Title 4

Revision Draft V. B

REAL PROPERTY ACQUISITION, MANAGEMENT, AND DISPOSAL

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Chapter 4.01

GENERAL PROVISIONS

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4.01.005 Definitions

A. Real property – "real property" includes any estate in land, easement, right-of-way, lease, permit, license, franchise, future interest, building, fixture, or any other right, title or interest in land or a building.
B. Major land use decisions – decisions with lasting and significant impacts on the use of borough land (see specific list in 4.01.015 A)
C. Permanent or intermittent waterbodies – these terms are used to distinguish waterbodies meriting development setbacks as specified in 4.01.050, from less environmentally significant, ephemeral water bodies. A perennial stream or river has continuous flow in parts of its stream bed all year round during years of normal rainfall. "Perennial" streams are contrasted with "intermittent" streams which normally cease flowing for weeks or months each year, and with "ephemeral" channels that flow only for hours or days following rainfall. This same conceptual distinction applies for wetlands.

4.01.010 Goals for borough real property

Manage, dispose and/or acquire new borough lands, to achieve the following:

A. Economy – enhance the sustainable health and diversity of the local economy, and support opportunities for borough residents to seek economic security.
B. Environment – protect the health and quality of the borough's natural environment and unique natural setting, considering individual borough properties as well as adjoining lands.
C. Fiscal Health – generate revenue, for example, through sales, leases or permit fees, to help support public services and facilities needed by borough residents and businesses, including exceptional educational opportunities.

D. Growth – provide more opportunities for people to make a life in the borough, in particular to provide more chances for young people/young families to own land for homes.
E. Quality of Life – support the range of characteristics that make the borough a good place to live, including access to public lands and clean waters, efficient and adequate public facilities, the right to be free from interference in chosen lifestyles, and the right to live in a clean, safe, and orderly environment.
F. Public Trust – recognize that borough properties are held by the public for the public benefit, and that as a result, the public shall be provided a full and fair opportunity to be involved in important decisions regarding the use of or acquisition of such lands.

4.01.015 Authority for management of borough property

A. The assembly is the managing authority of borough lands and the decision-making body on the following major land use decisions related to borough land:
   1. ~~Classification and re-classification~~
   2. Management plans including classification and re-classification
   3. Revisions and/or expansions to the land management code
   4. Sale and leases of borough land
   5. Land exchanges involving borough land
   6. Resource extraction licenses and long term, large scale land encumbrances (e.g., natural gas pipeline right of way)
   7. Appeals of decisions of administrative staff or planning commission.
B. The managing authority shall manage all borough land in accordance with this title and adopted management policies and goals.
C. As part of the annual work plan in DBC 4.10.020, the assembly shall review borough lands proposed to be offered for sale or lease and at that time may also give general approval for planned disposals, and other options for disposals as outlined in 4.15, 4.16, 4.17, and 4.18.
D. The planning commission will review and make recommendations to the assembly on major land use decisions, including the following:
   1. ~~Classification and re-classification~~
   2. Management plans including classification and re-classification
   3. Revisions and/or expansions to the land management code
   4. Sale and leases of borough land
   5. Land exchanges involving borough land
   6. Resource extraction licenses (e.g., for commercial gravel extraction), and long term, large scale land encumbrances (e.g., natural gas pipeline right of way)
   7. Appeals of administrative staff decisions regarding easements, resource extraction permits
   8. Annual work plan for borough lands
E. The planning commission is responsible for decisions on commercial use permits and smaller scale, local easements and rights-of-way.
F. The mayor or designee is authorized to grant approval of the following actions related to borough land, working within the framework of assembly-approved ~~classifications and/or~~ management plans:

1. Resource extraction permits, including sales of sand or gravel not to exceed a maximum of 500 cubic yards per year.
2. Temporary use permits.

4.01.020 Procedural requirements for major land use decisions

A. The borough assembly, mayor or designee, planning commission, or the public may initiate proposals for major land use decisions. Details of this process specifically for disposals are presented in DBC 4.15.040.
B. Prior to assembly actions on major land use decisions, and in addition to formal public hearings required under "D" and "E" below, the mayor or designee shall conduct at least one meeting to gather public input. This meeting should be held at an appropriate venue as near to the affected parcel as is practical. (see 4.01.030 for public notice requirements)
C. The mayor or designee shall make a recommendation regarding the proposed decision to the planning commission including:
    1. Parcel location and ownership, classification or other relevant borough land management policies, known encumbrances or permits
    2. To the degree information is available, property characteristics including topography, soils, access and availability of utilities
    3. A summary of previous input from the public, planning commission or assembly, including reference to the annual work plan
    4. Compatibility with the borough comprehensive plan or other land use policy approved by the assembly.
    5. If a proposed action is not compatible with an approved ~~classification,~~ management plan or the borough comprehensive plan, a revision to the relevant plan is required before the ~~classification or reclassification~~ action can be approved. These revisions may be presented for review and approval as part of the process for the review and approval of the major action.
D. The planning commission shall review the proposed major land use decision at a public hearing, and provide the opportunity for public testimony and/or submission of written comments regarding the proposed action. The planning commission shall make a recommendation to the assembly, building from the steps above, and its own deliberations.
E. The assembly shall review the proposed major land use decision at a public hearing, and provide the opportunity for public testimony and/or submission of written comments regarding the proposed action.
F. The assembly shall consider the planning commission and mayor's recommendations and public comments and then may adopt, adopt with modifications, deny, continue the item, or remand the item to the planning commission.

4.01.021 Process for land use actions other than major decisions

The borough mayor or designee may elect to meet with the public, the planning commission and/or assembly on other land management issues not explicitly identified in 4.01.015.

4.01.025 Inventory and record keeping

The borough mayor or designee shall develop and maintain an inventory of all real property in which the borough has, or has had, an interest. To the degree information is available, the inventory should contain information regarding parcel size, classifications, or any current borough authorized permits, easements and leases.

4.01.030 Public notice

Public notice shall, at minimum, meet the public notice requirements of the Charter of the Denali Home Rule Borough, Article 1, Section 1.05 unless otherwise specified in this title of the DB code. Public notices shall include the date, time, location, and purpose of the notification.

4.01.040 ~~Authorization to~~ Generally allowed uses of borough real property

A. No person shall place improvements or personal property upon, or make unauthorized use of borough real property, without permission from the borough mayor or designee acting in compliance with approved management plans ~~classifications~~ and other provisions of this title.
B. No person shall remove timber or other vegetation, gravel or other materials from borough real property or otherwise damage the above without written permission from the borough mayor or his designee.
C. Borough lands are open to incidental uses including walking, hiking, hunting, ATV's and snowmobiles, fishing, short term (14 days or less) camping or other low impact, public, non-commercial activities. These incidental uses may be restricted to provide for public safety or to avoid land degradation or vandalism if needed. Harvesting a small number of wild plants, mushrooms, berries, and other plant material for personal, non-commercial use is permitted.
D. If the mayor or designee has knowledge of an unauthorized use, steps shall be taken to end this activity. Unless the mayor or designee provides otherwise, the unauthorized user shall restore the borough land to the same condition it was just prior to when the unauthorized use began, and pay all costs incurred by the borough as a result of this action.
E. Failure to comply with borough, state and federal laws and regulations for any authorization issued under the authority of this title shall be terms for contract, permit or lease revocation, termination or other action as deemed appropriate.
F. Persons found in violation of this section will be prosecuted in accordance with state law and the Denali Borough Code of Ordinances.

4.01.050 Buffers & development setbacks

A. On borough owned land, and incorporated into the plans for any disposals of borough land:
   1. There shall be, at minimum, a 50-foot undisturbed natural vegetation buffer on either side of all permanent or intermittent waterbodies, including rivers and streams, and connected lakes and wetlands. The intent being to protect the riparian areas along these water courses.
   2. ~~There shall be, at minimum, a 50-foot undisturbed natural vegetation buffer on each side of the centerline on all trails on borough land as identified~~

~~through existing or future approved borough plans~~. Borough recognized main trails shall be no wider than 12-feet. There shall be, at minimum, a 50-foot undisturbed natural vegetation buffer on each side of the trail on borough land as identified through existing or future approved borough lands.

B. Exceptions to the minimum buffer requirements may be approved by the planning commission on a case by case basis.

4.01.060 Fees

The borough mayor or designee shall propose a schedule of fees for applications, permits and other uses of borough real property under this title. The borough assembly shall approve the fee schedule.

4.01.070 Best interest finding

Land disposals, leases, and exchanges require a best interest finding statement. A best interest finding statement shall be written by the mayor or designee and be included with every land disposal ordinance. This written finding must include a description of the land identified for disposal, a summary of the disposal process including public notices and public meetings, known natural or cultural considerations, comments received regarding the land disposal, a statement of consistency with approved borough plans, and a final statement that the land disposal is or is not in the best interest of the borough including reference to the goals in section 4.01.010 if appropriate.

4.01.080 Bonding, indemnification, insurance

A. Where the borough has authorized a use on borough land, including commercial use, resource harvest or extractions, leases, management agreements, easements, or rights-of-way, the borough may require bonding, indemnification, and/or insurance to ensure compliance with established standards.
B. Where the activity may alter the land surface, the borough may require a bond or damage deposit in order to ensure proper restoration after use of the land is no longer needed. The bond amount shall depend on the type of activity. The user's liability will be released and the land use authorization processed for closure only after the land has been restored or left in a condition suitable to the borough. This may be retroactive if the damage was caused by the same lessee or permit holder during a prior agreement.
C. Persons holding a land use authorization shall be required to indemnify, save harmless and defend the borough, 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 or omission arising from the persons use, occupancy or the performance under the authorization.

Chapter 4.05

REAL PROPERTY ACQUISITION

Sections:

4.05.005 Definitions
4.05.010 Acquisition and ownership
4.05.020 Procedural requirements
4.05.030 Eminent domain
4.05.040 Ownership and use
4.05.050 Rights and powers of borough
4.05.060 Federal and state aid
4.05.070 Acquisition through land exchange

4.05.005 Definitions

A. Real property – "real property" includes any estate in land, easement, right-of-way, lease, permit, license, franchise, future interest, building, fixture, or any other right, title or interest in land or a building.
B. "Less-than-fee simple interest" – refers to acquisition or disposal of less than the full bundle of ownership rights in a property, e.g., a lease or easement.

4.05.010 Acquisition and ownership

A. The borough may acquire, own, and hold real property or limited property rights inside or outside the borough boundaries by purchase, gift, grant, dedication, exchange, redemption, purchase of equity of redemption, operation of law, tax or lien foreclosure, condemnation or declaration of taking, annexation, or by any other lawful means of conveyance. Real property shall be held in the name of "Denali Borough."
B. The assembly may approve and authorize the purchase of real property by contract of sale, a deed of trust, or mortgage.
C. The borough may not acquire any real property by means of dedication by plat unless the dedication of real property is accepted in writing and signed by the mayor and approved by the assembly.

4.05.020 Procedural requirements

A. Acquisition of land by the borough shall require an assembly ordinance specific to the particular acquisition, including general purpose, conditions and manner of acquisition. Upon authorization by ordinance, the mayor or designee shall carry out the specific steps required to acquire the real property.
B. Any land acquisition instrument requiring execution by the borough, for example, a mortgage or deed of trust, shall be signed by the mayor or designee and attested by the clerk. The form of any conveyance shall be reviewed by the borough attorney.
C. The mayor or designee shall prepare a resolution regarding a proposed acquisition of land or resources for consideration by the public, the planning commission and the borough assembly. The resolution shall address:
    1. The purpose of the acquisition

2. The proposed use of the land and associated land ~~classification~~ management plans.
3. A description of the lands or interests in lands or resources concerned
4. The terms, conditions, valuation or consideration for the proposed acquisition

D. The decision to acquire the property shall be reviewed by the planning commission. Review by the planning commission shall be limited to the property's suitability for the intended purpose and its consistency with surrounding land use(s) and any applicable land use/land management plans. The planning commission shall recommend to the borough assembly, by resolution, their findings and recommendations.

E. After receipt of the recommendations of the planning commission, the borough assembly may find that the land being purchased is in the best interest of the borough and shall be consummated according to the terms and conditions in the purchase agreement.

F. Prior to approval, the mayor or designee is to make available for assembly review an abstract of title, an appraisal of the real property, a contamination/liability assessment as outlined below, and a review of any problem in acquisition. The acquisition or purchase of real property by the borough.

1. ***Stage 1***: Review maps, aerial photographs, plats, surveys, any historical land use records, and visit the site, to see if any issues of obvious concern can be found such as current or former waste disposal areas, fuel storage, handling or dispensing operations including heating oil, discolored soil, sheen on surface water, or any evidence that oil or other hazardous substances were stored, used, or released at the property. This phase should also include a review of the Alaska Department of Environmental Conservation Contaminated Sites Database and associated webmap available at the following link: http://dec.alaska.gov/spar/csp/. If nothing is found the assessment can end and a report presented to the assembly by the mayor or designee stating these findings. If any evidence of adverse effects are found, the assembly may consider contracting for a Phase I Site Assessment to be conducted by a qualified person under ASTM E1527-13 Standard-Phase I Environmental Site Assessments or equivalent.
2. ***Stage 2***: If the initial inspection reveals possible contamination issues, further research and site inspections would be needed to determine the nature of the suspicious findings in the initial assessment. This would determine if further, detailed investigation, digging, or drilling would be required. If warranted, the assembly may consider contracting for a Phase II Site Assessment to be conducted by a qualified person under ASTM E1903-11 Standard – Phase II Environmental Site Assessment or equivalent. A report of the findings would be presented to the assembly by the mayor or designee.

G. Unless otherwise provided by the assembly, the borough shall purchase marketable title in real property. Unless otherwise provided by ordinance or resolution, or upon assembly approval of a purchase, the mayor or designee is authorized to obtain title insurance, to execute any instruments, and to take all

steps necessary to complete and close the purchase and acquisition of the real property.

H. The assembly may authorize the mayor or designee to acquire land for more than fair market value only if the ordinance authorizing the acquisition contains a statement of the facts on which the more than market value acquisition is justified.

4.05.030 Eminent domain

The assembly may exercise the powers of eminent domain and declaration of taking in accordance with AS 29.35.030. Eminent domain shall be exercised only if the borough has made reasonable but unsuccessful efforts to negotiate a purchase or exchange. Eminent domain takings may only be used for public works or facilities, including road or trail access, when no other reasonable option is available, and may not be conveyed in any form to any private, corporate or nonprofit entity.

4.05.040 Ownership and use

The borough may acquire and hold real property as sole owner or as tenant in common or other lawful tenancy with any person, corporation or government body for any public purpose. The borough may hold real property in trust for any public purpose, including:

1. temporary activities
2. easements and rights-of-way, for utilities, access
3. leasing or eventual disposal
4. long term dedication for public purposes, including public facilities and public recreation

4.05.050 Rights and powers of borough.

The borough shall have and may exercise all rights and powers in the acquisition, ownership, and holding of real property as if the borough were a private individual.

4.05.060 Federal and state aid

The borough may apply for, contract with, and do all things necessary to cooperate with the United States Government and the state of Alaska for the acquisition, holding, improvement, or development of real property inside and outside the borough boundaries.

4.05.070 Acquisition through land exchange

A. The borough may accept in exchange for borough land any consideration of sufficient value not prohibited by law. Decisions on land exchanges are “major land use decisions”, as specified in 4.01.015, and the assembly shall review and approve or reject offers for exchange of municipal land, following the same procedures as specified for land disposals, including the requirement for a best interest finding.

B. As is the case with disposals, exchanges shall provide for equal value, except where the assembly prepares an explicit, written finding that borough and public

interests, and the goals expressed in 4.01.010, are best met through an exchange at less than equal value.

Chapter 4.10

MANAGEMENT OF BOROUGH REAL PROPERTY

Sections:

4.10.005 Definitions
4.10.010 Management plans
4..10.015 Classification requirement, categories, and definition
4.10.020 Annual work plan for disposal, leasing and/or exchange

NOTE: Permits, licenses, easements and right of way moved to 4.11

4.10.005 Definitions

A. "Commercial Use" ~~- based on quantity and proposed use of the natural resources per the fee schedule~~. means any activity, goods or services are offered for sale or rent.
B. "Fair market value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
D. "Hazardous use" means an unacceptable risk to human health and well-being.
E. "Interest in property" means a right, claim, title, or legal share in that property. Refers to the bundle of rights which may be transferred or conveyed separately or in total. Methods of transfer include deed, lease, or easement.
F. "Lease" means a contract granting use or occupation of property during a specified period in exchange for a specified rent.
G. "Natural resources" to which the borough holds title may be sold pursuant to approval by the assembly including, but not limited to, gravel, sand, soil, rock, peat, timber, firewood and natural vegetation
H. "Obnoxious use" means a use which is offensive through the creation or transmission of noise, vibration, illumination, emissions, fumes, odor, dust or radiation, or any combination of these, beyond any lot lines of the premises. Including blocking of scenic view, sunlight, causing flooding or blocking water access or flow.
I. "Public interest" – welfare of the general public (in contrast to the narrow interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies, and includes both monetary and non-monetary values.

4.10.010 Management plans

A. The mayor or designee, shall prepare a written management plan for borough lands where required under "B" below. The planning commission shall review, and the assembly provide final approval.
B. A management plan is required ~~when a borough parcel is classified as Land Bank, and for large parcels classified Multiple Use Reserve (see 4.25.040). Upon request by the assembly, the mayor or designee may prepare a management plan for parcels under other classifications, as needed to resolve complex land management issues~~. before any land management action can occur including, but not limited to, any disposal, lease, exchange, or any permit or license with significant impact to the land.
C. Management plans provide a basis for well-informed decisions on the best use of borough lands, particularly where larger blocks of borough land have the potential for a variety of uses~~, and several different classifications~~. Specific objectives for management plans include:
    1. Provide better understanding of current and potential uses
    2. Provide the opportunity for public involvement
    3. Develop broad goals for the affected lands
    4. Identify appropriate land use classification(s), standards and guidelines
D. A management plan shall contain ~~two~~ three elements:
    1. Information about the parcel, including:
        - Physical characteristics of the site, for example, elevations and slopes, vegetation, and water bodies
        - Surface and groundwater relationships and proximity to private water wells, public water source, surface contaminated sites and water bodies
        - Current and potential access, including roads, trails, airstrips
        - Current and potential uses on-site and on surrounding properties; any potential public health, safety, or welfare issues
        - Improvements (e.g., buildings, infrastructure)
        - Easements, leases, and permits; utilities or other infrastructure serving or crossing the site
    2. The plan will identify all permanent structural and non-structural BMPs selected and incorporated into the project design to eliminate or reduce pollutant discharges to air, storm water, and/or receiving waters to the maximum extent practicable.
    3. Management policies, including:
        - Overall goals and objectives
        - Classification(s), including boundaries and management intent statement for each classification area
        - Plans for access and other needed infrastructure
        - Site-specific management standards and guidelines including environmental safeguards
        - Implementation actions and schedule
        - For intended sales, leases, permits – objectives for terms, conditions

4.10.015 Classification requirement, categories, and definition

All borough land, must be classified through an assembly approved land management plan prior to any action being taken with lasting consequences for the character and/or options for use of that land.

All borough lands shall be classified as one of the following:

1. Agriculture and Forestry
2. Amenity Value
3. Commercial and Light Industrial
4. Heavy Industrial
5. Land Bank
6. Large Scale Materials or Mineral Extraction
7. Multiple Use Reserve
8. Public Facilities
9. Recreation
10. Settlement

Classification categories defined:

A. *Agriculture and Forestry* – Land intended for raising and harvesting crops, grazing, breeding and management of livestock, dairying, commercial timber harvest, or woodlot management. Such land can be sold in fee, sold as agriculture rights only, or leased while remaining in borough ownership.
B. *Amenity Value* – Land intended to be retained and kept in a natural state to maintain a sense of open space and "Alaska living" for adjacent parcels and the borough as a whole, and that may also protect wildlife habitat and support non-commercial recreational opportunities, subsistence, scenic vistas, historic structures and landscapes, greenbelts, or other natural, cultural, or aesthetic qualities.
C. *Commercial and Light Industrial* – Land intended primarily for uses related to trade and commerce, such as the sale, rental, or distribution of products and services, and/or for light industrial uses. Light industrial uses are those that do not create significant off-site impacts and are generally conducted inside closed buildings, for example warehousing, storage, and light manufacturing. Commercial and light industrial area may also include, as secondary uses, land for greenbelts, material sites for local roads and building lots, easements for roads and trails, or lots for community facilities. Residential uses may also be permitted in specified sites.
D. *Heavy Industrial* – Land intended for industrial and related uses that are best separated from most other uses, due to their potential for off-site impacts. Examples include landfills, large scale material or mineral extraction and processing, waste handling and storage, electric generation, large scale manufacturing, or other uses that involve significant noise, odors, bright lights, or other potential nuisances or safety risks that make them poor neighbors with most other land uses. Parcels should be of a size that allows for sufficient buffer zones to reduce potential impacts of these types of use on adjoining properties.
E. *Land Bank* – Lands where the intent is a mix of disposals and retention, and where a management plan is required to determine the specific types, character

and locations of these uses. These lands will be retained in borough ownership in the near term, until a management plan is complete. Following approval of a management plan, these areas will be reclassified to designate the specific intended uses, such as settlement, commercial, amenity value, or public facilities. In the interim, the land will be available for multiple use management, as long as such use does not reduce options for future uses, including disposals. Examples of such uses include seasonal personal use firewood harvest, low impact commercial recreation activities, or small scale gravel extraction.

F. *Large Scale Materials or Mineral Extraction* – Lands which are chiefly valuable for earth materials, including, but not limited to, sand, gravel, soil, peat moss, sphagnum, stone, pumice, cinders, limestone and clay, and for minerals, including, but not limited to, coal, phosphate, oil, shale, sodium, Sulphur, and potash, where the removal of the material would seriously interfere with utilization of the lands for other purposes.

G. *Multiple Use Reserve* – Land to be held in borough ownership at least the near term, where there is not a pressing need for immediate decisions on the ultimate preferred use. In the interim, the land will be available for multiple use management, as long as that use does not significantly reduce options for future uses, including disposals.

H. *Public Facilities* – Land intended to be retained and reserved for public facilities including schools, clinics, day-care centers, government buildings, parks, and other public uses. Parcels are sized to meet the need, and allow for future expansion. Such lands will generally be retained in borough ownership, but could also be sold or leased to another public or non-profit entity that will retain land for this purpose.

I. *Recreation* – Land intended to be retained where the primary use is public and/or commercial outdoor recreational areas and facilities. Recreational uses, include, but are not limited to, trails (hiking, horse, bikes, cross-country ski and motorized, such as ATVs), ski areas, golf courses, day use facilities, campgrounds, wilderness camps, and horse stables.

J. *Settlement* – Land intended primarily for residential uses, including selling individual lots or parcels or for subdivisions. These areas can also include, as secondary uses, areas for greenbelts and small parks, material sites for subdivision roads and building lots, easements for roads and trails, or lots for community facilities. Limited local serving commercial may also be permitted in specified sites.

4.10.020 Annual work plan for disposal, leasing and/or exchange

The mayor or designee shall prepare by March 1st of each year a work plan for borough real property specifying disposal, leasing and exchange plans for the coming year, and more general intentions for the subsequent three years. Following review by the planning commission, the annual work plan shall be submitted for assembly approval by resolution. Elements of the work plan shall include:

1. A summary of the previous year's actions, expenditures and revenues; a general overview of intentions for future real property management actions

2. A current inventory of the location and status of borough real property
3. Proposed actions concerning real property over the coming year
    - Priority locations for management plans including land classification
    - Priority areas for land disposals and/or leases
    - Other land management priorities, including issuance and/or renewal of use permits or licenses
4. Anticipated finances of real property activities, including
    - Projections of revenue from sales, leases, permits or fund investments over the coming year
    - Anticipated expenditures including costs for staff, contractors, capital improvements or other activities
5. Preliminary plans for borough real property over the following three years, including
    - Likely locations of future management plans, disposals, leases, exchanges and larger scale permits or rights of way
    - Management activity increases or changes.

Chapter 4.11

Borough Land Permits, License, Easements, and Rights of Way

Sections:

4.11.005 Definitions
4.11.010 Extraction permit
4.11.020 Extraction license
4.11.030 Temporary use permit
~~**4.11.040 Temporary access license**~~
4.11.050 Commercial use permit
4.11.060 Conditions for use of resources on borough land by permit or license
4.11.070 Easements and rights of way

4.11.005 Definitions

A. "Commercial Use" ~~- based on quantity and proposed use of the natural resources per the fee schedule.~~ means any activity, goods or services are offered for sale or rent.

B. "Fair market value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

C. "Hazardous use" means an unacceptable risk to human health and well-being.

D. "Interest in property" means a right, claim, title, or legal share in that property. Refers to the bundle of rights which may be transferred or conveyed separately or in total. Methods of transfer include deed, lease, or easement.

E. "Lease" means a contract granting use or occupation of property during a specified period in exchange for a specified rent.

F. "Natural resources" to which the borough holds title may be sold pursuant to approval by the assembly including, but not limited to, gravel, sand, soil, rock, peat, timber, firewood and natural vegetation

G. "Obnoxious use" means a use which is offensive through the creation or transmission of noise, vibration, illumination, emissions, fumes, odor, dust or radiation, or any combination of these, beyond any lot lines of the premises.

H. "Public interest" – welfare of the general public (in contrast to the narrow interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies, and includes both monetary and non-monetary values.

4.11.010 Extraction permit

A. Extraction permits provide for non-commercial personal use of limited quantities of resources on borough owned land, such as gravel or firewood. —
B. The mayor or designee is responsible for decisions on extraction permits, and for setting borough-wide and/or site specific guidelines for extraction activities.
C. An applicant who wishes to obtain an extraction permit shall submit a non-refundable fee as set in the fee schedule. An extraction permit is exclusive, not transferable and does not convey any interest in land. Approval must be consistent with a parcel's ~~classification and where applicable, policies of an adopted~~ management plan.
D. An extraction use permit is required for extraction of any quantity of gravel, firewood, timber or other resource from borough land.
E. If the mayor or designee determines an extraction permit may substantially affect the surrounding area, then prior to approving the permit the mayor or designee shall publish notice of the proposed use, including a description of the proposed use. Notice shall be per DBC 4.01.030, allowing for public comment on the proposed use. If the mayor or designee receives substantial adverse public comment to the proposed use then, before issuing the permit, the mayor or designee shall hold a public hearing on the proposed use.

4.11.020 Extraction license

A. Extraction license provide for larger scale use of borough resources than extraction permit. An extraction license is required for any commercial extraction activity, and for gravel extraction of more than 500 cubic yards per year.
B. The assembly is responsible for decisions on extraction licenses, for setting the terms for the license and the manner in which payment is made. After receiving recommendations from the planning commission, the assembly shall by resolution approve or deny a proposed extraction license and set borough-wide and/or site specific conditions for extraction activities.

    1. Lease holders are required to implement Best Management Practices (BMP) as prescribed in the Alaska Department of Environmental Conservation Best Management Practices for Gravel/Rock Aggregate
    2. The plan will identify all permanent structural and non-structural BMPs selected and incorporated into the project design to eliminate or reduce pollutant discharges to storm water, and/or receiving waters to the maximum extent practicable

C. An applicant who wishes to obtain an extraction license shall submit a non-refundable extraction license fee as set in the fee schedule. A successful applicant will be required to pay the fair market value of the extracted materials as determined by the assembly, based on recommendations from the mayor or designee. An extraction license is exclusive, not transferable and does not

convey any interest in land. Approval must be consistent with a parcel's ~~classification and where applicable, policies of an adopted~~ management plan.

D. Applications for extraction license shall include:
   1. A written detailed hydrogeological study that evaluates surface and groundwater relationships, potential impacts, and to design effective mitigation alternatives. Data collection should be accomplished under the supervision of a qualified professional engineer, hydrogeologist, or hydrologist and follow a written sampling plan approved by ADEC.
   2. Includes a plan detailing Best Management Practices (BMP) to be implemented in accordance with the Alaska Department of Environmental Conservation Best Management Practices for Gravel/Rock Aggregate. The plan will identify all permanent structural and non-structural MBPs selected and incorporated into the project design to eliminate or reduce pollutant discharges to storm water, and/or receiving waters to the maximum extent practicable.
   3. Setbacks: Required according to ADEC BMP Proximity mapping http://dec.alaska.gov/water/wnpspc/protection_restoration/bestmgmtpractices/docs/gravelrockextractionbmpmanual.pdf
   4. Water Quality: water and groundwater flow, surface water and groundwater temperature, turbidity, pH, specific conductance, and likely contaminants
   5. Air Quality: Monitor Air Quality to meet Alaska and National Ambient Air Quality standards. 18 AAC 50.110 Particulate levels shall not exceed the National Ambient Air Quality Standards (NAAQS)
   6. Excessive noise shall not be generated by the extractive process or by vehicles associated with the excavation at times local residents are at rest if within 1000 feet of a residence.
   7. No processing excavation or vehicular operation shall be permitted between 8:00 p.m. and 8:00 a.m. weekdays and Sundays is site is within one mile of residential dwelling(s).
   8. Noise levels shall not exceed the Department of Environmental Quality standards.
   9. The site shall be sufficiently secure so that local residents are not endangered.
   10. If the development abuts residential or commercial property or there is a residence within 1000 feet of the development's property lines, buffering and screening will be provided as prescribed by ADEC BMP.

E. The assembly may waive the license fee and the fee for fair market value of the material used by a nonprofit organization or public agency for a public purpose.

F. Prior to approving the permit, the mayor or designee shall publish notice of the proposed ~~The mayor or designee shall cause notice of the propose~~ license for extraction of borough natural resources to be publicized per DBC 4.01.030. The notice will include a description of the prosed use and allow for public comment.

G. If the assembly, mayor or designee receives any adverse public comment to the proposed license for extraction, before issuing the permit, the mayor or designee shall hold a public hearing on the proposed use. A decision by the planning

commission on an application for a resource development permit shall be based on the following criteria:

1. A development agreement between the Mayor/planning commission/designee and the applicant shall detail how excavation and mining will occur, and how all requirements shall be met. If the mayor or designee finds that a developer holding a development permit issued under this division is removing material from the ground contrary to the conditions set out in the development agreement, the permit may be revoked under notice and hearing as per these sections.

4.11.030 Temporary use permit

A. Temporary use permits provide for non-extractive~~, commercial~~ use of borough property for a timeframe of one year or less. Temporary use permits do not allow permanent structures or improvements, and allow only minimal disturbance to the property. ~~Examples include commercial recreation activities or geotechnical work in advance of a prospective pipeline.~~ Unless otherwise agreed to in writing, the real property will be restored to its original condition upon expiration or revocation of the permit. This may be retroactive if caused by the same authorized user.
B. The mayor or designee is responsible for decisions on temporary use permits, including setting borough-wide and/or site specific conditions. Approval must be consistent with a parcel's ~~classification and where applicable, policies of an adopted~~ management plan.
C. With planning commission review and assembly approval, a temporary use permit may be granted for a period of up to five years. A temporary use permit does not convey any other interest in the property, is exclusive and not transferrable
D. An applicant who wishes to obtain a temporary use permit shall submit a non-refundable application fee as set in the borough fee schedule. A successful applicant will be issued a permit detailing conditions and fees for the permitted activity.
E. The planning commission may reduce or waive permit fees for a non-profit organization or public agency for a public purpose.

~~**4.11.040 Use of borough land for temporary access Temporary access license**~~

~~A. The mayor or designee may grant a temporary access license for access across borough land when such access is necessary for construction, resource extraction, or other temporary activities on adjoining land.~~
~~B. The temporary access licenses provided for herein in this section shall be subject to such conditions as necessary to ensure the prudent use and protection of borough resources while allowing access across borough land.~~
~~C. A temporary access license may be exclusive or nonexclusive, depending on the particular intended activity, and is valid for a period no greater than five years from the date of issue. A temporary access license may be reissued with the same conditions, upon application by the licensee, if there is no substantial change in the projected plan of operations and all conditions of the previous license have been met.~~

~~D. The applicant shall pay to the borough the temporary access license fee required by the fee schedule.~~

4.11.050 Commercial use permit

A. Commercial use permit provides for commercial activity that occur on borough land or traverse borough land. A commercial use permit does not convey any other interest in the property, is exclusive and not transferrable.
B. The planning commission is responsible for decisions on commercial use permits of one year or less. Approval must be consistent with a parcel's management plan.
C. With planning commission review and assembly approval, a commercial use permit may be granted for a period of up to five years~~.~~
D. An applicant who wishes to obtain a commercial use permit shall submit a non-refundable application fee as set in the borough fee schedule. Commercial use permits may be subject to additional fees as specified in the borough fee schedule.
E. In accordance with DBC 4.01.080, where the activity may alter the land surface, the borough may require a bond or damage deposit in order to ensure proper restoration after use of the land is no longer needed. The bond amount shall depend on the type of activity. The user's liability will be released and the land use authorization processed for closure only after the land has been restored or left in a condition suitable to the borough.
F. Persons holding a land use authorization shall be required to indemnify, save harmless and defend the borough, 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 or omission arising from the persons use, occupancy or the performance under the authorization.
G. The mayor or designee shall cause notice of a proposed commercial use per DBC 04.01.030. The notice shall include a description of the proposed commercial use, the borough land where the activity is proposed and the terms of the permit. The planning commission may hold a public hearing on the proposed commercial use prior to issuing the permit.
H. A successful applicant will be issued a permit detailing specific terms, conditions, forms of issuance and a description of the applicable fees for the permitted activity. Each permit will specify road, trail, land, natural habitat, and environmental protection conditions.
I. The mayor or designee may revoke a permit, for cause, for the following reasons:
    1. the permit holder's failure to comply with the the terms and conditions of the permit, including road, trail, land, natural habitat, and environmental protection conditions.
    2. revocation is necessary to further the management plan for the area.

4.11.060 Conditions for use of resources on borough land, by ~~extraction~~ permit or license~~, or temporary use permit~~

A. The mayor or designee ~~may~~ shall establish borough-wide and/or site specific conditions to guide resource use activities allowed by ~~extraction~~ permit or license ~~or temporary use permit~~. Condition topics include, but are not limited to:
   1. Excavation and reclamation standards, slope standards
   2. Water quality protection
   3. Traffic impacts
   4. Safety including fencing and signage
   5. Visual screening
   6. Hours of operation
B. If the appropriate approval body determines a ~~extraction~~ permit or license may cause damage to the borough land, the mayor or designee shall require the applicant to post a bond with the borough to ensure that the applicant restores the land to reasonably the same condition it was in at the time the license was executed. The mayor or designee shall not release the bond until the licensee has complied with all conditions of the license.
C. The mayor or designee may inspect the borough land at any time to ensure compliance with permit or license conditions.
D. The mayor or designee may, for cause, revoke a~~n extraction~~ permit or license ~~or special use permit.~~
   1. Extraction Licenses -The mayor or designee shall give notice of the potential cause of the revocation and give the licensee reasonable amount of time, but not more than 60 days, to correct the problem. If the problem is not corrected and a permit or license has to be revoked, the licensee, within 45 days, shall restore the land to reasonably the same condition it was in at the time the permit or license was executed.
   2. ~~Extraction Permits and Special Use~~ Permits - The mayor or designee may, for cause and without notice, immediately revoke a~~n extraction~~ permit ~~or special use permit~~. The user of borough real property whose permit has been revoked shall, within the time specified in the permit, and if no time is specified, within seven days of the revocation of the permit, remove from the borough real property any temporary improvements placed on the borough real property pursuant to the ~~temporary use~~ permit. Any improvements not removed shall become the property of the borough or disposed of by the borough at the owner's expense.
E. Nothing in this chapter grants a holder of a permit or license exemption from any tax burden associated with the removal of resources from Denali Borough lands.
F. A holder of a permit or license assumes full responsibility for any damages to equipment either during use or if left unattended on borough property before, during or after the terms of the extraction license; including, but not limited to, loss, theft and vandalism.
G. The Denali Borough assumes no responsibility for hazardous use, accident, injury, or death incurred during any borough land use activity.

4.11.070 Easements and rights of way

A. Depending on scale and impact, as specified below, the mayor/designee or the assembly may negotiate the dedication of rights-of-way or easements for roads,

driveways, pipelines, electric transmission, telecommunication transmission, trails, pathways, or similar utilities

1. Actions of borough wide significance: rights-of-way and easements of borough wide significance, for example, those that extend across an extensive portion of borough land ~~or all of the borough such as the proposed gas pipeline~~, must receive approval by assembly ordinance and an associated best interest finding.
2. Actions of local significance: Rights or way or easements which only serve a limited area, are relatively short in length (approximately 1000 feet or less), and have minimal environmental impact, can be approved by the planning commission, with a recommendation from the mayor or designee.

B. Within 45 calendar days of acceptance of a completed application for locally significant easement or right-of-way, or 90 days for borough wide significant actions, the planning commission or assembly shall approve, reject, or notify the applicant of the discovery of additional requirements of the proposed easement or right-of-way.

Chapter 4.15

DISPOSAL, LEASES AND EXCHANGE OF BOROUGH REAL PROPERTY
GENERAL PROVISIONS

Sections:

~~***General provisions for land disposals, leases and exchanges***~~
4.15.005 Definitions.
4.15.010 General policy
4.15.020 Authority to dispose, lease or exchange borough real property
4.15.030 Conformity with classification and borough-approved plans
4.15.040 Procedures for nominations, review and approvals
4.15.050 Appraisal and market value
4.15.060 Requirements for sale
4.15.070 Qualifications of applicants, bidders, proposers
4.15.080 Assembly ordinance authorizing sales, leases or exchanges

(NOTE: Specific policies specific to land disposals was moved to DBC 4.16)

4.15.005 Definitions

4.15.010 General Policy

The borough shall provide for land disposal, leases and exchanges, considering the following:

1. Goals presented in the borough comprehensive plan and section 4.01.010
2. The preponderance of public land and the limited supply of private land in the borough
3. Evidence of local demand and the capacity of the private real estate market to meet that demand
4. A priority on land for year round residential use and for beneficial industrial or commercial developments
5. The general intent to generate revenue to support borough services, by offering land at fair market value, except in the limited situations provided by DBC 4.05.020 (H) and 4.15.050 (C).

4.15.020 Authority to dispose, lease or exchange borough real property

A. The mayor or designee may dispose, lease, or exchange borough land where authorized by the assembly by ordinance.
B. Decisions on disposals, leases and/or exchanges of borough real property are subject to review by the planning commission before submission to the borough assembly. Planning commission review shall be limited to the properties' suitability for the intended purpose and consistency with surrounding land use(s) and management plans which include classification. The planning commission, by resolution, shall make a recommendation to the borough assembly regarding the proposed land disposal.

4.15.030 Conformity with classification and borough-approved plans

The borough may dispose, lease or exchange municipal property when the affected land has received a management plan including land classification ~~been classified~~ under the policies of this title and the proposed action is consistent with ~~that classification, as well as~~ the borough comprehensive plan, and any other ~~where~~ applicable land use~~, an adopted management~~ plans.

4.15.040 Procedures for nominations, review and approvals

A. The borough mayor or designee, the assembly, the planning commission, or the public may nominate real property for sale, lease or exchange, as outlined below:
   1. Land disposal nominations from the borough mayor or designee, planning commission, or assembly are incorporated into the annual work plan (DBC 4.10.020).
   2. The public may recommend disposals, leases or exchanges to the borough mayor or designee for inclusion in the annual work plan. Nominations from the public shall be submitted to the mayor or designee in a standardized format established for that purpose and may include a processing fee according to the assembly approved fee schedule.
   3. The borough entities referenced above may also recommend disposals outside the timeframe of the annual work plan.

B. Once properties are nominated for disposal, lease or exchange, the process below shall be followed.
   1. The mayor or designee prepares the information below for each specific recommended disposal, lease or exchange action:
      - rationale, link to the ~~classification and~~ management plan (where applicable)
      - initial best interest finding
      - intended form and terms of offering
      - physical form of sale or lease – e.g., intended use, general number and size of lots, access, design standards
      - controls on post-disposal/post exchange uses
      - for leases, objectives for operations plan
   2. Public notice is issued, as specified in DBC 04.01.030. A public meeting is held in a location proximate to the proposed action.
   3. The mayor or designee presents a package to the planning commission for review, including a recommended action. The planning commission reviews these findings and takes public testimony as part of a regularly scheduled meeting. The planning commission presents a recommendation for consideration by the assembly.
   4. The assembly, by ordinance, approves any specific disposal, lease or exchange, providing sufficient direction to allow the mayor or designee to move forward with specific actions.
   5. The mayor or designee carries out disposal, lease or exchange process as authorized by the assembly. Final terms and conveyance of agreements or contracts are governed by the remaining sections of this Title.

4.15.050 Appraisal and market value

A. All lands shall be sold or leased at fair market value or fair market rental value as determined by appraisal, except as allowed by C below.
B. Parcels to be sold, leased or exchanged must have a current appraisal performed by an Alaska State certified, Alaska chapter, Member of the Appraisal Institute (MAI) appraiser.
C. The borough may provide for less than fair market land sales and leases in two circumstances:
    1. to established non-profit corporations and organizations when doing so would provide a public benefit and be in the best interest of the borough. The assembly may authorize the mayor or designee to sell or lease land for less than fair market value if the ordinance authorizing the action contains:
        - A finding that the sale for less than fair market value is in the best interests of the borough;
        - A statement of the facts on which the finding is based
        - The period of time during which the offer may be accepted.
    2. The borough may lease (but not sell) borough land at less than fair market value where, pursuant to the lease operating plan, a commercial or industrial facility or use will be established or maintained on the leased land, but only if the assembly first finds:
        - That without the rent reduction, development of the use or facility will not be financially feasible and will not be located or maintained within the borough;
        - The operation will confer a net economic benefit to the borough or to the citizens of the borough.
        - The below market lease rate shall not extend for up to more than10 years. A lease entered into pursuant to this subsection may be renewed only for a fair market rental value.
        - A lease providing for below a fair market value shall provide for an immediate rent adjustment to fair market value if the specified use or facility is not established within a time specified in the lease and if the specified use or facility is not continuously maintained except for such periods as are set forth in the lease.
    3. The borough may sell land determined to be unusable or inaccessible to an adjacent land owner through a direct sale as long as the land is left in permanent amenity status.

4.15.060 Requirements for sale

Borough real property (except natural resources) must be surveyed, platted and made to comply with other subdivision processes by the borough prior to sale or lease. The cost to the borough of surveying, platting and complying with other subdivision processes shall be included in the sale or rental price of the property. In the case of subdivisions, the costs may be prorated or shared equally among all the properties within the subdivision.

4.15.070 Qualifications of applicants, bidders, proposers

A. A bidder at auction, or an applicant to otherwise purchase, exchange, lease, respond to a proposal, enter into a management agreement, or use of borough real property must be:
   1. A legally competent person under the laws of the state of Alaska;
   2. At least 18 years' old
   3. A group, association, or corporation authorized to conduct business under the laws of Alaska; or
   4. a person acting as agent for another person qualified under subsection (1) or (2) and has provided evidence of this status acceptable to the borough mayor or his designee, for example by filing with the borough a power of attorney or letter of authorization.

B. In addition to subsection (A) of this section, a person is not qualified if:
   1. The person has failed to pay a deposit or payment, payable to the borough in relation to borough real property in the previous five years; or
   2. The person is currently in breach or default on any contract or lease for real property transactions in which the borough has an interest; or
   3. The borough mayor or his designee has documented in writing that the person is unlikely to make payment or responsibly perform under the lease or other contract.

4.15.080 Assembly ordinance authorizing sales, leases or exchanges

The assembly shall by ordinance fix the general terms of all sales, leases or exchanges of borough land. The ordinance shall contain:

1. the approximate date and the method or methods of the sale or lease
2. for sales or leases, the manner in which payment is to be made, the interest to be conveyed, the instrument of conveyance to be used, and any other terms the assembly deems necessary to provide the mayor or designee sufficient general direction to proceed with the sale or lease.

Chapter 4.16

DISPOSAL OF BOROUGH REAL PROPERTY

~~*Specific policies specific to land disposals*~~
4.16.005 Definitions
4.16.010 Terms for land disposals
4.16.020 Different methods for land disposal
4.16.030 Public auction outcry sale
4.16.040 Sealed bid public auction sale
4.16.050 Lottery sale
4.16.060 Over-the-counter sale
4.16.070 Direct sale
4.16.080 Negotiated sale
4.16.090 Land conveyance and future uses of conveyed lands
4.16.100 Conveyance for public purpose

4.16.005 Definitions

4.16.010 Terms for land disposals

A. The assembly may authorize payment to be made through either an upfront, full payment, or financed over time. The latter approach requires the following:
   1. The down payment, payment schedule and rates of interest shall be set in the assembly ordinance.
   2. For disposals, the period for total payment does not exceed 10 years, or 20 years if the land is sold for agricultural use.
   3. For a sale of land with a value of more than $5,000, the prospective purchaser shall pay to the borough not less than 10 percent of the minimum appraised value at the time of the sale or bid opening.
B. The sale of land with a value of $5,000 or less shall be paid at the time of the sale or bid opening by certified check or money order by the prospective purchaser.
C. Some methods of disposal may require a bid deposit upon submitting a request or bid to purchase. Any bid deposit submitted that is not successful shall be returned to the unsuccessful bidder immediately following the sale or bid opening.
D. Some methods of disposal may require an application fee upon request or application to purchase. Application fees to participate in a sale process shall not be refunded.
E. If the assembly requires a prospective buyer to pay the borough a down payment, bond or other deposit, and if the prospective buyer breaches a term of the sale, damages will be assessed. The borough shall retain as liquidated damages the prospective buyer's down payment, bond or other deposit.
F. The assembly may by ordinance impose additional limits on the number of parcels a person may buy at any sale.

4.16.020 Different methods for land disposal

The borough may dispose of borough land by any of the following methods:

1. Public auction outcry
2. Sealed bid public auction
3. Lottery Sale
4. Over the counter
5. Direct sale
6. ~~Soliciting proposals to purchase or lease borough land~~
7. Negotiated sale

4.16.030 Public auction outcry sale

The assembly may by ordinance authorize the mayor or designee to sell borough land by public auction outcry. The mayor or designee shall sell the land to the highest bidder who performs all the terms of the sale. The mayor or designee will promulgate rules and regulations for conducting this type of auction sale. These rules must be approved by the assembly.

4.16.040 Sealed bid public auction sale

The assembly may by ordinance authorize the mayor or designee to sell borough land by sealed bid public auction. The mayor or designee shall sell the land to the highest bidder who performs all the terms of the sale. The mayor or designee will promulgate rules and regulations for conducting this type of auction sale. These rules must be approved by the assembly.

4.16.050 Lottery sale

The assembly may by ordinance authorize the mayor or designee to sell borough land by the use of a lottery. A single individual, business, corporation or other eligible entity may purchase by lottery only one parcel of borough land every three years. In order to ensure the fair and equitable disposal of borough land to the public, the assembly may by ordinance impose additional limits on the number of parcels an eligible entity may buy from lottery sales. The mayor or designee may promulgate rules and regulations for conducting a lottery. These rules must be approved by the assembly.

4.16.060 Over-the-counter sale

A. The assembly may by ordinance authorize the mayor or designee to sell borough land by the use of over-the-counter sales if the land was offered for sale at an auction or lottery and the land did not sell at the auction or lottery. Land offered over the counter for sale may be purchased on a first-come, first-served basis at the borough office. The mayor or designee may promulgate rules and regulations for conducting an over-the-counter sale. These rules must be approved by the assembly.
B. The mayor or designee shall periodically review the terms of sale of all land offered for sale over the counter and shall:
    1. Adjust rates on interest to reflect the prevailing market conditions; provided, the rate of interest shall not be more than six percentage points above the prevailing Federal Reserve discount rate to member banks.

2. Adjustments in the price of any lot offered in the over-the-counter sale shall be made by the assembly. Price adjustments may be made under the guidance of an independent fee appraiser.

C. Lots unsold at a sale may also be offered for sale at future land sales.
D. Defaulted parcels may be offered for resale over the counter and/or at future land sales.

4.16.070 Direct sale

The assembly may by ordinance authorize the mayor or designee to sell borough land directly to the landowner adjoining the borough land if:

1. The land has no legal or physical access and the cost of developing access would be greater than the resulting value of the parcel with access; or
2. The cost of surveying, platting, or taking other action necessary to establish an acceptable legal description would exceed the value of the property; or
3. The land is of such a size or shape as to be illegal or unfeasible to develop as an independent parcel under the applicable land use ordinance; or
4. The land is found not suitable for development and is placed in permanent conservation status.

4.16.080 Negotiated sale

The assembly may by ordinance authorize the mayor or designee to sell borough land directly to an interested, eligible party under rare, specific circumstances:

1. Land will be sold at fair market value, and
2. The use of the proposed sale would lead to a specific use that provides a broad public benefit, beyond the specific benefits to the applicant, and the particular parcel provides an otherwise difficult to achieve option to provide this public benefit, or.
3. The sale meets the broad goals for land disposal specified in this Title and the specific terms of the proposed sale do not fit well into the other methods outlined in this chapter, e.g., forms of non-traditional payments.

4.16.090 Land conveyance and future uses of conveyed lands

A. After the buyer has paid to the borough the payments required by ordinance, the mayor or designee shall execute the instrument of conveyance authorized by ordinance that transfers the land or the interest in land to the buyer.
B. An instrument conveying land may contain controls on future land uses, for example deed restrictions, that set specific, borough-enforceable rules approved by the assembly that:
    1. Define allowed and prohibited use
    2. Prohibit subdivision and/or set maximum residential densities
    3. Establish dimensional requirements, such as building setbacks or maximum building heights
    4. Establish other use controls necessary to comply with the goals for the disposal established in the management plan or other adopted borough land use policy

4.16.100 Conveyance for public purpose

The transfer of borough land or resources may be made to a state or federal agency, or municipality within the borough, for public purposes if:

A. Approved by the borough assembly; and
B. The mayor or his designee ensures, by regulation, deed restriction, covenant, or otherwise, that transfers of land under this section serve a public purpose and are in the public interest; and
C. The borough retains a reversionary interest if the land is not used for the public purpose that was approved by the borough assembly on each conveyance or other land use authorization made under this section.

Chapter 4.17

LEASING OF BOROUGH REAL PROPERTY

Sections:

4.17.005 Definitions
4.17.010 Procedures ~~and policies common to leasing, disposals & exchanges~~
4.17.020 Types of leases
4.17.021 Grazing lease
4.17.022 Agricultural lease
4.17.023 Short term lease
4.17.024 Long term lease
4.17.030 Processing fee
4.17.040 Qualifications of applicants or bidders
4.17.050 Plan of operations
4.17.060 Competitive bids
4.17.070 Term of lease
4.17.080 Current appraisal
4.17.090 Right of renewal
4.17.100 Lease rate
4.17.110 Land survey
4.17.120 Attachment of special conditions
4.17.130 Termination of lease
4.17.140 Easements on leased land

4.17.005 Definitions

A. Agriculture - means the tilling of the soil, the raising of crops, dairying, or animal husbandry. NOTE: Steve Jones suggest that some controls should be put in place to control invasive plants and also control the use of herbicides.

B. Grazing – means the use of land for the sustenance and growth of domestic livestock, for example, horses or cattle; primarily relying on native vegetation.

Note to reviewers – the borough may want to develop policies on marijuana cultivation, manufacturing, sales and testing, as these activities may be proposed on borough lands. Preparing such a code is outside the scope of this current project, but for reference, two definitions, from the Anchorage draft code, are shown below.

C. Marijuana Cultivation Facility - A facility that cultivates and harvests marijuana for transfer or sale to a marijuana manufacturing facility, a marijuana testing facility, or a marijuana retail sales establishment.

D. Marijuana Manufacturing Facility - A facility that receives harvested marijuana from a cultivation facility and extracts, processes, and/or manufactures marijuana products for transfer or sale to another marijuana manufacturing facility, a marijuana testing facility, or a marijuana retail sales establishment.

4.17.010 Procedures ~~and policies common to leasing, disposals and exchanges~~

The mayor or designee is authorized to lease land, as authorized by assembly ordinance and associated best interest finding, consistent with policies in this title.

4.17.020 Types of leases

Land can be leased in response to a borough solicitation for public interest, as initiated through the annual work plan, or in response to a request for a lease from an individual, business or organization. There are four main categories of leases; grazing, agricultural, short term, and long term.

4.17.021 Grazing lease

Where lands are suitable, and public interest exists, the borough assembly may authorize by ordinance the leasing of land for grazing. The fair market value of leases shall be set to reflect the value of the land when limited to these specific purposes, that is, generally lower than if the land was available for commercial, industrial or residential use.

4.17.022 Agricultural lease

Where lands are suitable, and public interest exists, the borough assembly may authorize by ordinance the leasing of land for agriculture use. The fair market value of leases shall be set to reflect the value of the land when limited to these specific purposes, that is, generally lower than if the land was available for commercial, industrial or residential use.

4.17.023 Short term lease

Where lands are suitable, and public interest exists, the borough assembly may authorize by ordinance the leasing of land for short term use. Short term is defined as 5-years or less.

4.17.024 Long term lease

Where lands are suitable, and public interest exists, the borough assembly may authorize by ordinance the leasing of land for long term use. Long term is defined as up to 35-years.

4.17.030 Processing fee

Applicants wishing to lease borough property must complete an application and submit a nonrefundable processing fee, as specified in the borough's fee schedule.

4.17.040 Qualifications of applicants or bidders

A. ~~Requires complying~~ Qualified applicants or bidders must comply with the same standards presented in 4.15.070
B. Under certain circumstances, the borough may require a sole proprietor, partnership, corporation or other entity to provide a credit application. All financial information supplied to the Denali Borough will be stamped Confidential and will not be released for public scrutiny under applicable Public Records statutes.

4.17.050 Plan of operations

A. The lease applicant shall submit to the borough for review and approval a plan of operations as specified below. The lessee's plan of operations must be consistent with the broad goals of this title, the land's ~~classification~~ management

plan, any other applicable ~~adopted borough~~ land use plans, and provisions of borough code.

B. The plan of operations shall include, at a minimum:
   1. Detailed description of the intended use of the land
   2. Desired lease length
   3. Timetable for development
   4. Planned structures and fuel storage facilities accompanied by a scale drawing
   5. Estimated value of the improvements
   6. Delineated access, water, and power sources
   7. Intended solid waste and wastewater disposal methods,
   8. If a non-exclusive lease, identify location points of passage for the general public
   9. Detailed description of how improvements will be removed at the end of the lease.

C. Once approved the lessee must comply with all terms of the operations plan. Proposed modifications to the plan require submittal and approval of a request for plan amendment. Minor changes in the operations plan can be approved by the mayor or designee. Minor changes are defined as those that do not notably change the nature of the use, the footprint of any improvements, or the impact on surrounding uses. If changes are made without approval of the mayor or designee, the mayor or designee may require the changes to be reversed at the lessee's expense.

4.17.060 Competitive bids

The borough may provide for competitive bidding to lease borough land that is classified and intended for commercial or industrial use within the approved land management plan. The competitive bidding shall be conducted in accordance with requirements established by the Assembly.

4.17.070 Term of lease

The term of the lease shall be based on the type of lease, the nature of the improvements to be made by the lessee and shall generally be long enough to allow for amortization of improvements made by the lessee.

1. Leases shall have a maximum term of 35 years with a one-time option for renewal.
2. A lease for a term in excess of 10 years shall be recorded at the state recorder's office.
3. Lessee will provide 90 days' notice of a request to renew a lease.

4.17.080 Current appraisal.

Parcels to be leased must have a current appraisal performed by an Alaska State certified, Alaska chapter, Member of the Appraisal Institute (MAI) appraiser.

4.17.090 Right of renewal

The borough may grant the lessee a right of renewal upon the expiration of the initial term; provided, that the renewal, or any extension of the lease, shall be treated as a

new lease and shall be subject to all provisions of this code then in effect, and that the lessee has complied with the approved operations plan.

4.17.100 Lease Rate

A. The annual lease rate for a leases shall be established as the fair market value at the time the lease contract is approved, as determined by a qualified appraiser (see .14.080) unless otherwise authorized by ordinance. If an existing appraisal exists and is less than two-years old, a letter of opinion may be used.
B. Every five years the borough will review leases and adjustments will be determined by adding the increase or decrease rate of the consumer price index (CPI) based on the annual month of March adjustment for the Anchorage metropolitan area market. The amount of the adjustment will be conveyed to the lessee by the lessor by June 1st of each year and the adjusted payment will start beginning with the following July lease payment.
C. The appraised value or the adjusted value shall not include any improvements the lessee has made. Cost for the appraisal will be the responsibility of the proposed lessee at the lessee's own expense.

4.17.110 Land survey

The mayor or designee may require, for noncompetitively bid lands, a proposed lessee to cause the borough land to be surveyed at the proposed lessee's own expense.

4.17.120 Attachment of special conditions

The assembly, mayor or designee may attach special conditions to a lease in order to reduce risk to the borough, mitigate public concerns, or other purposes.

4.17.130 Termination of lease

When the lease terminates, the lessee shall remove all improvements made pursuant to the plan of operations except those improvements that the lease specifies shall become the property of the borough, and the lessee shall restore the land to reasonably the same condition it was in at the time the lease was executed or, if stipulated, to the condition specified in the lease agreement. Improvements that are not removed by the lessee at the expiration of the lease shall ~~become the property of the borough. If the improvement is unwanted property of the borough, it may~~ be remove at the lessee's expense.

4.17.140 Easements on leased land

Every lease of municipal land shall provide that the municipality retains the right to designate or grant rights-of-way or utility easements across the leased premises without compensation; provided, that the lessee shall be compensated for the taking or destruction of any improvements and provided further, that the lessee at their option may request to terminate the lease and/or a rental adjustment to reflect any reduction in value of the leased premises.

Chapter 4.18

EXCHANGE OF BOROUGH REAL PROPERTY

4.18.005 Definitions
4.18.010 Purpose
4.18.020 Value of real property exchanged
4.18.030 Execution of exchange

4.16.005 Definitions

4.18.010 Purpose

Subject to the requirements of this title, the assembly, by ordinance, can authorizes the exchange of borough real property. Exchanges shall be for the purpose of consolidating land holdings, creating land ownership and use patterns which will permit more effective management, facilitating the objectives of borough programs, or other public purposes.

4.18.020 Value of real property exchanged

A. The borough may accept in exchange for borough land any consideration of sufficient value not prohibited by law. Decisions on land exchanges are “major land use decisions”, as specified in 4.01.015, and the assembly shall review and approve or reject offers for exchange of municipal land, following the same procedures as specified for land disposals, including the requirement for a best interest finding.
B. As is the case with disposals, exchanges shall provide for equal value, except where the assembly prepares an explicit, written finding that borough and public interests, and the goals expressed in 4.01.010, are best met through an exchange at less than equal value.

4.18.030 Execution of exchange

The borough must first, or simultaneously, receive the title conveyance for the real property the borough is to receive before the borough can convey the title to the real property the borough is to release through this exchange.

Chapter 4.20
FINANCIAL PROVISIONS FOR LAND SALES AND LEASES

CHAPTER 4.20 IS BEING REVIEWED BY THE FINANCE COMMITTEE

This section moved to 4.10.015

Chapter 4.25
CLASSIFICATION OF BOROUGH LANDS

Sections:

4.25.010 Classification required
4.25.020 Classifications categories
4.25.030 Procedural requirements
4.25.040 Classification categories defined

4.25.010 Classification required

All borough land, must be classified through an assembly approved land management plan prior to any action being taken with lasting consequences for the character and/or options for use of that land.

4.25.020 Classifications categories

B. All borough lands shall be classified as one of the following:
   1. Agriculture and Forestry
   2. Amenity Value
   3. Commercial and Light Industrial
   4. Heavy Industrial
   5. Land Bank
   6. Large Scale Materials or Mineral Extraction
   7. Multiple Use Reserve
   8. Public Facilities
   9. Recreation
   10. Settlement

4.25.030 Procedural requirements

The classification or reclassification of the borough property shall be identified through the assembly approved management plan ~~processed following the general provisions contained in DBC 4.01 and DBC 4.25~~. ~~Guidelines for classification categories are located in the borough land management policies and procedures document (*and included in this draft as a reference appendix*).~~

4.25.040 Classification categories defined

K. *Agriculture and Forestry* – Land intended for raising and harvesting crops, grazing, breeding and management of livestock, dairying, commercial timber harvest, or woodlot management. Such land can be sold in fee, sold as agriculture rights only, or leased while remaining in borough ownership.

L. *Amenity Value* – Land intended to be retained and kept in a natural state to maintain a sense of open space and “Alaska living” for adjacent parcels and the borough as a whole, and that may also protect wildlife habitat and support non-commercial recreational opportunities, subsistence, scenic vistas, historic structures and landscapes, greenbelts, or other natural, cultural, or aesthetic qualities.

M. *Commercial and Light Industrial* – Land intended primarily for uses related to trade and commerce, such as the sale, rental, or distribution of products and services, and/or for light industrial uses. Light industrial uses are those that do not create significant off-site impacts and are generally conducted inside closed buildings, for example warehousing, storage, and light manufacturing. Commercial and light industrial area may also include, as secondary uses, land for greenbelts, material sites for local roads and building lots, easements for roads and trails, or lots for community facilities. Residential uses may also be permitted in specified sites.

N. *Heavy Industrial* – Land intended for industrial and related uses that are best separated from most other uses, due to their potential for off-site impacts. Examples include landfills, large scale material or mineral extraction and processing, waste handling and storage, electric generation, large scale manufacturing, or other uses that involve significant noise, odors, bright lights, or other potential nuisances or safety risks that make them poor neighbors with most other land uses. Parcels should be of a size that allows for sufficient buffer zones to reduce potential impacts of these types of use on adjoining properties.

O. *Land Bank* – Lands where the intent is a mix of disposals and retention, and where a management plan is required to determine the specific types, character and locations of these uses. These lands will be retained in borough ownership in the near term, until a management plan is complete. Following approval of a management plan, these areas will be reclassified to designate the specific intended uses, such as settlement, commercial, amenity value, or public facilities. In the interim, the land will be available for multiple use management, as long as such use does not reduce options for future uses, including disposals. Examples of such uses include seasonal personal use firewood harvest, low impact commercial recreation activities, or small scale gravel extraction.

P. *Large Scale Materials or Mineral Extraction* – Lands which are chiefly valuable for earth materials, including, but not limited to, sand, gravel, soil, peat moss, sphagnum, stone, pumice, cinders, limestone and clay, and for minerals, including, but not limited to, coal, phosphate, oil, shale, sodium, sulphur, and potash, where the removal of the material would seriously interfere with utilization of the lands for other purposes.

Q. *Multiple Use Reserve* – Land to be held in borough ownership at least the near term, where there is not a pressing need for immediate decisions on the ultimate preferred use. In the interim, the land will be available for multiple use management, as long as that use does not significantly reduce options for future uses, including disposals.

R. *Public Facilities* – Land intended to be retained and reserved for public facilities including schools, clinics, day-care centers, government buildings, parks, and other public uses. Parcels are sized to meet the need, and allow for future expansion. Such lands will generally be retained in borough ownership, but could also be sold or leased to another public or non-profit entity that will retain land for this purpose.

S. *Recreation* – Land intended to be retained where the primary use is public and/or commercial outdoor recreational areas and facilities. Recreational uses, include, but are not limited to, trails (hiking, horse, bikes, cross-country ski and motorized,

such as ATVs), ski areas, golf courses, day use facilities, campgrounds, wilderness camps, and horse stables.

T. *Settlement* – Land intended primarily for residential uses, including selling individual lots or parcels or for subdivisions. These areas can also include, as secondary uses, areas for greenbelts and small parks, material sites for subdivision roads and building lots, easements for roads and trails, or lots for community facilities. Limited local serving commercial may also be permitted in specified sites.

Appendix - Classification Guidelines

The material on the following page is not intended to be included in code, but would be part of a "policy and procedure" manual created by the borough land management department. This manual could provide guidance to the mayor, planning commission, assembly and general public when determining the appropriate classification for a parcel.

Notes:

1. *Small, single use, stand-alone parcels, where the intended use is clear, generally do not require management plans*

2. *Management plans may result in a general objective to use an area for land disposal, and classify the area accordingly. As more detailed site planning takes place, the initial classification will need to be refined, to clarify specific areas for sales, and other areas for retention in borough ownership. For example, the initial management plan could classify a large tract for settlement. When a detailed disposal plan is created, a portion of this land would be sold, and other portions re-classified as open space surrounding the sales areas.*

Classification	Where Appropriate	Timeframe	Management Plan Required
Agriculture & Forestry Amenity Value Commercial Extraction Industrial Public Facilities Recreation Retention Settlement	For relatively small, accessible individual borough parcels or a set of such parcels (e.g., < 640 acres in size), where preferred uses are currently established, or where the general intent for future use can be determined with information on hand	Borough lands available for use today, due to current accessibility and opportunities for near term use. Drivers for such near term uses include specific public objectives (e.g., a public facility) or private sector interest (e.g., a request for sale, lease or permit).	Requires formal assembly review and approval process for specific proposed uses or projects: This level of approval is required for disposals (sales or lease), or for activities resulting in substantial, enduring changes in the character of the landscape (e.g., a commercial gravel operation)
Land Bank	For larger parcels (e.g., > 1 section/640 acres), with decent access, where the intention is for a mix of disposals and retention, but where work is required, using a management planning process, to determine the appropriate mix, character and location of uses	Borough lands that are priorities for near to mid-term decision making through a management planning process, to set the stage for subsequent implementation in a 1-5year timeframe	Management plan required to assess site characteristics and current and possible uses, and based on this information, establish preferred uses. Results set stage for more specific classifications & approvals described in the row above.
Multiple Use Reserve	For small or larger parcels, with limited or no road access, where there is little current pressure for use and where preferred future uses are not yet clear	Borough lands where developed uses are not likely for 5, 10, or more years into the future	Management Plan: for larger parcels Formal Assembly review and approval process for specific proposed uses or projects: for single small parcels