fiscal resources to adequately perform the inspection. Inspection priority will be given to those permits with the greatest potential for creating management problems or where misuse of the permit may result in the greatest environmental damage. For these, regular inspections shall be scheduled. The expertise of other agencies will be requested in all field inspections, when necessary.
6. In cases where the activity may alter the land surface, such as the removal of trees or other materials for a campsite, the borough may require a bond or damage deposit prior to issuance of the permit in an amount that will ensure proper restoration after use of the land is no longer needed. The bond amounts will vary depending on the type of activity. The permittee's liability will be released and the permit processed for closure only after the land has been restored to the borough's satisfaction.
7. It is the policy of the Borough that the permittee agrees to indemnify, hold harmless and defend the borough, its assembly members, officers, agents and employees from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages or economic loss sustained by any person or property arising directly or indirectly as a result of any error, omission, or anyone directly or indirectly employed by them, arising from the permittee's use, occupancy or performance under or in association with the permit.
  - a. Without limiting the permittee's indemnification, the permittee shall purchase at its own expense and maintain in force at all times during the term of the permit, the insurance limits required by the Borough.

<b>PERMITS</b>
<b>PART 50</b>

E. Roving Vendor Permits may be issued annually to a person who commercially offers food, goods or services to the public, with or without the use of a motor vehicle, from one or more locations on public property or from no fixed location at all.

1. It is unlawful for any person to engage in the business of a roving vendor in a manner that is inconsistent with the terms of a permit issued pursuant to this chapter.
2. Roving Vendor Permits are non-transferrable.
3. The permittee shall specify on the application the name of the vending business, the name of the owner and operators, home and business address and telephone numbers of the owner.
4. The permittee shall provide a complete description of the equipment to be used for display, storage or other purposes related to the business to be conducted pursuant to the desired license, to include a description of every vehicle or trailer to be used, and all distinctive markings and signs;
  - a. Proof that the applicant has obtained a state and a borough business license in the applicant's name and the name of the business to be conducted pursuant to the desired license;
  - b. A complete description of the types of goods and services that shall be offered under the desired license and an application fee;
  - c. Proof of state vehicle registration and of insurance as required by state law to include insurance coverage of each vehicle to be used in the vending business.
5. Notwithstanding the provisions of this chapter, the director of the Community Development Department shall regulate all activities by vendors on those borough lands and facilities managed by the parks and recreation division.

4.1 Permits, authorized under paragraph 2.4, may be issued for public utility facilities across borough real property for a period not to exceed five (5) years when it is in the best interest of the borough to do so.

<b>PERMITS</b>
<b>PART 50</b>

The applicant must demonstrate that it is in the best interest of the borough to issue a permit instead of an easement.

5.1 Personal use permits may be issued for a period not to exceed one year in designated areas based on the established fee schedule.

- A. The permits are non-assignable.
- B. Cordwood is limited to ten cords per household per calendar year.
- C. Gravel and other earth material is limited to one hundred cubic yards per household per calendar year.

6.1 Following is the procedure for issuance of permits:

- A. The application on a form issued by the borough and required application fee (if any) is submitted to the borough and reviewed for accuracy and completeness.
- B. If the application is for a personal intermittent use or public use cabin permit, a determination will be made if the applicant meets qualified applicant status, the lands available for personal intermittent use or public use cabin will be identified to the applicant, the fee will be accepted and the permit issued.
- C. All other permits will be processed as follows:
  - 1. Land status is checked for borough ownership and for any reservations or prohibited uses and to determine if the area is subject to coastal zone regulations. The application will be rejected if the existing classification is inconsistent with the proposed use. The land need not be classified, if it is unclassified at the time of application.
  - 2. If the application is for use of lands under the jurisdiction of another agency (i.e. parks, sanctuaries, or ILMA's) it is forwarded to the appropriate agency for action and the applicant is notified.

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3. The application if proper is accepted by the manager and is then given a MSB case number. It is then filed in a permit file which is kept by township, range, and section with a cross index to the name of the applicant.

A request for interdepartmental review of the application will be prepared and routed for the purpose of identifying problems or conflicting plans which other borough departments may have with the proposed permit or area of use. If the property is located within a community council area, a request for review similar to the interdepartmental review package will be prepared and provided to the council.

4. Any proposed use which may be potentially damaging to the environment or hazardous to the health, safety or welfare of the public must be carefully reviewed. Discretion should be used when coordinating with other agencies which, by law or other authority, share jurisdiction over the use. Examples of these types of activities include storage of flammable or explosive materials, activities in zones of suspected geological hazards, use of a material site for target practice, and activities which may significantly affect anadromous fish habitat.

Review and approval by the appropriate agency is mandatory when the activity applied for is within a game refuge, critical habitat area, coastal management zone, or other area designated "special use."

In cases where the application is sent to other agencies, the applicant is notified that additional review time will be required. The applications forwarded to the appropriate agency for review with a request for response within 15 working days. If agency review is mandatory, no permit will be issued without concurrence and failure of the agency to respond must be deemed non-concurrence. Where a review is elective, the notice will give the agency 15 calendar days to respond, and a non-response will be deemed a non-objection. Comments are reviewed and appropriate special conditions added to the permit.

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<b>PERMITS</b>
<b>PART 50</b>

5. The permit is either issued, denied or the review period extended within a 30-day period. The permit or application denial is signed by the manager or his designee with any necessary stipulations or conditions.
6. If the application is denied, the applicant must be informed of the reason for denial. The applicant then has the right to reconsideration of such denial according to MSB 23.05.090.
7. The user fee is collected. It is not effective until signed by the applicant and returned to the office issuing the permit, with the user fee and bond or other security if required, and signed by the authorized officer. The applicant's failure to sign and return the permit within 30 days of receipt constitutes their rejection of the conditions of the permit.
8. A copy of the issued and signed permit will be filed in the TRS file.
9. A permit may be revoked or altered by serving notice directly upon the permittee. If the revocation is pursuant to a special use designation per paragraph 2.6 above, the revocation is not effective until 30 days after notice of the designation has been published.
10. A notice revoking a permit under paragraph 2.5 of this section shall be signed by the Manager. The notice shall be sent by certified mail, return receipt, and shall be considered delivered when postmarked or when receipted by permittee if delivered by hand.
11. Normally, a field inspection must be conducted as a condition of releasing a bond or security deposit. If the inspection indicates that the activity violated the stipulations of the permit, the permittee shall be given an appropriate length of time to take corrective action. If subsequent inspections indicate that the permittee remains in violation, the bond shall be revoked and the monies used to minimize adverse effects.

<b>PERMITS</b>
<b>PART 50</b>

12. A permittee may be given up to 30 days to remove any improvements and do site restoration work. At his discretion, the Manager may extend this time period due to adverse weather conditions or any extenuating circumstances. Failure to remove any improvements or to restore the site may result in filing a civil or criminal complaint or both by the borough attorney.

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

<b>QUALIFIED APPLICANT AND BIDDER</b>
<b>PART 55</b>

- 1.1 Authority: 23.10.090
- 2.1 Only a qualified applicant or bidder may participate in any of the borough's real property programs or use borough-owned real property by application.
- 3.1 In order for an applicant or bidder to obtain qualified status the applicant must complete a qualified applicant/bidder statement which attests to and meets the criteria required by MSB 23.10.090.
- 3.2 An interdepartmental review is initiated and the qualified applicant/bidder statement submitted will be reviewed by other departments to notify of any issues with the applicant request.
- 3.3 Any applicant or bidder whose qualification statement conflicts with the Matanuska-Susitna Borough records will be notified and given an opportunity to supply additional information to clear up misunderstandings or misidentifications, or remedy the conflict.

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

<b>REAL PROPERTY: Acquisition and Exchange</b>
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- 1.1 Authority: 23.10.275
- 2.1 Introduction. This section describes the borough policy and procedure to provide guidance in acquiring and exchanging real property interest for public purpose. This section does not encompass the planning and engineering process leading to the determination to proceed with an acquisition or exchange, but is limited to the real property function of ownership identification, appraisal, real property solicitation, negotiation and condemnation. These procedures apply to all real property acquisitions and land exchanges by the borough excepting road right-of- way easement and public access.
- 2.2 Policy. It is the policy of the borough that all property owners shall be dealt with fairly and equitably in the acquisition or exchange of land or interests therein. Only a willing seller and willing buyer relationship shall be used to acquire or exchange land under this chapter unless another method such as condemnation, eminent domain, or prescriptive rights is approved in advance by the assembly. Settlements shall be based on the concept of fair market value in accordance with MSB 23.10.060(B), unless otherwise provided. Negotiations with prospective sellers will continue in good faith as long as reasonable hope of a settlement exists.
- 2.3 Implementation via public solicitation. Once a need is identified for acquisition or exchange of real property, the community development department may prepare a scope of work for a proposal to be solicited through the purchasing division. Acquisitions or exchanges may be offered through a formal public solicitation.
- A. The public solicitation shall contain at a minimum:
1. Intended use of the property and desired location proximity;
  2. desired development characteristics, such as size of property, physical needs, proximity to utilities and condition of access; and



<b>REAL PROPERTY: Acquisition and Exchange</b>
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3. identified source of funding, or pool of borough land potentially available for exchange.
- B. Solicitation within a minimum radius of one mile of the needed site for public facility must be used in any proposal seeking acquisition or exchange of property under this procedure. The advertised period for the request for proposal shall not be less than 30 calendar days. Notwithstanding public notice requirements as adopted in MSB 23.05.025, community development shall, in conjunction with the advertising period, provide public notice of the offering for not less than 30 calendar days to a mailing area as described in public notice procedures.
- C. In addition to the requirements of MSB 23.10.090 and MSB 3.08, to have a responsible, responsive proposal, a proposer is required to include in the proposal document at a minimum:
1. The property owner's willingness to sell;
  2. the proposed offer submitted by the property owner shall be effective for a period of 120 days from date of acceptance by the borough;
  3. the submission of a current title report;
  4. authorization of entry by the owner to allow inspection and assessment of the site for utilization; and
  5. verification of property ownership and/or authority to act on behalf of owner.
- D. Evaluation of responsible and responsive proposals received shall be weighed on the following minimum criteria;
1. Location of the property offered with additional weight placed on properties located closer to the desired location;
  2. the potential for intended development of the property;
  3. a title report showing the ability to deliver marketable title, free

<b>REAL PROPERTY: Acquisition and Exchange</b>
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and clear of liens and encumbrances, including only covenants, restrictions, reservations, and easements acceptable to the borough; and

4. environmental and physical characteristics of the property offered which are acceptable to the borough.

E. If less than two qualified and responsive proposals are received by the borough through the request for proposals, a best interest finding must accompany any recommendation to acquire or exchange a single property.

#### 2.4 Implementation via Agent

A. Once a need is identified for acquisition or exchange of real property, if the borough manager makes a determination that the use of a public solicitation is impracticable, will not serve the best interests of the borough, or will unduly restrict or impede the borough's bargaining position in acquiring/exchanging property, the community development department may act directly for the borough or hire a third party real estate agent or broker to act on behalf of the borough to acquire or exchange property.

B. A third party real estate agent or broker may be instructed to represent the borough as an unnamed client and the borough may hire multiple agents or brokers.

C. Notwithstanding MSB 3.08, hiring a third party real estate agent or broker and/or acquisitions or exchanges of land under this procedure may be accomplished through direct negotiation with a qualified individual or firm.

#### 2.5 Property Evaluation

A. Upon one or more parcels being identified for public purpose in accordance with 2.3 or 2.4 of this section, the community development department shall coordinate with the capital projects department to establish a team made up of a land manager, civil engineer, project manager, and transportation planner to internally evaluate the parcel(s), including at a minimum, the following criteria:

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1. Access to/from site and cost to develop
2. Proximity to utilities and cost to develop
3. Environmental assessment and requirements
4. Geotechnical assessment
5. Site preparation cost / tree removal plan

B. Once internal evaluations are satisfactorily completed, the borough shall then select the appropriate contractors to conduct those assessments necessary. Contractors shall perform their assessments in conformance with the scope and limitations of local, state and federal industry standards.

2.6 Appraisal. Once a property has been identified in accordance with 2.3 or 2.4 of this section, or anytime the community development director deems necessary to appraise a property, the community development department may contract for a third party appraisal. The appraiser shall be selected by the borough based on the appraiser being able to meet borough qualifications, and Uniform Standards of Professional Appraisal Practice (USPAP) standards, and be licensed by the state of Alaska pursuant to A.S. 08.87.100. The borough shall submit payment for the appraisal and provide appraisal instructions to the appraiser. If the appraised value of the property is expected to exceed \$500,000 the appraisal must be done by a Member of the Appraisal Institute (MAI) certified appraiser.

A. Owners shall be advised of the commencement of the appraisal and be afforded the opportunity to present any evidence through the borough, deemed pertinent to their property and such evidence shall be duly considered by the appraiser. A borough representative may be present during the appraiser's site visit.

B. The appraiser shall employ recognized appraisal techniques to insure that the valuation is unbiased and is fair and equitable to both parties.

2.7 The borough government may waive the requirements of 2.3 of this section, when acquiring property within a quarter mile of existing borough real property or borough facility when the purpose is to improve, make more feasible, or expand an existing facility. The valuation of such transactions may be conducted as contained within MSB 23.10.060(B).

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- 2.8 Purchase Offer. Upon completion of the property evaluation, appraisal and/or environmental assessment, the borough shall provide the property owners with the information upon its receipt. The borough's offer at first contact shall be the full estimate of the market value supported by the value as determined in accordance with MSB 23.10.060 (B) with no further concession. The desired result will be to produce a settlement equitable to the parties.
- 2.9 Negotiation. Negotiations shall continue until either a settlement is effected or an impasse is reached and in an effort to achieve the former, any information which may come to light that was not known or considered at the time of valuation shall be examined to determine its effect on the fairness of the valuation. If justified, adjustments in the valuation may be made.
- 2.10 Exclusions. Unless otherwise prohibited by code, this section does not apply to acquisitions or land exchanges when:
- A. The other party to the transaction is a public agency, such as federal, state, or local government and acquiring or exchanging real property is for the purpose or interest intended for use as a public right-of-way or public use easement; or
  - B. Acquiring property near an existing facility or borough property for the purpose to improve, make more feasible, or expand an existing or new borough facility.
- 2.11 Exclusions shall not be applicable without the prior approval of the community development director. Violation of this section or failure to obtain prior approval of the community development director shall result in recording of a notice of non-compliance or lien against the affected taking.

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

<b>ADL LESSEE PURCHASE OF THE FEE SIMPLE ESTATE FOR LANDS 10 ACRES IN SIZE OR SMALLER</b>
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1.1 Authority: 23.05.030  
23.10.020  
23.10.060

2.1 This section applies to borough lands, ten acres in size or smaller, which are subject to pre-existing Alaska Division of Lands (ADL) leases where the lessee wishes to extinguish the lease and purchase the fee simple estate at fair market value (FMV).

2.2 These procedures give existing ADL lessees an abbreviated process to purchase.

A. Lessee must comply with all steps outlined in the “Applications: Filing & Acceptance” policy and procedure.

B. According to the ADL lease, the applicant is responsible for properly locating improvements on the leasehold.

1. Applicants may request the borough waive the as-built survey requirement only under the following conditions:

a. the borough will not be financing the sale; or

b. the parcel is an unimproved island or parcel of land;  
and

c. the applicant is willing to sign an acknowledgement at closing, accepting the property without providing an as-built survey.

C. The applicant shall order, and pay the cost of, a fee appraisal from a list of borough approved appraisers. The borough will prepare a list of borough approved appraisers. The borough will prepare appraisal instructions as follows:

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1. The date of valuation will be the date of the appraiser's inspection. The value will be the fair market value of the land; and
  2. The property rights to be appraised are the fee simple unimproved estate.
- D. The Borough Assessor may review and comment on the appraisal for deficiencies in the report. The borough is not obligated to accept the appraiser's opinion of value for the applicant to purchase the land and the borough will notify the applicant in writing within 30 calendar days of after receipt of the report of its acceptance or rejection. The applicant may submit a written request to the manager to reconsider the appraised value of the land.
- E. The appraised value, subject to reconsideration, shall be the purchase price of the property.
- F. The Borough prepares a purchase agreement stating the terms of the sale by either case or by terms. The purchase agreement is sent to the applicant by certified mail or any other means as agreed on by the applicant. The applicant will have 10 calendar days to sign the purchase agreement, and any other associated documents required, and return to the borough with certified funds for the down payment if borough financing is requested.
- G. In the event the applicant requests borough financing, at a minimum the following will be required.
1. A survey will be required showing all improvements on the property and their distances from lot lines and waterbodies. Improvements may include, but are not limited to, structures, wells, septic systems, fences, and driveways.
  2. If the parcel of land is vacant, unimproved land, a survey will not be required if the applicant is willing to sign an acknowledgement at closing, accepting the property without providing an as-built survey.

**ADL LESSEE PURCHASE OF THE FEE SIMPLE ESTATE  
FOR LANDS 10 ACRES IN SIZE OR SMALLER**

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3. Applicants shall bear the expense of survey and costs required to remedy any violations of Title 17 Zoning and meet Title 43 Platting requirements.
  4. Applicant shall demonstrate an ability to repay the amount financed according to borough lending practices.
  5. Applicant shall submit with the purchase agreement a down payment of at least 10 percent of the purchase price.
  6. Applicant shall pay all costs necessary for a title policy insuring the borough's deed of trust in a first lien position and may include bank or other fees to subordinate existing loans or liens to the Borough's deed of trust.
- H. The applicant shall be responsible for all closing costs including, but not limited to, recording fees, taxes and special assessments.
- I. Should the applicant decide not to complete the purchase, the applicant may continue to lease under the terms and conditions of the existing lease. The borough will not be responsible to reimburse to the applicant any costs associated with the requirements to purchase.
- J. The application may be terminated by the Borough by written notice to the applicant for delays caused by the applicant.
- K. Conveyance will be by quitclaim deed.
- 3.1 Approval of sale. The Matanuska-Susitna Borough Assembly does hereby approve the sale of the fee simple estate, at FMV, where the ADL lessee has met the requirements of the policy and procedure entitled "Purchase of The Fee Simple Estate, For Lands Ten Acres in Size or Smaller, by ADL Lessees."

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

<b>REAL PROPERTY: Homesteads</b>
<b>PART 60</b>

- 1.1 Authority: 23.10.240
- 2.1 This section addressed the conveyance of land pursuant to the homestead program.
- 3.1 A homestead is a parcel where an entry permit is awarded to an eligible person selected by non-gaming lottery or sealed bid and where title to the parcel is acquired after compliance with the homestead program. Homesteads by lottery remain homesteads, not lottery parcels.  
  
When offering homestead parcels, a 30 day application period will occur. At the close of the 30 day period all parcels receiving only 1 application will be sold to the applicant utilizing the purchase by application procedure. Those parcels receiving 2 or more applications will be sold by either the non-gaming lottery or sealed bid procedures. The determination for using either the non-gaming lottery or the sealed bid procedures will be made by the assembly by resolution.
- 3.2 It is the general policy of the borough to place the homestead parcels closest to the available subdivision access and on borough patented lands whenever possible. However, other factors, such as poor soils, topography, and the availability of utilities, may influence the location of homestead parcels. As the homestead program requires successful applicants to live on the land and make improvements while other types of disposals do not, homesteads parcels should have the highest overall suitability for immediate residential use.
- 3.3 It is conceivable that some areas of the borough, because of their recreational, industrial, commercial nature will have no homesteads. Others, because of their overall suitability, might contain a very high percentage of homesteads. Agriculture homesteads will be subject to current agriculture requirements and policies.
- 4.1 Homesteads parcels shall be no greater than 40 acres or a minimum allowed by code.



**REAL PROPERTY: Homesteads**

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- 4.2 All successful applicants are given a letter at the lottery and must sign a receipt for the letter. The letter may include the following:
- A. A list of the kinds of proof acceptable for the verification of their qualifications to receive a homestead entry permit which may include, but not be limited to that information requested under the qualified applicant and bidder procedure.
  - B. An explanation that the applicant has 60 days from the lottery date (a date which may be identified and specified) to submit the necessary proof of Alaska state residency. It should be clearly stated that if the applicant fails to respond within that 60 day period, his case file will be closed automatically (unless appealed) and the parcel will be offered over the counter. Extensions of time may be granted for a good cause and requests must be submitted in writing.
  - C. The address and name of the office with which the applicant should correspond.
- 4.3 The policy of the land and resource management division on granting extensions of time to meet homestead construction and/or occupancy requirements is as follows:
- (1) Except as provided in paragraph 3 below no extension of either requirement is granted unless both the substantially completed dwelling and progress requirements are met. All requests for extensions must contain reasonable evidence (such as photographs, witness's statements, affidavits, inspection reports) showing the construction status at the time of the request. Information such as foundation type, construction method, insulation, heating and cooking facilities, and sewage facilities is helpful to the director in making a determination.
  - (2) Providing the requirements of paragraph one above are met:
    - (A) Extensions to complete construction requirements are granted for one construction season with the total extension not to exceed one year. The length of an extension is determined as follows:

Permits that expire during the period of July 1 through

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**REAL PROPERTY: Homesteads**

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November 1 are extended for one year. Permits that expire during the period from November 2 through June 30 are extended until November 1.

- (B) An extension to meet occupancy requirements is granted for one year, provided that the occupancy requirement is capable of being satisfied within that extended period. In addition to the information required in paragraph one, all requests for occupancy extensions shall contain an affidavit attesting to the occupancy accumulated up to the time of application.
- (C) If extensions under both (A) and (B) are granted, they will run concurrently.
- (3) If the holder of an entry permit dies during the permit period, the interval between the death and the settlement of the estate, or two years, whichever is less, shall be added to the permit period. Additional extensions may be granted upon a showing of justifiable delay in the estate settlement.

4.4 Title to the homestead parcel will be conveyed upon compliance with:

- (1) occupancy of the land for at least 5 months of each calendar year for a cumulative total of no less than 35 months within the 7 year period following issuance of the homestead entry permit;
- (2) erection of habitable, permanent, single-family dwelling on the homestead, which meets all applicable state and local regulations, within five years of the date of issuance of the homestead entry permit; for the purposes of this paragraph, mobile homes are not considered to be permanent dwellings unless they are placed on a permanent foundation;

and:

- (1) the permit holder shall be fully responsible for all survey and platting costs to comply with borough subdivision laws;
- (2) the permit holder presents proof that a habitable, permanent single-family dwelling has been constructed, evidenced by a certificate of inspection from an appropriate borough official or proof that the permit holder has requested an appropriate borough official to make

**REAL PROPERTY: Homesteads**

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such an inspection; “habitable, permanent, single-family dwelling” means a structure or mobile home, suitable for year round occupancy with at least 200 square feet of space built or placed on a permanent masonry or treated wood foundation with sanitary facilities meeting Department of Environmental Conservation (DEC) requirements, and meeting the local building codes, if applicable; and

- (3) the permit holder presents proof that the parcel has been occupied by the permit holder or members of his/her household for a cumulative total of 35 months; or
- (4) occupancy of the land for at least 14 consecutive months and payment for the parcel, or the permittee may claim a non-financial credit for any work completed and may request to purchase the parcel. The non-financial credits shall be awarded if the permittee has made substantial efforts to comply with the development requirement of the program when substantial is defined to be at least 50 percent completion of a habitable, permanent single family structure suitable for year-round occupancy.

4.5 Terms of payment will conform to installment payments as provided by the land and resource management division. The purchase price of each homestead parcel is the total of its prorated surveying and platting costs as described below.

All costs of surveying and platting are assessed against the homestead parcel and will include all costs incident to the design of the subdivision as well as the cost of field survey and monumentation of the lots. These costs will be prorated among the lots on the basis of acreage within each lot or on the basis of road or water frontage whichever is more equitable.

4.6 When the permittee has complied with and satisfied the occupancy and dwelling construction requirements, he contacts the appropriate borough office and the following procedures are followed:

- A. The land and resource management division sends the permittee a homestead packet. This packet includes a Request for Deed form, the Homestead Entryman’s Affidavit of Occupancy form, and a minimum of three Witnesses’ Affidavit of Occupancy forms (see sample pages 2-5). Witness affidavits should be executed by disinterested and unrelated parties who reside in the area and can

<b>REAL PROPERTY: Homesteads</b>
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support the permittee's claim.

- B. After all the appropriate forms are executed and returned; the land and resource management division schedules and conducts a field inspection of the homestead. Following the field inspection, a recommendation for approval or denial is made on a Report of Inspection form. Either recommendation is accompanied by a completed explanation. The community development director reviews the recommendation and case file, and countersigns the recommendation to verify this review.

A copy of the field inspection report shall be mailed by certified mail to the permittee. The permittee shall have 30 days, from the receipt of the report to respond to the inspection report.

- C. The completed case file, recommendation, permittee's comments, and cover letter is then reviewed and either approved or denied by the community development director.
- D. If approved, the file is forwarded for processing. The land and resource management division notifies the permittee of his purchase options and after receiving a response, prepares the documents to convey title to the permittee.
- E. If denied by the community development director a written response is prepared and mailed by certified mail to the permittee. The permittee may appeal the decision of the community development director per the adopted appeal procedure.

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

<b>REAL PROPERTY: Lands Available for Disposal</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.05.030
- 2.1 This section addresses the method to be used by the land and resource management division to develop a pool of borough-owned lands for disposal, which may or may not require further approval by the assembly depending on the parcel value and method of disposal if over \$25,000 fair market value disposal by lottery or would require further approval by the assembly.
- 2.2 This section does not apply to the sale, lease, or management of resources, such as minerals, earth materials or timber, when the borough will continue to own the land or has reserved the resource from a previous conveyance.
- 3.1 The land and resource management division shall complete preliminary condition of title analysis, or update existing analysis, ensuring parcel is borough owned land.
- 4.1 The land and resource management division shall determine if the land classification, previously classified, is consistent for a disposal. Review of existing classifications older than five years may be in order due to changing conditions or surrounding use patterns.
- 5.1 The land and resource management division shall complete a highest and best use analysis of each parcel. The analysis will be used to indicate if a parcel should be considered for either classification or reclassification to a use consistent for a disposal.
- 6.1 If the recommended classification is not consistent with the existing classification, or no classification exists, the classification must be a use as defined in MSB 23.05.100 and processed as required by MSB 23.05.030(E).
- 7.1 Based on the highest and best use analysis and the classification, an estimated present value will be made.
- 8.1 The estimated present value and the method of disposal will determine the additional approvals necessary.

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LAND AND RESOURCE MANAGEMENT DIVISION  
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<b>REAL PROPERTY: Less Than Fair Market Value Sales and Leases</b>
<b>PART 60</b>

- 1.1 Authority: 23.05.030  
23.10.060  
23.10.180
- 2.1 This section describes the borough policy towards the sale or lease of borough-owned property at less than fair market value.
- 3.1 Fair market value, as defined under 23.05.150, shall be the basis for establishing the property value within this title except when one of the three following purposes may permit the use of less than FMV:
1. Economic, through a beneficial industrial or commercial enterprise; or
  2. Public health, safety, and welfare purposes; or
  3. Public purposes.
- 4.1 Economic. As it is the intent of this policy to encourage economic growth the borough may offer, as an incentive, borough-owned property for sale or lease or otherwise convey for less than fair market value for a beneficial industrial or commercial enterprise, as defined within 23.05.150. In order to receive this consideration, an industrial or commercial enterprise must also meet the best interest requirements of 23.05.030(G) and 26.05.060.
- 5.1 Public Health, Safety, and Welfare. Less than fair market value may be available when the purpose of an application for borough property is in furtherance of the public's health, safety, and welfare, as defined within MSB 23.05.150, which the borough would otherwise be required to perform by local ordinance or state law. Public Health, Safety, and Welfare purposes must also meet the best interest requirements of 23.05.030(G).
- 5.2 Public Purposes. Non-profit corporations, associations, clubs and societies, or community service organizations. Less than fair market value may be available when the purpose of an application for borough property is to provide for charitable, religious, scientific, educational, youth encampment, or other public purpose as defined within MSB 23.05.150. Charitable, religious,

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scientific, educational, youth encampment or other public purposes must meet the best interest requirements of MSB 23.05.030(G).

6.1 In order to make a less than fair market value determination a best interest finding must be completed.

7.1 For all disposals at less than fair market value, the borough shall retain the right to have the title revert to the borough or the lease terminated in the event the property is no longer used for the purpose approved, subject to environmental assessment and clean-up.

8.1 Fees. Established cost for real property at less than fair market value disposals shall be determined by the assembly. The minimum fee to be paid to the borough for:

A. A sale at less than fair market value shall be the greater of \$500 or a range between 50% and 90% of the market value which shall be determined by the Assembly.

B. A lease at less than fair market value shall have an annual lease rate as follows:

1. For a beneficial industry or commercial enterprise as defined under Section 4.1 above, the annual rate shall be 5% of the fair market value, or \$500.00, whichever is greater.
2. For public health, safety, and welfare or public purposes as defined under Sections 5.1 and 5.2 above, the annual rate shall be 2.5% of the fair market value, or \$500.00, whichever is greater.

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<b>REAL PROPERTY: Lottery By Gaming</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.05.030  
23.10.200
  
- 2.1 This section applies to the disposal of borough land by gaming lottery. The gaming land lottery shall be conducted in accordance with AS 05.15 and 15 [ACC 105] AAC 160.
  
- 2.2 A gaming land lottery winner is given a parcel of land as a prize. The property is subject to the conditions of patent, reservations of record, and payment of appropriate taxes.
  
- 2.3 Parcels chosen for disposal by gaming lottery will be selected from the borough's inventory of properties available for disposal. No more than five parcels shall be offered as prizes at one time.
  
- 2.4 Participants in the gaming land lottery must be 18 years of age or older and meet the qualified applicant criteria as defined by MSB 23.10.065. The members of the borough assembly, borough manager, borough mayor, community development director, and staff directly involved in the land lottery are not eligible to participate.
  
- 3.1 Official rules governing the gaming land lottery shall be made available for each participant. The official rules shall state eligibility requirements; when, where, and how the drawing will take place; how the borough will convey the property; and what the winners of the gaming land lottery are responsible for.
  
- 4.1 The following procedures apply to the conduct of the gaming land lottery.
  - A. A budget that outlines the estimated costs for the project and the assessed land values is drafted to assist in establishing criteria for the disposal of property.
  
  - B. An account is established for the deposit of ticket sale receipts.



<b>REAL PROPERTY: Lottery By Gaming</b>
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<b>PART 60</b>
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- C. A Gaming Permit is obtained from the State of Alaska, Department of Revenue.
- D. State and federal regulations pertaining to lotteries and gambling activities are reviewed for compliance. This should include postal regulations, IRS requirements, FCC requirements, and state gaming regulations.
- E. Parcels of land chosen as prizes are from the borough's inventory of properties available for disposal. Photographs of each parcel should be taken for advertising purposes. The parcels are subject to interdepartmental review and comment from the appropriate commission, and final approval for disposal by the assembly.
- F. A schedule for the sale of land lottery tickets and the date of the drawing are established.
- G. The official rules for the lottery are drafted and approved by the borough attorney.
- H. A primary location is identified for conducting the lottery and sales. A time and place for the lottery drawing is also reserved.
- I. Arrangements are made to sell tickets in various locations such as community festivals, community booths at malls, and other areas around the borough.
- J. Locations for tickets sales are secured. An informational letter that outlines the lottery program and important dates is mailed to each ticket seller.
- K. A marketing strategy is completed to determine where and when advertising is needed. Designs and information for advertisements are prepared. Arrangements are made with the printers, newspapers, magazines, and other outlets that include dates and size for advertisements. Deadlines are established for each phase of advertising; camera ready copy, printing, delivery to agency and publication. All printed material, including the lottery tickets must include the state of Alaska gaming permit number.

## REAL PROPERTY: Lottery By Gaming

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- L. Tickets are printed on color stock paper in sequential order. Each portion of the stub must contain the state of Alaska gaming permit number. The tickets are color coded one color for each parcel. An affidavit stating the number of tickets printed must be signed by the printer.
- M. Advertising begins two to three weeks prior to the sale of tickets. Advertising includes the dates for ticket sales, the drawing date information on the lottery parcels, and ticket sale locations. All advertising must include eligibility requirements and the state of Alaska gaming permit number.
- N. Procedures for the ticket sales are established which address cash management, lost tickets, lost cash, courier schedule, and responsibilities.
- O. A courier is selected to perform the weekly pick-up of receipts from the ticket sales from remote ticket sellers.
- P. Tickets are delivered to the ticket sellers and each location is given an information notebook that outlines the step by step procedure for sales and cash management. The supervisor of each location is given an orientation and signs a form that they have received the information and the tickets. Posters advertising the sale of tickets in these locations are put up in doorways and other highly visible areas.
- Q. A press release is prepared and faxed or mailed to newspapers and broadcasting stations in Alaska and other media sources when practical.
- R. The sales of tickets begin. Weekly pick up of cash and checks begins a week later.
- S. Items for the lottery drawing are purchased or rented. A table, tumbler, back drop and chairs are needed. Staff or volunteers to work the event are chosen or called upon for assistance. This includes an emcee, drummer, and stage crew. Staff needed include: one person to locate matching ticket stub with the winners name and address, one person to record names, and one person to assist the mayor and take photographs.

**REAL PROPERTY: Lottery By Gaming**

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- T. Advertising is scheduled and checked during the time the ticket sales are occurring.
- U. The sales location(s) is/are prepared. Photos are printed and display items made. Arrangements for the transport of the booth to and from the site are made.
- V. A schedule for site staffing is prepared using department employees who volunteer for specific dates and times, as needed. The courier is scheduled on a regular basis to maintain consistency during high volume days (weekends). Staff members from land and resource management open and close the booth for consistency in handling the large volume of cash.
- W. The sale site(s) should be operational at commencement of ticket sales.
- X. An information packet is provided to each seller that includes property information, location of sale site(s), staffing and schedule.
- Y. The mayor (or ticket drawer) and staff are briefed on the schedule and drawing procedures.
- Z. Tickets sales at any outlying tickets sales locations are stopped one day prior to the drawing. All cash receipts and tickets are tallied and prepared for the drawing. Ticket sales at the primary location must cease at least one hour before the drawing in order to count tickets and prepare for the drawing.
- AA. A press release is sent to local newspapers and broadcasting stations informing them of the drawing time and location.
- BB. An area is set up for the drawing to include identified ticket tumbler on a table. An area near the stage is set aside for reporters and engineering equipment. A staff member is assigned to answer questions and arrange for interviews with the mayor or other borough officials.
- CC. An emcee announces the event and provides the audience with some background on the lottery then introduces the person who will pick one ticket; the stub is then matched with the main stub that

**REAL PROPERTY: Lottery By Gaming**

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contains the winner's name and address. This process is repeated until all the winners have been announced. The emcee then informs the audience that five other tickets will be drawn and held in order of drawing for each parcel as back-up in case the winner is not eligible.

DD. Once the drawing is completed a staff member telephones the winners of each of the lottery parcels (if they were not present at the drawing). A certified letter signed by the community development director is also mailed to each winner notifying them of their prize.

EE. A press release is prepared that notifies the media of the winner of each lottery parcel and briefly describes the number of tickets sold. The press release is sent to all Alaska newspapers and broadcasting stations.

4.2 Participants in the gaming land lottery need not be present to win. Winners of the gaming land lottery will be notified by certified mail. Winners must sign an Acceptance Agreement and return it to the borough within fourteen days of notification.

5.1 The property will be deeded by quitclaim subject to the conditions of the patent and reservations of record. The borough will pay for all closing costs.

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

<b>REAL PROPERTY: Lottery By Non-Gaming</b>
<b>PART 60</b>

- 1.1 Authority: 23.05.030  
23.10.200
  
- 2.1 This section applies to the sale of borough land by non-gaming lottery. A non-gaming lottery winner obtains only the right to purchase the parcel of land under the stated price, terms, and conditions of the sale.
  
- 2.2 Parcels for disposal by non-gaming lottery shall be selected from the pool of properties available for disposal.
  
- 2.3 Participants in the non-gaming lottery program must be 18 years of age or older and meet the qualified applicant criteria as defined by MSB 23.10.090.
  
- 3.1 Official rules governing the non-gaming land lottery shall be made available for each participant. The official rules shall state the eligibility requirements; when, where, and how the drawing will take place; how the borough will convey the property; and what the winners are responsible for.
  
- 3.2 The non-gaming lottery disposal application fee is non-refundable except when an application is accepted on properties which are withdrawn from the lottery after the printing of the brochure. This information is provided to the prospective applicant through the regulations governing such sales, the brochure, and the application itself.
  
- 4.1 Applicants for a non-gaming lottery sale need not be present to win. Upon notification of their winning, applicants who are not present to win must provide their acceptance to the borough in writing within ten days after receipt of notification letter. Acceptance must be received by purchasing agent at the address shown on the application.
  
- 5.1 A land sale by non-gaming lottery will proceed as follows:
  - A. The time frames for filing applications and holding the actual lottery are established.
  
  - B. A brochure is made available for the public which contains

## REAL PROPERTY: Lottery by Non-Gaming

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information pertinent to the land being sold, terms of the sale, and any conditions or restrictions which are applicable.

- C. Applications are made on the forms available online or at the borough purchasing division. All applications must be accompanied by the application fee. The application and application fee, and the certification must be submitted together.
- D. Three copies of the application are needed. The original copy is retained by the purchasing agent (one is for the drawing, and one for generating lists and file control) and the third copy will be stamped "received by MSB date-time" initialed by MSB employee and returned to applicant.
- E. Lists will be generated prior to the lottery drawing to include the following:
  - 1. an alphabetical listing of all applicants;
  - 2. an alphabetical listing of all applicants and all parcels for which an applicant applied. This list is posted for public review prior to the drawing;
  - 3. a listing of all parcels, in numerical order, with the applicants listed alphabetically by parcel;
  - 4. a listing of all parcels in drawing order with the respective number of applicants for each.
  - 5. administrative personnel to receipt deposits.
- F. If, prior to the start of the non-gaming lottery, a member of the public complains that they applied for a particular parcel but their name does not appear on the appropriate list, proceed as follows:
  - 1. Re-check envelope confirming receipt.
  - 2. Allow the person reasonable time to provide proof of their application.

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3. If the person cannot provide the necessary proof, proceed with the drawing. An aggrieved non-gaming lottery participant may appeal to the manager under MSB 23.05.090.
  - G. Prior to the beginning of the non-gaming lottery the land and resource management division representative in charge presents a complete explanation of the procedures, policies, and rules to be followed. Any errata information is presented at this time as well.
  - H. Parcels are drawn first in the order of popularity, the parcel receiving the highest number of applications being drawn first. In the event of a tie, the parcel with the lowest parcel number is drawn first. Disputed parcels dropped from the regular order due to protest are drawn last, or at the end of their section, if the problem has been resolved.
  - I. When an application is drawn and handed to the announcer, the announcer reads off the name and parcel number and passes it to the persons preparing the list. The list prepared under 5.1 of this section is checked off first to see if the winner has previously been drawn. The number of the parcel is written next to the winner's name. The other lists are marked appropriately and the application is finally put in the MSB file. Five applications are to be drawn in the event an applicant cannot complete the real property transaction. In the event the first applicant does not complete the transaction, the second application will be provided this opportunity and then the third, fourth, and fifth.
  - J. At the end of the lottery an announcement is made that any parcels not receiving applications may be included in any over-the-counter sales.
- 5.2 The winners will be notified of their selection and sent a purchase agreement.
- 5.3 The winner will execute the purchase agreement to indicate acceptance of the price, terms and conditions of the sale and return to the borough by certified mail within ten days with the appropriate deposit.
- 5.4 The sale will be closed based on the price, terms, and conditions of the

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**REAL PROPERTY: Lottery by Non-Gaming**

**PART 60**

purchase agreement.

- 6.1 Any parcels which have selected winners, but the winner fails to execute the purchase agreement, may be added to any over the counter sale.



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

<b>REAL PROPERTY: Outcry Auction</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.05.030  
23.10.190
- 2.1 This section addresses the lease or sale of borough land, or an interest in borough land, by outcry auction.
- 3.1 A bidder must meet the criteria of qualified bidder requirements set out in MSB 23.10.090.
- 3.2 A bidder must meet any special requirements of the particular auction being bid.
- 4.1 Should the high bidder not qualify, the sale or lease may be offered and awarded to the next highest bidder qualified and willing to accept the contract. The sale or lease price will be their high bid. This process continues until a deposit is received. If there are no willing and qualified bidders, the parcel may be offered over-the-counter.
- 4.2 The land management division will maintain a master auction file for each auction, with duplicates made as necessary.

Each auction file should, in a minimum, contain:

- a) Successful bidder's list with sale prices;
- b) Auction brochure with all property information and maps as necessary;
- c) Bidder's list (sign-in sheet);
- d) Certification that auction was held;
- e) Delegation of authority to hold auction;
- f) Decisions and findings;
- g) Planning reports, classification orders and other enabling actions;
- h) Soil data or soil survey, if agricultural;
- i) Copies of complaints, appeals, advertising copy and public comments;
- j) Public hearing notice, legislation authorizing the auction, documentation for all decisions /changes concerning the auction.

## REAL PROPERTY: Outcry Auction

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- 5.1 Parcels for this chapter shall be selected from lands and resources approved for disposal.
- 6.1 Procedure for conducting a disposal of land, or an interest in land, by auction may include:
- A. Upon approval by the manager or assembly, as the case may be, an auction brochure is prepared which presents pertinent information about the sale to any interested party. The brochure is made available to the public a minimum of four weeks prior to the auction date. Copies may be obtained by contacting the borough land and resource management division. Information contained in the brochure may include, but need not be limited to, the following:
1. Auction title and number, date, time and location including specific times, as applicable, for pre-qualification session, registration, and briefing;
  2. Type of disposal, requirements, and restriction;
  3. The terms of the sale including the required down payment, how interest rate will be determined, qualified applicant status;
  4. Statutory and regulatory eligibility requirements;
  5. General description of lands involved, including the number of parcels and the approximate size of each;
  6. Sketch maps or plat reproductions, which should be of sufficient scale to locate the parcel, access to the parcel reserved easements, right-of-way, and any other dedications;
  7. A statement explaining the order that the parcels will be up for bid (it may be by parcel number in ascending or descending order).
- B. An auction sale notice is prepared. The notice shall contain, but need not be limited to, the following:
1. A note explaining the availability of the brochure, and its purpose;

**REAL PROPERTY: Outcry Auction**

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2. A statement on the right to postpone, adjourn, or annul the auction in part or in whole;
  3. A reservation of the right to waive technical defects in the publication;
  4. Who to contact for further information.
- C. The land and resource management division will coordinate the following;
1. Locate a facility and prepare it for auction with arrangements made well in advance of the scheduled disposal date;
  2. Provide adequate seating, based on anticipated and/or past participation, but including provisions for overflow;
  3. Provide support personnel including the auctioneer, one or two bid spotters, bid recorder, minimum of two clerks, and one runner.
  4. Provide a public address system; the auctioneer's voice should be clear and sufficiently loud to reach all the people in the room;
  5. Locate equipment; including adding machines, typewriter, calculators, auction bid cards, registration sheets, extension cords, tables and chairs, assorted office supplies and a large writing surface;
  6. Prepared in advance, disposal documents such as bid cards, deposit receipts, some contracts, etc;
  7. If participation of other divisions or agencies is appropriate, notify affected entities.
- D. A delegation of authority is necessary if the auction is to be conducted by anyone other than the borough manager; a briefing

## REAL PROPERTY: Outcry Auction

### PART 60

may be held prior to the auction date for a review of sale procedures.

- E. Bidders sign for their outcry bid card prior to the beginning of the bidding. Qualified bidders at least at a minimum on a 4" x 6" card with the assigned number with at least 3" high numerals.
- F. If any person is purchasing as an agent, the name of the principal being represented must be noted. The power of attorney (POA) document shall be submitted according to the bid document terms and conditions. The POA document is retained if the person is a successful bidder; and becomes part of the sale case file. Unsuccessful bidders may recover their documents after the auction.

Persons representing entities such as, partnerships, corporations, trusts, estates, joint ventures, must present proof that they are authorized to conduct the business on behalf of the entity. For example: the corporation must be authorized to conduct business under the laws of the state of Alaska, a corporate resolution affixed with the corporate seal authorizing the individual to bid and sign on behalf of the corporation and proof of good standing with the Department of Commerce and Economic Development at or before registration. The partnership agreement, either general or limited, must authorize the person to bid and sign on behalf of the partnership and the purchase of real estate must be an act authorized by the partnership agreement. Upon acceptance, the documents are held for the duration of the auction and are retained if the entity is a successful bidder becoming part of the sale case file. Unsuccessful bidders may recover their documents after the auction.

- G. The auctioneer must be plainly visible and audible. The recording sheet is displayed in the auctioneer's eyesight. There should be at least one spotter to catch any bids the auctioneer might miss. The auctioneer gives a brief introduction, explains the auction procedure and answers any questions. The auction proceeds in the order as listed in the disposal brochure. It is important that the auctioneer explain clearly how the auction is to proceed. The bidding increments to be used must be explained, as it is a discretionary power of the auctioneer to adjust the increments.
- H. When conducting the auction, the auctioneer has broad discretion to

## REAL PROPERTY: Outcry Auction

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control the auction and must exercise that authority. The auctioneer may call a recess at any time. The auctioneer initiates the bidding by calling for an offer. A bid is made by raising the bidder number card in response to the call. The auctioneer calls out the bidder's number, if possible, and asks for a higher bid. A call by the auctioneer for a specific bid does not preclude any bidder from offering any amount greater than the last bid. Such a bid is recognized by the auctioneer by repeating the offer and the bidder's number. When bidding is stopped and there are no more bids made, the auctioneer makes a final call ("going once, going twice"). The auctioneer concludes the bidding by saying "Sold to bidder #\_\_\_ for \$\_\_\_."

- I. After the final bid, the runner takes the recording sheet to the area designated for processing the bid. The auction continues until all parcels have been offered. At the completion of the auction the successful bidder turns in the bid card, completes the promissory note and receives a copy of the signed promissory note.
- J. The auctioneer may eject any spectator or bidder whose conduct interferes with the orderly proceeding of the auction and may withdraw parcels from the auction.
- K. Any aggrieved bidder must file an appeal with the borough manager in writing. The appeal must be received in accordance with MSB 23.05.090.
- L. The documents necessary to close will be prepared and closing set-up in accordance with the terms and conditions of the bid document.

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

<b>REAL PROPERTY: Over-the-Counter Sales</b>
<b>PART 60</b>

- 1.1 Authority: 23.05.030  
23.10.210  
23.10.220
  
- 2.1 Over-the-counter – A parcel offered to the general public on a first-come, first-serve basis at a date later than the original competitive offering.
- 2.2 Competitive sale refers in general to any sale by bid, i.e., sealed bid auction, outcry auction, or competitive request for proposal.
- 2.3 A parcel is considered to be available over-the-counter if it has been offered at an approved competitive sale and a bid has not been accepted, or if accepted, the transaction failed to close.
- 2.4 Public notice provided for in the previous competitive sale will satisfy the notice requirement for over-the-counter sales.
- 2.5 This section addresses the offering of a parcel by over-the-counter sale method and the procedures for handling the sale itself.
  
- 3.1 All parcels not sold in a competitive sale are eligible for purchase in a subsequent over-the-counter sale. The parcels are offered under the terms and conditions outlined in the over-the-counter sale brochure:
  - A. Parcels are made available on a first-come, first-serve basis on a purchase request form described in the sale brochure.
  - B. The purchase price is defined as;
    - 1. the minimum bid price offered in a competitive sale held within the previous 12 months; or
    - 2. if the parcel was offered in a competitive sale for more than 24 months, the fair market value (FMV) may be established by the community development director; or
    - 3. the FMV determined by a fee appraisal ordered by the borough; or

<b>REAL PROPERTY: Over-the-Counter Sales</b>
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- 4. as provided in Alaska statute and borough code and the competitive sale ordinance for tax and special assessment (LID) foreclosed parcels.
  - C. Parcels for sale may be purchased for cash or terms described in the sale brochure.
  - D. A list of all parcels to be available, showing the legal description, tax parcel number, purchase price, and the information for acquiring a brochure will be mailed to all community councils prior to the opening day of the sale. A notice of the over-the-counter sale will also be published in the newspaper prior to opening day.
  - E. Purchase request forms are submitted to the borough directly. No real estate commissions will be paid by the borough.
- 3.2 The dates for the over-the-counter sale will be listed in all advertisements and the sales brochure.
- 4.1 General procedures for over-the-counter sales:
- A. Prior to the opening of an over-the-counter sale, the land and resource management division advertises the sale and provides a brochure of the parcels offered over-the-counter for public review at the counter.
  - B. The dates and times for acceptance of the over-the-counter registration and purchase request are stated in the brochure.
  - C. All parcels will be sold on a first-come, first-serve basis to a purchaser qualified pursuant to MSB 23.10.090.
  - D. Prospective purchasers must submit a completed purchase request form, a non-refundable purchase request fee or bid deposit, as applicable, the qualification statement, and any other documents required by the sales brochure.
  - E. In the event that more than one applicant is waiting in line with purchase requests for the same parcel, and it cannot be determined who was first, those applicant names shall be taken by staff and a drawing will be held to determine priority. Applicants must remain on the premise until priority is determined.

<b>REAL PROPERTY: Over-the-Counter Sales</b>
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<b>PART 60</b>
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- F. Mail applications are acceptable. The date and time of receipt of the application in the Land and Resource Management Division shall determine priority order. All applications by mail are required to include the same complete package and fees as someone applying in person. An incomplete package will be returned to the applicant. A new priority number will be issued when the completed package is resubmitted.
- G. Upon verification of qualified applicant status under MSB 23.10.090, the applicant will be notified by the land and resource management division according to the conditions stated within the over-the-counter sale brochure.
- H. If an applicant is deemed to be non-qualified under the qualified applicant and bidder procedure, the parcel will be offered to the next qualified applicant for the remaining time in the sale period.
- I. Prospective purchasers shall perform pursuant to the terms and conditions of the bid document.
- J. A parcel is not considered awarded until qualified status is verified and the appropriate down payment is made unless otherwise provided in a tax and LID foreclosure sale.
- K. A parcel may continue to be included in subsequent over-the-counter sales until one of the following occurs:
  - 1. The parcel is sold and the transaction closed.
  - 2. The parcel is withdrawn by the manager:
    - a. due to a request to dedicate to public purpose;
    - b. to include the parcel in a competitive sale;
    - c. for any other reason deemed to be in the borough's best interest.
- L. Tax and LID foreclosed parcels will continue to be included in subsequent over-the counter sales on a first come, first served basis until sold.



<b>REAL PROPERTY: Over-the-Counter Sales</b>
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- M. If a parcel has been withdrawn, the manager may again include the parcel in a subsequent over-the-counter sale if the reason for withdrawal is no longer valid.

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

<b>REAL PROPERTY: Real Estate Broker Land Sales</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.05.030
  
- 2.1 Definitions: A real estate broker is a person currently licensed by the state of Alaska as a real estate broker in accordance with Alaska state law, as defined under AS 8.88.171.
  
- 2.2 An associate broker or real estate sales agent is a person currently licensed by the state of Alaska as an associate real estate broker or real estate sales agent in accordance with Alaska state law, as defined under AS 8.88.171, as a real estate sales person, employed by and operating under the direction and authority of a real estate broker.
  
- 2.3 Listing agreement means an exclusive right to sell contract between the borough and a real estate broker to dispose of specified borough real properties during a specified period.
  
- 2.4 Professional Services Contract (PSC) means a contract specifying the services to be performed by a broker having a listing agreement with the borough and the method of compensation for those services.
  
- 3.1 The services of real estate brokers may be used for the disposal or acquisition of borough property. Professional services are coordinated through the borough purchasing division pursuant to MSB 3.08.260 and 3.08.300.
  
- 3.2 Annually, borough purchasing may publish a request for information from real estate brokers and provide interested brokers an information packet.
  
- 3.3 Brokers may register with the borough purchasing department, their interest in submitting purchase agreements for prospective purchasers of borough property.
  
- 3.4 Registered brokers will be mailed notices of all properties selected to be sold through real estate brokers. Registered brokers may request sales packets, to include but not limited to property specifications, real estate commission, legal description, map, and appropriate purchase agreement forms, sales price and terms, the scheduled bid opening date and time for each property

**REAL PROPERTY: Real Estate Broker Land Sales**

**PART 60**

offered for sale and the procedure for presenting offers to purchase borough property.

- 3.5 Registered brokers will bring completed purchase agreements, signed by the prospective buyer, to borough purchasing on or before the scheduled bid opening date and time.
- 4.1 Land and resource management division may request broker services through a listing agreement to dispose of one or more parcels of borough real property. A request for proposal shall provide a scope of services, the evaluation criteria, broker's insurance requirements, and the parcel(s) with legal description(s).
- (a) Proposals will be evaluated by a review committee selected by borough purchasing.
  - (b) The selected broker will sign a PSC and a listing agreement. The PSC will also identify any forms, contracts, or procedures which the broker agrees to use in providing services specified by the PSC.
  - (c) The PSC will specify compensation as either a negotiated percentage of the sales price or as a fixed payment schedule per parcel.
  - (d) Land and resource management division will provide maps and property specifications and monitor performance on the listing agreement with the selected broker(s).
- 5.1 Payment for broker services is approved by the community development director and due after the property purchase transaction has closed and been recorded.

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LAND AND RESOURCE MANAGEMENT DIVISION  
POLICY AND PROCEDURE MANUAL**

<b>REAL PROPERTY: Remote Parcel Staking</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.10.170
- 2.1 This section addresses the remote parcel program.
- 2.2 Land offered for a remote parcel program shall be first classified as required by code.
- 3.1 The land and resource management division shall prepare a concept development plan of the parent parcel illustrating all of the proposed remote parcels available to be staked.
- 3.2 Remote parcels shall be surveyed in compliance with the staking instructions of the land and resource management division. All boundary adjustments in the field survey shall be in accordance with survey instructions issued by the land and resource management division.
- 4.1 An applicant must be a qualified bidder/applicant per MSB 23.10.090 to be eligible for the remote parcel program.
- 4.2 Applicants shall apply per the over-the-counter disposal procedures.
- 4.3 Applicants shall pay a \$1,000 non-refundable application fee in addition to other applicable fees and shall also be required to pay the prorated share of the subdivision costs at the time of closing. Prorated share shall be determined by number of qualified applicants.
- 5.1 The sale period shall be opened for 60 days. A minimum of 75 percent of all remote parcels offered must receive qualifying applications within the 60 day period in order for the borough to proceed with the sale. In the case where less than 100 percent but more than 75 percent of the parcels receiving qualifying applications, the borough will pay the prorated share of subdivision costs for any remaining lots without qualified applicants.
- 5.2 No person may acquire more than one parcel of land from the borough under the provisions of this section.

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

<b>REAL PROPERTY: SALES &amp; LEASES BY APPLICATION</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.05.030  
23.10.230
  
- 2.1 This section applies to sale or lease of borough land by application without competitive bid.
  
- 2.2 This section applies only to the sale or lease of borough-owned real property as described in MSB 23.10.230 (A) (1).
  
- 2.3 This section does not apply to applications for permits (MSB 23.10.100) or easements and rights-of-way (MSB 23.10.110) for which separate policies and procedures have been adopted.
  
- 3.1 Parcels for sale or lease by application shall be selected from the pool of borough-owned lands available for disposal, or requested for sale or lease by the application.
  
- 3.2 Parcels requested for disposal will meet the requirements of the adopted policies and procedures for "Classification" and "Lands Available for Disposal."
  
- 3.3 Parcels proposed for sale or lease at less than fair market value (FMV) must meet the requirements for less than FMV, best interest finding, and public notice procedures.
  
- 4.1 A purchaser must be a qualified applicant as described in MSB 23.10.090.
  
- 4.2 Once an application is accepted for processing, no additional applications will be accepted and processed for the same property.

## REAL PROPERTY: SALES AND LEASES BY APPLICATION

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- 5.1 The following procedures should be followed in general when preparing for the sale or lease of borough lands by application under the authorities cited in paragraph 1.1 of this chapter prior to acceptance of the application for processing.
- A. The application:
1. is assigned an MSB number;
  2. has a case file created, which contains the original application and any pertinent enclosures or inclusions;
  3. a more comprehensive review of the property status is made and the land is checked for any current uses, reservation, or prohibited uses and to determine if the area is subject to an existing area plan.
  4. The nature of the proposed use shall be considered. If the lands were acquired by deed, the proposed use must be consistent with any restrictions contained therein.
  5. Interdepartmental review is initiated.
  6. In the event a field inspection is necessary, and the parcel is in a remote area or accessible only by air, the applicant will be required to pay for the inspection.
- B. Where an application is submitted under MSB 23.10.230 (A) (I) (F), the applicant must also submit to the land and resource management division a letter addressed to the manager.
1. The letter will state:
    - (1) The proposed use for the property;
    - (2) How the borough will benefit from the disposal beyond receiving revenue; and
    - (3) Why the applicant does not wish to purchase through a competitive sale.

## REAL PROPERTY: SALES AND LEASES BY APPLICATION

### PART 60

2. The manager has 30 days to recommend rejection or recommend accepting an application for processing.
  3. The criteria for rejecting a land purchase application shall be based on one or more of the following:
    - (1) The application is not eligible for processing as required under MSB 23.10.230 (A) (1).
    - (2) The applicant is not a public agency or utility for facilities serving the general public, or the application's not for a beneficial new industry or commercial enterprise; or
    - (3) The application is not for a public health or welfare purpose; or
    - (4) The applicant is not a non-profit corporation, association, club, or society organized and operated exclusively for charitable, religious, scientific, educational, or youth encampment.
    - (5) The application is not submitted to remedy problems associated with an adjoining parcel which is substandard or has an unusable lot condition or for access;
    - (6) The application provides insufficient information for processing and the deficiency is not remedied within 30 days of receiving the application.
  4. If the application is denied, the applicant is provided the reason for denial. The applicant may nominate the property for a competitive sale.
- C. Upon acceptance of the application for processing, an application conference will be held to present to the applicant findings from the interdepartmental review and:

## REAL PROPERTY: SALES AND LEASES BY APPLICATION

### PART 60

1. the application processing steps are discussed with the applicant;
  2. applicant's costs are estimated;
  3. any other conditions or borough code considerations are discussed with the applicant; and
  4. the applicant pays the processing fee.
- D. If classification or reclassification is deemed necessary, the land and resource management division will follow the adopted policies and procedures for classification. Classification can be processed concurrently with other application matters which require assembly approval.
- E. A departmental recommendation is prepared and provided to the applicant, and forwarded to the manager or the assembly, as required by MSB 23.10.020, Assembly Approval of Disposal.
- F. The manager's or assembly's approval should contain the terms of the disposal, any costs or requirements which the applicant will be required to meet and any restrictions or conditions to be placed on the transaction.
- G. Based on the outcome of the decision, the land and resource management division will prepare a package to the applicant as follows:
1. If approved, a purchase agreement or contract for lease, as appropriate, will be prepared. It will incorporate the terms and conditions as approved, and set out the remaining steps and monies required to close. The original document will be provided to the applicant, with instructions that the applicant execute and return the original, along with any monies required.
  2. If denied, the applicant will be notified by certified mail with a summary of the reason for denial and a copy of MSB 23.05.090, Reconsideration and Appeals.



## **REAL PROPERTY: SALES AND LEASES BY APPLICATION**

### **PART 60**

- H. Upon the receipt of the signed agreement/contact and monies, the document will be reviewed to ensure no unauthorized changes have been made and it will be forwarded for the manager's signature.
- I. Closing of the sale or lease will take place in accordance with the agreement/contract.

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

<b>REAL PROPERTY: SEALED BID SALE</b>
<b>PART 60</b>

- 1.1 Authority: 23.05.030  
23.10.190
- 2.1 This section addresses the lease or sale of borough land, or an interest in borough land, by sealed bid which is defined as a public land sale or lease of land to the highest bidder.
- 2.2 In the event borough land or an interest in borough land is acquired through grant funding sources, sale or lease of that land or interest therein shall be subject to specific requirements of said grant funding for as long as the grant requirement remains active.
- 3.1 A bidder must meet the criteria and qualified bidder requirements set out in MSB 23.10.090.
- 3.2 A bidder must meet any special requirements of the particular land sale or lease being bid.
- 4.1 Should the high bidder not qualify, the sale or lease may be offered and awarded to the next highest qualified bidder. The sale or lease price will be their high bid. If there are no willing and qualified bidders, the parcels may be offered over-the counter.
- 4.2 The land and resource management division will maintain a master bid file for each sale/lease.

The file should, at a minimum contain:

- a) successful bidder's list with sale prices;
- b) bid brochure with all property information and maps as necessary;
- c) list of bid envelopes received;
- d) date that bids were opened;
- e) public hearing notice and signed legislation authorizing the sealed bid land sale and documentation for all decisions and changes with regard same;
- f) planning reports, classification orders and other enabling actions;

**REAL PROPERTY: SEALED BID SALE**

**PART 60**

- g) soil data or soil survey, if agricultural; and
- h) copies of complaints, appeals, advertising copy, public comments and media reports;

5.1 Parcels for this chapter, shall be selected from land and resources approved for disposal.

6.1 Procedure for conducting a disposal of land, or an interest in land is as follows:

A. Upon any required approval by the manager or assembly, a bid brochure is prepared which presents pertinent information about the sale or lease to any interested party. The brochure is made available to the public a minimum of four weeks prior to the land sale or lease date. Copies may be obtained from the borough land and resource management division or the borough website. Information contained in the brochure may include, but need not be limited to, the following:

1. land sale/lease title and bid number, date, time, and location including specific times for pre-qualification session (if appropriate), bid submission and deadline, and bid opening date;
2. type of disposal, requirements, and restrictions;
3. the terms of the sale or lease including the required down payment, how terms will be determined, qualified applicant status;
4. statutory and regulatory eligibility requirements;
5. general description of land involved, including the number of parcels;
6. sketch maps or plat reproductions, which should be of sufficient scale to locate the parcel, and included in the bid document information statements regarding access to the parcel, reserved easement, right of way, and any other dedications.

**REAL PROPERTY: SEALED BID SALE**

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- B. A sale notice is prepared. The notice shall contain, but need not be limited to, the following:
1. a note explaining the availability of the brochure, and its purpose;
  2. a statement on the right to postpone, adjourn, or annul the auction in part or in whole;
  3. a reservation of the right to waive technical defects in the publication;
  4. who to contact for further information.
- C. The bid envelopes will be dated and time stamped by the land and resource management division when received and registered in that day/time sequence.
- D. If any person is purchasing as a buyer's representative, the name of the principal being represented must be noted on the bid form and a recorded power of attorney (POA) on a form provided in the bid brochure shall be presented with the bid and is reviewed by staff as to form and content. If determined to be legally acceptable, the POA is held for the duration of the auction. The POA is retained if the person is a successful bidder; and becomes part of the sale case file.

Persons representing entities such as, corporations, trusts, estates, joint ventures, must present proof that they are authorized to conduct the business on behalf of the entity. For example: The corporation must be authorized to conduct business under the laws of the state of Alaska, a corporate resolution affixed with the corporate seal authorizing the individual to bid and sign on behalf of the corporation, and proof of good standing with the Department of Commerce and Economic Development at or before registration. The partnership agreement, either general or limited, must authorize the person to bid and sign on behalf of the partnership and the purchase of real estate must be an act authorized by the partnership agreement. Upon acceptance, the documents are held for the duration of the auction and are retained if the entity is a successful bidder, becoming part of the sale case file. Unsuccessful bidders may recover their documents after the auction.

- E. The purchasing agent opening bids must be plainly visible and audible. A recording sheet is prepared for the bid recorder. The purchasing agent gives

**REAL PROPERTY: SEALED BID SALE**

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a brief introduction, explains the procedures and answers questions, and then proceeds by opening the bids in parcel number order.

- F. After the final bid for a parcel is opened the purchasing agent will announce the apparent high bid and proceed to the next parcel.
- G. Following opening of the final bids the purchasing agent will announce that all bids are being taken under advisement.
- H. If a successful bidder fails to: (a) make the required deposit, or does not otherwise meet the bid requirements, the parcel bidding is reopened and the next highest bid reviewed; or (b) sign a promissory note at a tax and LID foreclosure sale, this process continues until a bid is accepted on all parcels, or there are no bids or parcels remaining.
- I. The apparent successful bidder will be given specific instructions by land and resource management staff for closing.
- J. Any aggrieved bidder must file an appeal with the borough manager in writing. The appeal must be reviewed in accordance with MSB 23.05.090.
- K. The documents necessary to close will be prepared and a closing set-up in accordance with the bid document and/or the terms and conditions of the declaration of intent or promissory note.
- L. Upon receipt of the executed declaration of intent or signed promissory note in tax and LID foreclosure sale, all other bid deposits being held for that parcel will be released to the unsuccessful bidders in accordance with the bid brochure.

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

<b>REAL PROPERTY: Tax Foreclosed Properties</b> {Extinguished re-purchase rights}
<b>PART 60</b>

- 1.1 Authority: 23.10.210  
23.10.220
  
- 2.1 This section addresses parcels where the borough has acquired clerk's deed through tax foreclosure and the right of repurchase has been extinguished. Land and resource management's objective is to put these properties back onto the tax rolls as quickly as possible.
  
- 2.2 Annually land and resource management identifies all parcels where the statutory right of repurchase has been extinguished.
  - A. Condition of title is reviewed and where feasible, exceptions are cleared.
  
  - B. Delinquent taxes, special assessments, and any other costs or fees are cleared according to borough policy and Alaska Statutes.
  
  - C. Departmental review is initiated to determine if:
    - 1. The parcel is a substandard or a non-conforming division of land by today's standards, is in violation of federal, state, or borough laws or regulations, or reflects any other conditions where it may not be in the best interest of the borough or the public to offer the parcel for sale in its current state or without providing for special conditions or disclosure in the sale;
  
    - 2. Additional reservations for trails, easements, roads, or other public purposes should be made when the parcel is sold and conveyed;
  
    - 3. The parcel should be retained for a specific public purpose;
  
    - 4. The soils, access, and parcel size suggest that agricultural use may be appropriate.

**REAL PROPERTY: Tax Foreclosed Properties**

{Extinguished re-purchase rights}

**PART 60**

- D. Where issues are raised in the departmental review, land and resource management may recommend special conditions for any single parcel or adjacent parcels such as re-platting to combine two or more adjacent parcels, subdividing a larger parcel, or offering only to adjacent property owners.
- 2.3 Parcels acquired through tax foreclosure do not require classification prior to sale because borough classification may conflict with covenants and existing private property uses.
- 2.4 Public notice requirements have been met through prior tax foreclosure and sale procedures (AS 29.45.330-470.)
- 2.5 The minimum bid price is the fair market value requested from the borough assessor and approved by the manager.
- 2.6 Land and resource management prepares a recommended list of parcels, based on follow-up to the departmental review, to offer for competitive sale and submits the list to the manager for approval.
- 2.7 Upon approval by the manager, the sale brochure is prepared and the parcels are offered according to the appropriate competitive sale PPM. Parcels unsold at the completion of the sale may be offered in subsequent over-the-counter sales.

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

<b>REAL PROPERTY: Unpatented Borough Lands</b>
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<b>PART 60</b>
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- 1.1 Authority: 23.10.040
- 2.1 Title 23 provides for the borough to enter into agreements to sell, lease, or otherwise dispose of municipal entitlement lands after receiving final decisions and before receiving patent from the state of Alaska. Due to potential borough liabilities regarding disposition of unpatented land, it is the borough's policy to reject any applications for the exchange or purchase of these lands barring an overriding public interest. In many cases accepting an application to exchange or purchase property that is not patented raises many issues that cannot be addressed until after the property is surveyed.
- A. At a minimum, a recordable survey of boundaries, including location of all easements and trails, parcel size and access shall be completed prior to an approval under this section.
  - B. Funds to complete survey work and obtain patent may not be available. When the lack of funds does not allow survey work to be completed the borough is therefore not able to convey title to the purchaser.
  - C. Survey requirements to obtain patent do not consider existing contracts the borough may have entered into, so additional surveying and platting work is often required to comply with all applicable ordinances.
  - D. Obtaining a current market price or closing date is impractical without the ability to obtain a patent and clear title.
  - E. Platting and other land use regulations may change during the period of time it may take to obtain patent from the state of Alaska. Changes in regulations often impact the costs to finalize obligations contracted years earlier on tentatively approved lands.
  - F. The borough shall not be liable for any costs except as expressly agreed.



**REAL PROPERTY: Unpatented Borough Lands**

**PART 60**

G. Exception may be made when an exchange of land is between the borough and the state of Alaska prior to patent being issued.

2.2 In agreements for lease, management agreement, or permit, the following must be satisfactorily addressed, where applicable:

A. If an agreement or lease for more than ten years is intended, or land exchange, or fee simple conveyance is to be considered, the borough should not enter into such transactions for the unpatented parcel unless the borough has good cause to believe it will acquire title to the land within 10 years.

B. The borough shall disclose to the other party that it does not have title and cannot guarantee that it will receive title. The party entering into an agreement with the borough shall acknowledge in writing it has been informed and understands the borough's position.

C. In the event the borough does not acquire title to the land within 10 years from the date of the agreement, either the borough or the other party to the agreement may cancel the agreement upon 30 calendar days' written notice to the other party. All monies received by the borough in connection with the agreement shall be considered as rent and shall be retained by the borough, and such retention shall be included in the agreement, unless all parties to the agreement have previously negotiated a different settlement.

D. Prior to lease, a survey of boundaries, including parcel size, all easements and trails of record, and other conditions set forth as required shall be located, and completed prior to final approval with conditional title. The borough shall not be liable for any costs or survey except as expressly agreed between parties.

3.1 Applications to lease, manage, or obtain a permit to use unpatented borough lands are authorized.

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

<b>FOREST MANAGEMENT: Agreements</b>
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<b>PART 65</b>
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- 1.1 Authority: 23.20  
23.10.160
- 2.1 This section applies to the management of forest resources by use of management agreements.
- 3.1 Criteria for forest management agreements may include, but need not be limited to:
- A. relieve the borough of some of the financial burden of developing and managing a timber sale;
  - B. provide for the long-term management of borough forest management lands, creating the stability for the forest products industry and incentives for the responsible use of borough timber;
  - C. provide an operator with a stable source of timber from a designated area on the basis of successive renewals of contractual rights;
  - D. provide for equal consideration of other beneficial uses of forest land.
- 4.1 Requirements of forest management agreements are:
- A. the term of the initial agreement, not to exceed twenty years, and conditions for an extension of the term;
  - B. the stumpage prices to be charged for the timber and a periodic review and, if appropriate, adjustment of the stumpage prices;
  - C. penalties for violation of the terms of the agreement and termination of the agreement;
  - D. the update of the operating plan each five years;
  - E. the update of the annual harvesting plan;

## **FOREST MANAGEMENT: Agreements**

### **PART 65**

- F. public use of borough land involved in the agreement, except that the contractor may limit access in an area that is being harvested, reforested or where hazardous conditions exist;
- G. the protection of compatible and noncompliant uses, such as mining, recreation, and fish and wildlife habitat and harvest;
- H. a bond from the purchaser to protect the interest of the borough;
- I. the preparation of reports required by the manager; and
- J. other terms, conditions, and limitations determined to be in the public interest by the manager.

5.1 Forest management agreements may also:

- A. compensate the borough for monitoring and enforcement of the terms and conditions of the agreement and applicable state and borough laws;
- B. compensate the borough for the scaling services required to account for the timber sold;
- C. construct and maintain access roads necessary to the harvest of the timber;
- D. designate a percentage of the timber volume to be subcontracted to independent operators; the manager shall make the final designation from areas included in the borough operating plan.

6.1 A forest management agreement may be extended at any time between the fifth and tenth year, if the following applies:

- A. the term of the extension does not exceed a term of years equal to the term of the initial agreement;
- B. the contractor submits a proposed operating plan for the next five years of operation and amends the management plan for the forest management agreement, as the manager considers necessary.

## **FOREST MANAGEMENT: Agreements**

### **PART 65**

- 7.1 The most qualified proposal for a forest management agreement shall be determined by considering the following:
- A. the stumpage payments proposed;
  - B. the amount of the investment in plant and facilities proposed;
  - C. the utilization standards proposed;
  - D. the number of jobs to be provided;
  - E. road construction, reforestation, and recreation improvements requested by the borough;
  - F. measures posed to maintain, enhance, or mitigate the effects on other beneficial uses or resources of forest land; and
  - G. other items requested by the borough or offered by the proposer
- 8.1 The manager may establish maximum and minimum development requirements and the maximum annual allowable cut.
- 9.1 The manager shall require the selected proposer to submit a management plan for the land that is or may be subject to a forest management agreement. The management plan must include:
- A. an inventory of renewable and nonrenewable resources present, their human uses and their economic value as measured by net present value;
  - B. location, type, and duration of access;
  - C. operable timber base areas to be harvested;
  - D. annual allowable cut;
  - E. silvicultural prescriptions;
  - F. facility development;

**FOREST MANAGEMENT: Agreements**

**PART 65**

G. area specific management practices or prescriptions needed to protect or enhance fish and wildlife habitat and harvest, public recreation, and other significant public or private resources and uses of the area. In addition the operation shall submit a five year operating plan and annual harvesting plan for the first two years of operation; and

H. reforestation methods and techniques.

10.1 Solicitation Process. The manager shall solicit requests for proposals from interested parties for any forest management agreement. The solicitation procedure shall be developed by the manager or his designee.

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

<b>RESOURCE SALES: Material Sales and Site Designation</b>
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<b>PART 70</b>
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- 1.1 Authority: 23.10.010  
23.10.060  
23.10.120
  
- 2.1 This section applies to sale of borough earth materials.
  
- 2.2 "Competitive interest" in general is considered to exist where two or more applications are filed for materials from a limited source area.
  
- 2.3 "Earth materials" include, but are not limited to, the common varieties of sand, gravel, rock, peat, pumice, pumicite, cinders, clay, and sod.
  
- 2.4 "Public land sale" is a method of selling or disposing of materials, either by public outcry or by sealed bid.
  
- 2.5 "Competitive material sales" are those material sales which, in the best interests of the borough, are open to competitive bidding at the public auction.
  
- 2.6 Content of the mining and reclamation plans are determined by the division and may consist of: cross-sectional survey of upland sites, and methodology for site clearing, stripping and stockpiling of overburden, development of improvements (if necessary), site restoration, provisions for drainage ditching, and development of access.
  
- 2.7 "New Pit": A pit is considered to be a new pit when the material site has not yet been developed or permitted.
  
- 2.8 "Active/Inactive Pits": A permitted or legal nonconforming pit is considered active if materials have been removed from it within the past five years. If no recent removal activity has been documented for the past five years, the pit is considered inactive.
  
- 3.1 Personal use contracts, at fair market value, shall not exceed 100 cubic yards per calendar year.

- 3.2 The chart below summarizes the steps necessary for competitive material sales. A short narrative on each step follows.

STEP SUMMARY

1. Any application requiring the establishment of a new pit per MSB 17.30 Earth Material Extraction Activities	X	X	X	P	P	A	A	P	X
2. Any application from an existing/ active pit	X	X	X	A	A	A	A	A	X
Competitive Material Sales  Guideline Chart  X = Required P = Planning Dept. A = As Appropriate	A. Application	B. Fee	C. MSB Number	D. Review	E. Notice	F. Field Inspection	G. Appraisal	H. Planning. Comm. Or Director Approval	I. Assembly approval (if contract > \$25,000)

- A. A completed application is submitted to the Land and Resources Management Division (LRMD). A cursory review is conducted to determine whether the proposed site(s) are available for material extraction.
1. One material sale application is submitted for each proposed site. Each material site is identified by legal description and a sketch map or survey plat showing location and limits. Mining and reclamation plans may be requested at this time if a new pit is to be developed or a substantial volume is proposed to be extracted from an existing pit.
  2. Upon approval of an application or applications, an auction or competitive bid may be held, if it is determined to be in the borough's

## RESOURCE SALES: Material Sales and Site Designation

### PART 70

best interest to do so. Bids may only be offered for individual sites, not multiple sites. A material sale contract is required for each site.

3. A material sale under 23.10.120(A) may also be negotiated by the borough manager or his/her delegate, under terms that are in the best interests of the borough. Material sale contracts greater than \$25,000 in value require assembly approval via non-code ordinance.
- B. Applications must be accompanied by the appropriate fee in order to be accepted.
1. Performance bond requirements are determined for each prospective site. The purpose of the bond is to ensure that the terms and conditions of the contract are fulfilled and to provide the funds needed to remedy damage resulting from failure to meet contract conditions. A minimum of \$1,500, or 10% of the sale value, whichever is greater, is required as a performance bond for any material sale. A performance bond in excess of the minimum may be required based on, but not limited to the following considerations:
    - a. the potential for hazards to the environment and the public health, safety and welfare;
    - b. the timing of the operation;
    - c. the cost of performing restoration work in the area;
    - d. the method of material extraction, stipulated in the contract;
    - e. any unusual aspects of the operation or other factors they believe significant.
  2. In determining whether a bond, greater than the minimum is required for a sale, the identity and past performance of the purchaser is considered in addition to factors a. through e. above. The requirement for a bond may not be waived
  3. The necessity for and the amount of a bond for competitive sale is set without regard to the identity of the prospective bidders. The requirement for a bond is a significant condition of the contract. In a competitive sale, the requirement for a bond of a certain amount affects the bidding.



<b>RESOURCE SALES: Material Sales and Site Designation</b>
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<b>PART 70</b>
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- C. Applications accepted by the LRMD shall be assigned a unique casefile number.
- D. An interdepartmental review and legal review is conducted as required.
- E. For existing sites, public notice is provided in accordance with MSB 23.05.025 if the sale or disposal of material is in excess of one year or as otherwise required. Where public notice is not required, other third parties are notified as appropriate and may include adjacent interests as well as other users of the site.

For new sites, public notice and third party notification is performed by the MSB Planning Department in accordance with MSB 17.30

- F. Field inspections should be conducted to verify site suitability, availability of access, surrounding land uses, and presence of wetlands or other sensitive environmental conditions. It is worthwhile to coordinate field inspections with the appropriate Road Service Area Superintendent as they may have a shared interest in use and development of the material site.
- G. Materials are priced for sale in accordance with current regulations as per 23.10.060(B)(5).
- H. If a proposed sale is from a new or inactive pit, the appropriate Planning Department Permit will need to be obtained in accordance with MSB 17.30. An Administrative Permit may be authorized by the Planning Director for extraction that will occur within the limits of MSB 17.30. A Conditional Use Permit (CUP) may be granted by the Planning Commission for extraction that does not qualify for an Administrative Permit. A CUP is generally worth the extra time for a site that has potential for multiple sales and will last longer than two years.
- I. When a proposed sale is from an existing site, and the total volume of the material to be extracted is equal to or less than 300 cubic yards, a decision may be made from the information obtained during the initial review. This decision also analyzes the proposed extraction as it relates to nearby existing uses, zoning, management plans for the site, comments from the appropriate Road Service Area representatives, local elevation of the water table, as well as the availability of an adequate amount of material. Proposed material

## RESOURCE SALES: Material Sales and Site Designation

### PART 70

extraction with a total volume greater than 300 cubic yards must adhere to the procedures for a large quantity sale. Proposed extraction valued more than \$25,000 requires assembly approval in the form of a non-code ordinance. Section 4 below provides more guidance on material sales from existing sites.

- 3.3 The following procedures are used as a minimum in reviewing a proposed use:
- A. Is the location available for material extraction? Consideration shall address any title restrictions, easements or right-of-ways, any adopted plans affecting the site, borough land classification, future borough uses, and current uses;
  - B. The expected value of the resource and known surface suitability. This includes, but is not limited to soil classification, local water table elevations, the likelihood reclamation will be needed, and potential for future reuse;
    - 1. Excavation within four feet of the seasonal high water table requires a conditional use permit. The seasonal high water table is the elevation the water reaches during breakup and during the fall. Consult with Development Services Division if there is any concern a proposed sale could be close to the seasonal high water table.
  - C. The potential effects on the local community. This should include visual screening, access to the site, traffic, noise pollution, and hours of operation.
  - D. The LRMD retains the right to require additional information before a review is completed.
- 3.4 A material sale contract is drafted by the division, leaving the applicant's name and sale price blank for review by the applicant. The standard contract contains the majority of the stipulations necessary to protect the borough's interest and safeguard the public. Other aspects may warrant consideration. These may include re-contouring of the site upon completion of the contract to alleviate potentially hazardous slopes, vegetative screening of the activities from adjacent public roads, site cleanup at end of contract, reasonable stipulations required by federal and state agencies, or any conditions required by the classification of the land. Contract stipulations are simply written and emphasize the effects of activities, not specific directions on how activities must be done. The contract should not require other agency approval or permits prior to the issuance of a contract; however, the contract

<b>RESOURCE SALES: Material Sales and Site Designation</b>
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<b>PART 70</b>
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may require that all other necessary permits or non-objections be acquired prior to commencement of extraction.

The following sample stipulations may be incorporated into the contract:

- A. The user will be responsible for all aspects of gravel extraction and transport. Material previously ripped, stockpiled, screened or otherwise processed by other users of the pit will not be available or used without written authorization. Survey stakes and markers, if removed by the user, shall be replaced at its expense.
- B. The use of this pit shall not interfere with the operation of existing users.
- C. The user is responsible for maintaining records of the amount of material extracted.
- D. The user shall coordinate with existing users as to the location of extraction and the timing of extraction.
- E. Haul roads, inside and outside the borrow area, shall be maintained in an approved manner at the minimum rate of one equipment hour for each 500 cubic yards of material extracted when 5,000 cubic yards or more are extracted during one consecutive period.
- F. The user shall leave the disturbed area of the site in a graded, clean and tidy condition. Support facilities such as portable toilets, light plants, maintenance trucks, etc., shall be provided by the user. Access to other areas of the pit shall not be blocked or impeded.
- G. The user shall provide the LRMD with copies of all agreements reached with other permit holders prior to the start of work.
- H. Mining and reclamation plans are required to demonstrate the manner in which the contract stipulations will be met. A survey is not necessary. A map, to scale, or an aerial photograph illustrating the mining and reclamation plans can be an appropriate method of portrayal. Contract stipulations should be as simple as possible and consistent with the best interest of the borough.

<b>RESOURCE SALES: Material Sales and Site Designation</b>
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<b>PART 70</b>
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- 3.5 The LRMD may hold an auction (public outcry or sealed bid). The purchaser and the borough manager execute the completed contract. After execution, the LRMD forwards a copy of the contract to the applicant. The bond, if required, and deposits are collected. The division sends deposits (and bond) to the Finance Department.
- 3.6 Material sale contracts are maintained and administered by the LRMD. The LRMD is responsible for maintaining a log sheet noting the location of material sale contracts. The log sheet references the MSB number, applicant name, and where the case file is being kept.
- 3.7. File closure/sale termination. Completion of the following steps must take place before closure of a file:
- A. At any time during a contract for removal of resources the LRMD shall reserve the right to terminate or suspend any operations which extend within four feet of the high water table of a material extraction site. This action shall be taken without any expense or liability to the borough.
  - B. A final accounting voucher, accompanied by any payment due, which indicates how much material (if any) was extracted in the period preceding the sale expiration date, is received from the contractor.
  - C. When necessary a field inspection or survey at the contractor's cost is conducted in order to ascertain the final condition of the site after completion of extraction. Extraction from an existing pit may not warrant an inspection, whereas a new site in a sensitive area may. A determination as to status of the performance bond is made at this time, i.e., forfeiture or release.
  - D. A notice, indicating the expiration of the sale and explaining any necessary actions on the contractor's part is sent by certified mail to the contractor.
  - E. A supplemental accounting voucher is completed indicating the disposition of any deposits, performance bonds, or other unearned money.
  - F. The Community Development Director closes the case file, and notifies the Finance Department.
  - G. The original file is sent to the Clerk's Office to be archived.

## RESOURCE SALES: Material Sales and Site Designation

### PART 70

- 4.1 Procedure for processing a request for a material sale from an existing, active material site from a single applicant.
- A. Review the submitted Application for Earth Material Extraction at an Existing Material Site, to ensure it is complete. Contact the applicant to discuss any missing information.
  - B. A completed application and fee are submitted to the LRMD.
    - 1. For 300 cubic yards or less, the application fee is \$300.
    - 2. For more than 300 cubic yards, the application fee is \$500.
  - C. Contact the appropriate RSA superintendent to let them know about the proposed sale. Discuss the potential negative effects of the proposed material sale on the ability of the RSA contractors to efficiently obtain material from the site in the future. Determine if any conditions must be placed on the proposed extraction in order to minimize its negative effects on the RSA.
  - D. Determine if the proposed volume of material to be extracted will result in a significant disturbance that will need to be reclaimed.
    - 1. Large cut slopes should be left at no greater than a 2:1 slope (2 rise: 1 run) and dressed with a minimum six inches of topsoil and seeded with an approved Alaskan seed mix.
  - E. Determine the performance bond value necessary to guarantee the site is left in a stable condition. Bond amount should be based on the amount of staff and equipment time necessary to reclaim the disturbed area when reclamation is required using prevailing wages as required under the Little Davis Bacon Act and a 25% overrun allowance (see AS 36.05 Wages and Hours of Labor).
    - a. Minimum performance bond guidelines for extraction from an existing pit: \$1,000 for up to 300 yards; \$1,500 for between 301 to 500 yards; 10% of the total sale value in excess of 500 yards.
  - F. Require a 25% deposit on the value of the material to be extracted. The deposit will be counted as a partial payment for the material once staff have determined that the total volume of extracted material has been accurately

<b>RESOURCE SALES: Material Sales and Site Designation</b>
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<b>PART 70</b>
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reported. Site inspections, before and after extraction, are necessary to document the site conditions and verify the volume of material extracted.

- G. Public notice is required in accordance with MSB 23.05.025 when the proposed extraction will take longer than one year. The applicant is responsible for the cost of the public notice. Where public notice is not required, staff should notify the appropriate community council via phone, email, or letter as appropriate.
- H. Applications for material extraction with a total value of \$25,000 or less, may be approved at this point via the standard MSB material sale contract. Applications for material extraction of 300 cubic yards or less may be approved via the abbreviated MSB material sale contract.
- I. Applications for material extraction with a total value exceeding \$25,000 must be approved by the assembly by non-code ordinance. The ordinance must be accompanied by an Informational Memorandum. The process requires two assembly meetings and will generally take about six weeks to complete.
- J. Log the sale in the material sales log.

**POLICY AND PROCEDURES**  
**APPENDIX**  
with Approval and Authority References

<b>PART TITLE</b>	<b>PPM TITLE</b>	<b>PPM SUB-TITLE</b>	<b>Assembly Approval</b>	<b>Authority</b>	<b>PART - PAGES</b>
<b>PART 5</b>	<b>AGRICULTURAL LAND</b>				
	Agricultural Land Sales	Agricultural Disposal	ORD 99-104 7/20/99	23.05.030 23.10.150	5-1 thru 5-6
	Agricultural Land Sales	Grazing / Range Management Lease	ORD 94-069 9/20/94	23.05.030	5-7 thru 5-10
<b>PART 10</b>	<b>APPLICATIONS</b>				
	Applications	Filing & Acceptance	Reso 16-068 9/20/16	23.05.060 23.10.080	10-1 thru 10-2
<b>PART 15</b>	<b>BEST INTEREST FINDING</b>				
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POLICY AND PROCEDURES MANUAL  
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**Land and Resource  
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**POLICY  
AND  
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MANUAL**

**APPROVED ON 9/20/16  
ORDINANCE 16-100 AND RESOLUTION 16-068  
UPDATED ON 12/03/2019  
ORDINANCE 19-040 AND RESOLUTION 19-027**

**Matanuska-Susitna Borough  
COMMUNITY DEVELOPMENT DEPARTMENT  
350 EAST DAHLIA AVENUE  
PALMER, ALASKA 99645**

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