

Often the borough receives inquiries about MSB agricultural land sale programs. This summary is intended to provide a brief description of each MSB agricultural land sale program that has occurred since the borough

was formed in 1964. The land used for these programs was acquired by the borough as Municipal Entitlement Lands (MEL) from the State of Alaska.

As part of any inquiry into status of title, it is important to review all recorded documents, including the patents originating from the United States of America and the State of Alaska to determine the status of title the borough received. Certain reservations and exceptions in the patents were required by federal and state law. The borough's ownership is also subject to valid existing rights, permits, easements, and oil and gas leases and matters of survey and law. Some of these items require extensive research, to determine their status today.

1964 – 1974: During this period the MSB contracted with the State of Alaska to manage its MEL lands. Under the agreement the State of Alaska offered borough land for sale and lease using state regulations. In these sales, the borough signed the contracts and conveyance documents. The payments were collected for the MSB by the SOA and the leases and real estate contracts (for deed) were usually not recorded. Typically the fulfillment quitclaim deed was signed and delivered to the buyer, with instructions to record it, several years after the buyers' obtain an equitable interest through the contract. During this era, before 1970, a few parcels have been identified that were sold by real estate contract under an "agricultural classification", however the deeds, typically signed and recorded later, do not include the restrictive covenants or agricultural rights title that were later imposed by law and regulations. In 1970 the borough adopted Ordinance Serial No. 70-23 (MSB Title 15, Chapter 35)

which provided for a MSB Preferential Agricultural Land Program. The state advised the borough it could not administer the program because it was not part of the state regulations. The borough obtained the release of parcels that were offered under the program from the management agreement with the State of Alaska and offered the program on its own. These sales were typically sold by real estate contract, and the fulfillment Quitclaim Deed, recorded up to 10 years later, contained a strict covenant "running with the land" that the real estate was conveyed "only for agricultural purposes". Each deed should be reviewed for the exact covenant language.

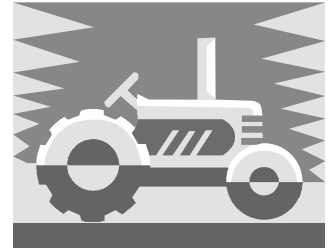
1974-1994: Early during this period the MSB took over management of its lands and terminated the agreement for management by the State of Alaska. The MSB also repealed Title 15 and replaced it with Title 13. Title 13 provided for Agricultural Land Sales, but MSB 13.30.120 (B) required that the sales "*shall not be sold, or granted except for agricultural use*". This was accomplished, in part, by the use of the term "*Agricultural Rights*" as the interest conveyed to the farm unit buyer. Title 13 also established that other steps had to occur to obtain a "fee simple" title by this provision in MSB 13.30.120(G)(3) "*The Assembly may grant a release from the terms of the sale an amount of land sufficient for a farm residence and/or farm related facilities, provided that the land is situated so as to conform to all planning, platting, subdivision and other regulations of the Borough. Such land shall then be sold and granted to the purchaser in fee simple at current full and true value for cash paid at the time of sale.*"

The MSB retained (by not conveying) the "*Development Rights*" defined in Title 13 as "*the rights to subdivide or use the surface of the land for residential, commercial, or industrial uses which are not a part of the farming enterprise conducted on the land.*"

This was done as a covenant of protection, rather than a reservation of the rights so the borough could use them. Title 13 also allowed the Assembly to establish other conditions of sale designed to promote the agricultural use and development of the lands. This is how

substantial changes occurred in the methods of disposal and requirements between the 1977, 1981, 1982 and 1983 agricultural land sale programs, even though the sales occurred under the same code.

1977 – This sale program conveyed the Agricultural Rights by Quitclaim Deed, subject to conditions and restrictions recorded with the deed. If financing was requested from



MSB, the parcel was used as collateral in a Deed of Trust securing the promissory note. The note required annual payments for 20 years. The Quitclaim Deed states it is "subject to immediate termination and annulment upon breach of condition or restriction". The sale brochure required approval of a farm development plan and stated that a development schedule should show "substantial completion" within 10 years. This particular deadline was not carried over into the Quitclaim Deed, although the deed does state that adherence to the "farm use development plan submitted and approved by the Matanuska-Susitna Borough is mandatory." Any 1977 Agricultural Rights unit in private hands today is considered to have met the "substantial completion" requirement. Several other conditions and restrictions are recited in the deed and should be carefully read and understood. As a way of example, one item states: "*Alienation of property. The agricultural interest, the sole interest herein conveyed, may not be sold, leased, or conveyed, in whole or in part, without first obtaining written approval from the Matanuska-Susitna Borough*".

1981 – This sale program also conveyed the Agricultural Rights by Quitclaim Deed, subject to the conditions and restrictions recorded with the deed. Financing by the borough was available using similar terms as the 1977 program. However, this sale consisted of just two (2) MSB –owned parcels and they were included in the State of Alaska Pt. MacKenzie Agricultural Land Sale. Therefore, in addition to all the MSB agricultural sale

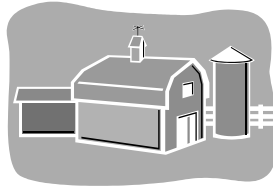
requirements under title 13, the buyers also had to meet the Pt. Mackenzie clearing and production requirements under the State of Alaska program. The clearing and production requirements were administered by staff from the SOA, Division of Agriculture (DOAg) and Alaska Revolving Loan Fund (ARLF) based on clearing and development loans for dairy operations.

1982 – This sale program was implemented using a 20 year lease. The lease provided the option to exercise the right to obtain the Agricultural Rights by Quitclaim Deed upon meeting completion requirements based on the approved farm development (70% of Class II and III soils) within 6 years and payment of six (6) annual lease payments calculated as 8% of the sale bid price. If the timeframe was met, 50% of the sale bid price was applied as a credit to the purchase. The 6 lease payments were applied to the purchase price, and the balance of 2% was paid before the Quitclaim Deed was signed and recorded. The declaration of conditions and restrictions affecting all parcels in the program year was recorded as a single document prior to the leases.

1983 - This sale program was also implemented using a 20 year lease. The lease provided the option to exercise the right to obtain the Agricultural Rights by Quitclaim Deed upon meeting completion requirements based on the approved farm development (70% of Class II and III soils) within 6 years and payment of six (6) annual lease payments calculated as 8% of the sale bid price. If the timeframe was met, 50% of the sale bid price was applied as a credit to the purchase. The 6 lease payments were applied to the purchase price, and the balance of 2% was paid before the Quitclaim Deed was signed and recorded. A declaration of conditions and restrictions affecting all parcels in the program year was recorded prior to the leases. The declaration of conditions and restrictions that affected all parcels in the program year was recorded as a single document. The document contains some subtle differences in definitions and process from the 1982 program.

1986- Because of the serious economic downturn in 1985, the assembly adopted non-code Ordinance 86-78 for the 1977, 1981, 1982, and 1983 programs. It clarified some clearing and use definitions, expanded

some uses and provided a way to request up to 3 deferments from the financial and development deadlines looming in all of the sales.



1991 – The borough adopted non-code Ordinance 91-054, as a financial reorganization program for the 1982 and 1983 Lease/Purchase programs. These parcels

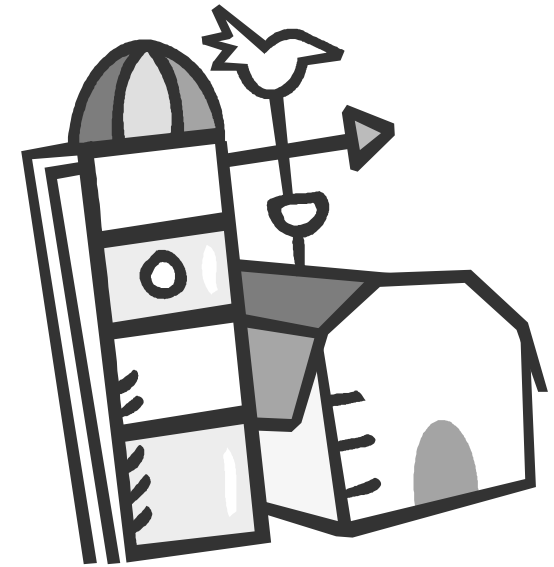
had strict development requirements based on interpretation and analysis of soils maps that proved in some cases to be in serious error. The Ag Reorganization Program allowed the lessees to obtain tillable acreage adjustments to their lease contract, then convert the lease to a Quitclaim Deed for Agricultural Rights, and finance the balance due on the sale to a Deed of Trust. Provisions also allowed a completion credits to be applied on a sliding scale to the principal due, once the revised acreage development was completed.

1991-1997 - The borough spent a great deal of time and resources during this period recovering agricultural parcels that were in default under either the lease or deed of trust programs.

1994 – Title 13 was repealed and Title 23 was adopted. The first Borough-owned Agricultural Land Sale under Title 23 and its policies and procedures was held in 1999. The borough's fee estate is conveyed by Quitclaim Deed, and the title is subject to a recorded Declaration of Covenants, Conditions and Restrictions to promote Agricultural Use. The programs under title 23 do not represent farm capability or impose development requirements. The CCRs do limit improvement sites, residential locations, and subdivision of the original farm unit. They also restrict use of some resources, such as gravel, to on site development. The CCRs can not be summarized here and should be read in its entirety to understand the long term implications of the program to future use and enjoyment of the parcels.

Summary

Matanuska-Susitna Borough Agricultural Land Sale Programs



Matanuska-Susitna Borough
Community Development Department
Land & Resource Management
350 E Dahlia Avenue
Palmer, Alaska 99645
(907) 745-9869
lmb@matsugov.us

