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Introduced:

Draft: 11/5/2024

Public Hearing:
Action:

Bold Underline = Language being added
[CAPS AND BRACKETS] = Language being deleted

MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. Choose an item. ____

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.02 MANDATORY LAND USE PERMIT, MSB 17.55 - SETBACK AND SCREENING EASEMENTS, MSB 17.65 VARIANCES, MSB 17.80 NONCONFORMING STRUCTURES AND MSB 17.125 DEFINITIONS.

BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 25-XX.

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Amendment of chapter. MSB 17.55 is hereby amended to read as follows:

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]

Section

- 17.55.004 DEFINITIONS
- 17.55.005 [GENERAL] **PURPOSE AND INTENT**
- 17.55.010 SETBACKS **FROM RIGHTS-OF-WAY AND LOT LINES**
- 17.55.015 SHORELANDS; DEFINITION [REPEALED]
- 17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES**
- 17.55.020 **WATERBODY** SETBACKS FOR [SHORELANDS] **STRUCTURES**
- 17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES

17.55.004 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- "Aircraft hangar" means a roofed structure which is used to completely or partially enclose and store aircraft and aircraft accessories.

- "Animal waste facility" means any area or structure used to store, compost, or dispose of animal manure, animal byproducts, an animal carcass, or fish waste. The term does not include a dumpster or other closed container provided by a waste service provider.

- "Boathouse" means a roofed structure which is used to completely or partially enclose and store boats and boating accessories.

- "Building" means any structure intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature.

- "Building line" means the line of that part of the building nearest the property line.

- "Dedication" means the reservation of land to a public use by the owner manifesting the intention that it shall be accepted and used presently or in the future for such public purpose. A dedication by the owner under

the terms of this section is a conveyance of an interest in property which shall be deemed to include the warranties of title listed in A.S. 34.15.030. The dedication of streets, alleys, sidewalks, or public open space shall convey a fee interest in the area dedicated. The dedication of all other public rights-of-way shall be deemed to create an easement in gross to perform the indicated function in the area depicted.

- "Engineer" means a registered professional civil engineer authorized to practice engineering in the state of Alaska.

"Hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. §§ 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980). "Hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less.

- "Impervious surface" means the area of the

subject site covered by impenetrable materials. This surface has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

- "Incidental" means subordinate and minor in significance and bearing a reasonable relationship to the primary use.

- "Lot" means the least fractional part of subdivided lands having limited fixed boundaries and having an assigned number, or other name through which it may be identified.

- "Lot depth" means the average distance between front and rear lot lines.

- "Lot frontage" means all property abutting the right-of-way of a dedicated street or road easement, measured along the right-of-way between side lot lines of a lot.

- "Lot width" means the average distance between side lot lines.

- "Ordinary high water mark" means the mark made by the action of water under natural conditions on the shore or bank of a body of water which action has been so common and usual that it has created a difference between the character of the vegetation or soil on one side of

the mark and character of the vegetation and soil on the other side of the mark.

- "Parcel" means an unsubdivided plot of land.

"Private pond" means a natural or constructed waterbody less than five acres in size that lacks a surface connection to other waterbodies and is located entirely on property with a single owner.

- "Right-of-way" means a strip of land reserved, used, or to be used for a street, alley, walkway, airport, or other public or private purpose.

"Secondary containment" means an impermeable diked area or portable impermeable container capable of providing storage capacity for materials which may leak due to the failure, overflowing or improper draining of the primary storage container. Double-walled tanks do not qualify as secondary containment.

- "Structure" means anything that is constructed or created and located on or above the ground, or attached to something fixed to the ground. For purposes of minimum setbacks and building separation requirements, the following are not considered structures unless specifically addressed by code: signs; fences; retaining walls; parking areas; roads, driveways, or walkways; window awnings; a temporary building when used for 30

days or less; utility boxes and other incidental structures related to utility services; utility poles and lines; guy wires; clotheslines; flagpoles; planters; incidental yard furnishings; water wells; monitoring wells; and/or tubes, patios, decks, or steps less than 18 inches above average grade.

- "Subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or lease for more than ten years, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.

- "Surveyor" means a professional land surveyor who is registered in the state of Alaska.

- "Utility box" means electric transformers, switch boxes, telephone pedestals and telephone boxes, cable television boxes, traffic control boxes, and similar devices.

- "Utility services" means the generation, transmission, or distribution of electricity, gas, communications, and municipal water and sewer systems.

- **"Water-dependent accessory structure" means a**

structure necessary to support access to or use of the water (e.g., a shed used to store boating accessories) or waterfront (e.g., a gazebo).

17.55.005 [GENERAL] PURPOSE AND INTENT.

(A) [THIS] The purpose of this chapter is to establish[ES] minimum structural setbacks from lot lines, [WATER COURSES AND] water bodies, and rights-of-way [, AND SPECIFIC SCREENING EASEMENTS FOR CERTAIN LANDS WITHIN SUBDIVISIONS] in the Matanuska-Susitna Borough except where otherwise specified in special land use district regulations within this title.

(1) Setbacks provide for light and air, fire protection, traffic safety, preservation of privacy, stormwater management, space for utility lines, and uphold neighborhood aesthetics; and

(2) Setbacks along flowing waters minimize risks to structures from lateral channel migration and flooding.

(B) The primary purpose of 17.55.016 to 17.55.020 is to protect human health, aquatic and riparian habitat, the ecologic function of waterbodies, the local economy and property values, recreation, viewshed, and quality of life.

(1) These sections establish requirements

related to the development and management of lands adjoining waterbodies.

(2) Standards will reduce and minimize the discharge of pollutants to waterbodies via surface runoff and subsurface leaching.

17.55.010 SETBACKS FROM RIGHTS-OF-WAY AND LOT LINES.

(A) No structure or building line shall be placed within 25 feet from the right-of-way line of any public right-of-way, except no furthestmost protruding portion of any structure shall be placed within ten feet from the right-of-way line of any public right-of-way when the pre-existing lot:

(1) measures 60 feet or less in frontage on a public right-of-way, and is not located on a cul-de-sac bulb; or

(2) comprises a nonconforming structure erected prior to July 3, 1973. This setback shall be known as the structure or building line setback.

(B) Except where specifically provided other-wise by ordinance, no furthestmost protruding portion of any structure or building line shall be located nearer than ten feet from any side or rear lot line.

(C) Except as otherwise specified by code, eaves may project a maximum of three feet into required setback

areas.

(D) The setback requirements of this section do not apply to property within the cities of Palmer and Wasilla.

(E) If a condemnation by a governmental agency reduces the building line setback of a structure below 25 feet, but there remains at least ten feet setback, and the setback reduced by the condemnation met the requirements of this section prior to the condemnation, the resulting setback shall be the setback requirements for the lot.

(F) For purposes of this chapter, commercial or industrial buildings on separate but [ADJACENT] **adjoining** parcels, which otherwise meet the setback requirements, may have connecting pedestrian walkways, enclosed or not. Pedestrian walkways:

(1) shall not contribute to the building area or the number of stories or height of connected buildings; and

(2) must comply with the current adopted edition of the International Building Code, except that the outside width of the walkway shall not exceed 30 feet in width, exclusive of eaves.

(G) No furthestmost protruding portion of any

structure or building line shall be located nearer than ten feet from railroad rights-of-way, except that utilities and rail dependent structures may extend up to railroad rights-of-way.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

(A) No part of a subsurface sewage disposal system shall be closer than 100 feet from the ordinary high water mark of any body of water.

(B) Kennels, stables, animal yards and animal waste facilities shall not be located closer than 100 feet from the ordinary high water mark of any water body. Drainage from kennels, stables, animal yards and animal waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body. This requirement does not apply to private ponds.

(C) Paved vehicle parking areas for commercial and industrial facilities shall not be located closer than 25 feet from the ordinary high water mark of any water body.

(1) paved parking areas within 75 feet of a waterbody shall demonstrate that the development standards identified in MSB 17.02.035(B) regarding stormwater runoff are met.

(D) Except as provided in subparagraph (1), all

liquid hazardous substances, including petroleum fuels, oils, and lubricants, located or stored closer than 75 feet from the ordinary high water mark of any water body shall include secondary containment of at least 110 percent of the storage volume to minimize the risk of spills. All piping and valves carrying liquid hazardous substances shall have secondary containment.

(1) Pump-activated fuel-delivery systems with leak detection may have a drip collection system instead of secondary containment.

(2) The owners of pre-existing fixed storage facilities for petroleum fuels and other liquid hazardous substances (e.g., home heating oil tanks) shall be allowed five years from the effective date of this section to fully comply with the secondary containment requirement.

(E) The following activities are prohibited within 25 feet of the ordinary high water mark of any water body:

(1) Removing riparian buffer from more than 50 percent of the surface area.

(a) the riparian buffer area shall be left undisturbed except that dead, diseased, or fallen trees may be removed, and pruning for vegetation health

is allowed.

(2) Ground disturbing activities of more than 50 percent of the surface area.

(3) Storing or discharging solid or liquid waste, including debris, and animal and yard wastes.

(4) Stockpiling imported snow from an offsite location.

(5) The application of fertilizers or herbicides.

17.55.020 WATERBODY SETBACKS FOR [SHORELANDS]

STRUCTURES.

(A) Except as provided in subsection (B) of this section, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE, E]Eaves may project three feet into the required setback area.

(1) Compliance with setbacks for structures adjoining waterbodies shall be based upon the location of the structure in relation to the ordinary high water mark at the time it was constructed. Subsequent movement of the ordinary high water mark that reduces the setback distance does not create a violation under this chapter.

(B) Docks, piers, marinas, aircraft hangars, boathouses and water-dependent accessory structures may

be located closer than 75 feet of a waterbody and over the waterbody, provided they [ARE NOT USED FOR HABITATION AND DO NOT CONTAIN SANITARY OR PETROLEUM FUEL STORAGE FACILITIES. STRUCTURES PERMITTED OVER WATER UNDER THIS SUBSECTION SHALL CONFORM TO ALL APPLICABLE STATE AND FEDERAL STATUTES AND REGULATIONS] meet all state, federal, and borough regulatory standards and receive a land use permit prior to construction in accordance with MSB 17.02.

(1) A permit in accordance with MSB 17.02 is required prior to construction or placement of any building or structure, or any ground-disturbing activity within 75 feet of the ordinary high water mark of any waterbody.

([1]2) Boathouses or aircraft hangars which are exempt from a minimum shoreline setback for structures shall:

(a) be built over, in, or [IMMEDIATELY ADJACENT TO] adjoining a waterbody and used solely for storing boats and boating accessories;

(b) be designed, constructed and oriented for primary access by boats or aircraft directly to a waterbody;

(c) not have more than incidental

accessory access to a street or driveway; and

(d) not be usable as a garage or habitable structure without significant alteration.

[(C) IN THE CITY OF WASILLA, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO NOVEMBER 16, 1982. ELSEWHERE IN THE BOROUGH, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO JANUARY 1, 1987, IF THE PRESENT OWNER OR OWNERS OF THE PROPERTY HAD NO PERSONAL KNOWLEDGE OF ANY VIOLATION OF THE REQUIREMENTS OF THIS SECTION PRIOR TO SUBSTANTIAL COMPLETION OF THE STRUCTURES. THE DIRECTOR OF THE PLANNING DEPARTMENT SHALL, UPON APPLICATION BY A PROPERTY OWNER, DETERMINE WHETHER A PROPERTY QUALIFIES FOR AN EXCEPTION UNDER THIS SUBSECTION.

(1) AN APPLICATION FOR A SHORELINE SETBACK EXCEPTION SHALL INCLUDE A FILING FEE AS ESTABLISHED BY RESOLUTION OF THE ASSEMBLY.

(D) IN THIS SECTION, A "STRUCTURE" IS ANY DWELLING OR HABITABLE BUILDING OR GARAGE.

(E) NO PART OF A SUBSURFACE SEWAGE DISPOSAL SYSTEM SHALL BE CLOSER THAN 100 FEET FROM THE ORDINARY HIGH WATER MARK OF ANY BODY OF WATER. THE PLANNING COMMISSION SHALL REQUIRE THIS DISTANCE BE INCREASED WHERE NECESSARY

TO PROTECT WATERS WITHIN THE BOROUGH.]

17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

(A) Except as otherwise specified in this chapter violations of this chapter are infractions.

(B) Remedies, enforcement actions, and penalties shall be consistent with the terms and provisions of MSB 1.45.

Section 3. Amendment of Paragraph. MSB 17.02.020(A)(6) is hereby amended as follows:

(6) construction or placement of any building, or structure within 75 feet of [ANY WATERCOURSE OR WATER BODY] the ordinary high water mark of any water body;
[.]

Section 4. Amendment of Paragraph. MSB 17.02.020(A)(7) is hereby adopted as follows:

(7) ground-disturbing activities within 75 feet of the ordinary high water mark of any water body.

Section 5. Amendment of Subparagraph. MSB 17.02.030(B)(2)(a) is hereby amended as follows:

(a) site plans are not required to be certified but shall clearly identify the following:

- (i) north arrow;
- (ii) boundaries of parcel;
- (iii) size, location, and setback dimensions

of proposed structures;

(iv) names and location of [ADJACENT] **adjoining** roadways;

(v) location of rights-of-way and public easements within and [ADJACENT TO] **adjoining** the parcel;

(vi) location and name of [ADJACENT] **adjoining** water bodies;

(vii) location of subsurface sewage disposal systems; [AND]

(viii) intended use of proposed structures;[.]

(ix) existing cleared areas, structures, and impervious surfaces; and

(x) any areas of proposed ground disturbing activities.

Section 6. Adoption of Subsection. MSB 17.02.035 Standards for development within 75 feet of a waterbody is adopted as follows:

17.02.035 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF A WATERBODY

(A) The director may issue a land use permit pursuant to MSB 17.02.020 only upon finding that the development meets the following standards:

(1) the site plan demonstrates compliance with

the provisions of MSB 17.55.016;

(a) Notwithstanding the requirements of MSB 17.55.016(E) (1), a land use permit may be issued where no riparian buffer exists or where the property owner proposes to remove the riparian buffer if the requirements of MSB 17.02.035(B) are met.

(2) any proposed buildings or structures will comply with MSB 17.55.020(B) (2), as applicable; and

(3) the total area of impervious surfaces within 75 feet of a waterbody will not exceed 20% of the area within 75 of the waterbody.

(a) Impervious surface may exceed 20% if the requirements of MSB 17.02.035(B) are met.

(B) For existing structures seeking nonconforming status in accordance with MSB 17.80.020(B) (4), those seeking a variance from the waterbody setback in accordance with MSB 17.65, or a land use permit application in accordance with MSB 17.02.035(A) (1) (a) or 17.02.035(A) (3) (a), the following additional requirements apply:

(1) site plan requirements identified in MSB 17.02.030, and

(2) The application shall include the following information:

(a) existing and proposed drainage patterns to and from the parcel, known drainage problems such as flooding or erosion, and potential pollutant sources from current or proposed land use that may add pollutants to stormwater runoff;

(b) plans and specifications for proposed runoff pollution mitigation measures, including for necessary maintenance, with sufficient detail to support an engineering review;

(c) plans and specifications for infiltrative methods shall identify soil type and depth to the seasonal high water table, with a minimum of 2 feet from the bottom of any basin or swale to the seasonal high water table; and

(d) site-specific analyses conducted by a qualified professional identifying the proposed runoff pollution mitigation measures.

(2) a land use permit may only be issued upon a finding that the applicant's proposed runoff pollution mitigation measures will meet the following criteria:

(a) Treat the initial 0.25 inch of post-development runoff for each storm event;

(b) Provide (a minimum of) 12 hours of detention for the post-development runoff in excess of

pre-development runoff volumes for the 1-year, 24-hour storm;

(c) Maintain the post-development runoff peak flow from the 10-year, 24-hour storm to less than 1.10 times the pre-development runoff peak flow at all project discharge points;

(d) Storm water conveyance and drainage ditches shall be sized to pass the 10-year, 24-hour storm event. Control flows in conveyance channels so that transport of particles will not occur for the post-development 10-year, 24-hour storm; and

(e) In areas where wetlands are disturbed, drainage must be designed to preserve the pre-development function of the remaining wetlands.

(3) runoff pollution mitigation measures shall be designed and installed under the oversight of a qualified professional.

(4) upon completion of the project, an as-built survey shall be submitted showing the location of all pertinent structures and features associated with the development.

(5) a revised stormwater runoff analysis will be required if future development could reasonably result in increased stormwater runoff.

(6) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit while the structure permitted under this subsection remains within 75 feet of a lake, pond, or ponded or emergent wetland.

Section 7. Adoption of Subsection. MSB 17.65.020(B) is hereby adopted as follows:

(B) For variances from the waterbody setback requirement in MSB 17.55.020(A) the Planning Commission must find each of the following requirements has been met:

(1) the site plan required by MSB 17.65.050(C) (4) demonstrates that the development standards identified in MSB 17.02.035(A) will be met.

(2) the variance application demonstrates compliance with the requirements identified in 17.02.035(B) regarding stormwater runoff.

(3) The Planning Commission shall not authorize a variance if the location of the structure is:

(a) closer than 45 feet from the ordinary high water mark of a water body.

(b) in an area of known erosion hazard adjacent to a river, stream, or other flowing waters.

Section 8. Amendment of Section. MSB 17.80.020 is hereby amended as follows:

17.80.020 LEGAL NONCONFORMING STRUCTURES

(A) The following structures qualify as legal nonconforming structures without an administrative determination, however, an administrative determination may be issued if requested by the property owner:

(1) structures built lawfully and made nonconforming by adoption of subsequent ordinances;

(a) all structures within 75 feet of a water body that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered are legal nonconforming structures.

(b) Non-habitable structures within 75 feet of a water body **that were constructed between September 16, 1988 and the effective date of this section are legal nonconforming structures.**

(2) structures built in violation of the ordinance existing at the time of construction, then made legal by adoption of subsequent ordinance, and later made nonconforming by adoption of subsequent ordinances;

(a) habitable buildings and garages that

were completed between July 3, 1973, and January 1, 1987, and have not subsequently been enlarged or altered, that are located between 45 and 75 feet from the ordinary high water mark of a water body are legal nonconforming structures.

(3) permanent structures which were constructed lawfully after the date of adoption of the Acknowledgement of Existing Regulations, Chapter 17.01, but which were made unlawful after the date of start of construction due to adoption of subsequent regulations.

(B) The following structures require an administrative determination in order to be granted legal nonconforming status;

(1) structures granted a variance in accordance with Chapter 17.65;

[(2) STRUCTURES BUILT IN VIOLATION OF SHORELINE SETBACK ORDINANCES EXISTING AT THE TIME OF CONSTRUCTION, AND SUBSEQUENTLY GRANTED AN EXEMPTION FROM SHORELINE SETBACKS IN ACCORDANCE WITH MSB 17.55.020 (C);]

(3) permanent structures built in violation of ordinances existing at the time of construction, and subsequently granted legal nonconforming status in accordance with MSB 17.80.070.

(4) Habitable buildings and garages that were

constructed between 45 and 75 feet of the ordinary high water mark of a lake, pond, or emergent wetland between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.020(B).

Section 9. Amendment of Section. MSB 17.125.010 is hereby amended as follows:

- "Cleared area" means an area where existing vegetative cover and surficial soil layers, including organic matter or duff, is removed or altered by ground-disturbing activities.

- "Ground disturbing activity" means an activity that includes the use of heavy equipment, such as a backhoe or bulldozer, that disturbs the soil layers, uproots woody vegetation, or alters preexisting land contours. Examples of such uses include mechanized land clearing, grading, contouring, or placing of fill. Ground disturbing activity does not include the cutting or removal of vegetation above the ground (i.e. use of hydro-axe, mowing, rotary cutting, and chain sawing) without disturbing the soil or root systems.

- "Kennel, stable, and animal yards" means any premises used for breeding, buying, selling, keeping, or

boarding five or more dogs over the age of six months, whether for profit or not; any facility housing or holding more than three pigs, goats, or animals of similar size; and all facilities housing or holding large animals (e.g., horses, cattle, llamas).

- "Lake" means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes artificial waterbodies created by excavation, as well as artificial blocking or restriction of the flow of a river, stream, or tidal area (e.g. by a dam).

- "Qualified professional" means a professional [HYDROLOGIST, GEOLOGIST, OR REGISTERED ENGINEER THAT HAS SPECIFIC EDUCATION AND EXPERIENCE WITH GROUNDWATER HYDROLOGY] civil engineer or other professional registered with the State of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this title.

- "Riparian buffer" means an area of undisturbed native vegetation.

• "Runoff pollution mitigation measure" means any combination of bioswales, rain gardens, riparian buffers, filter strips, or other features designed and intended to treat and retain stormwater runoff associated with a development.

• "Stormwater runoff" means any surface flow consisting entirely of water from precipitation including from the melting of ice and snow. Runoff occurs when the water volume or surface gradient overcome the infiltrative capacity of the surface.

• "Treat and retain" means to manage stormwater on the parcel through any combination of detention, retention, infiltration, evapotranspiration, or other treatment methods to mitigate a discharge of stormwater runoff to a water body or adjoining parcel.

Section 10. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2025.

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)