

## MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION AGENDA

Vern Halter, Mayor

### PLANNING COMMISSION

Mary Anderson, District 1  
Jason Ortiz, District 2  
Patricia Chesbro, District 3  
Colleen Vague, Chair, District 4  
Chris Elder, District 5  
Stafford Glashan, District 6  
Sassan Mossanen, District 7



Michael Brown, Borough Manager

### PLANNING & LAND USE DEPARTMENT

Alex Strawn, Planning & Land Use Director  
Kim Sollien, Planning Services Manager  
Mark Whisenhunt, Acting Development  
Services Manager  
Fred Wagner, Platting Officer  
Karol Riese, Planning Clerk

*Assembly Chambers of the  
Dorothy Swanda Jones Building  
350 E. Dahlia Avenue, Palmer*

**April 19, 2021**  
**REGULAR MEETING**  
6:00 p.m.

Ways to participate in Planning Commission meetings:

**IN PERSON.** Should you wish to testify in person, please adhere to the 6-foot distance between yourself and others. It is required to wear a mask for anyone entering or attending meetings in MSB facilities.

**IN WRITING:** You can submit written comments to the Planning Commission Clerk at [planning@matsugov.us](mailto:planning@matsugov.us).

### TELEPHONIC TESTIMONY:

- Dial 1-855-290-3803; you will hear “Joining conference” when you are admitted to the meeting.
- You will be automatically muted and able to listen to the meeting.
- When the Chair announces audience participation or a public hearing you would like to speak to, press \*3; you will hear, “Your hand has been raised.”
- When it is your turn to testify, you will hear, “Your line has been unmuted.”
- State your name for the record, spell your last name, and provide your testimony.

- I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM
- II. APPROVAL OF AGENDA
- III. PLEDGE OF ALLEGIANCE

IV. CONSENT AGENDA

*Items on the consent agenda are considered routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.*

A. MINUTES

1. April 5, 2021, Regular Meeting Minutes

B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS

C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS

1. **Resolution PC 21-07**, A Resolution Of The Matanuska-Susitna Borough Planning Commission Recommending Assembly Adoption Of An Ordinance Adopting MSB 17.31 - Supplemental Wetlands Mitigation Provisions For Large-Scale Projects Requiring United States Army Corps Of Engineers Individual Permits Under Section 404 Of The Clean Water Act; And Amending MSB 1.45.100 Schedule Of Fines For Infractions  
Public Hearing: May 3, 2021 (Staff: Ted Eischeid).

V. COMMITTEE REPORTS

VI. AGENCY/STAFF REPORTS

- A. Lake Management Plan Update (Staff: Kelsey Anderson, Planner II)

VII. LAND USE CLASSIFICATIONS

*(None)*

VIII. AUDIENCE PARTICIPATION *(three minutes per person, for items not scheduled for public hearing)*

IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS *(Public Hearings shall not begin before 6:15 p.m.)*

***Commission members may not receive or engage in ex-parte contact with the applicant, other parties interested in the application, or members of the public concerning the application or issues presented in the application.***

*The Planning Commission members may submit questions to the Planning Commission Clerk concerning the following matters or request for more information from the applicant at the time of the introduction. All questions and requests submitted by the Commission shall be in writing and copies will be provided to the applicant and made available to all interested parties and the public upon request. Answers to questions and additional material requests will be addressed in the staff report for the public hearing.*

- A. **Resolution PC 21-08**, A Request To Modify A Conditional Use Permit In Accordance With MSB 17.70 - Regulation Of Alcoholic Beverages Uses, For The Expansion Of An Existing Alcoholic Beverage Dispensary (Talkeetna Restaurant),

Located At 13605 E. Main Street (Tax ID #8088B12L014A-1); Within Township 26 North, Range 5 West, Section 24, Seward Meridian. Public Hearing: April 19, 2021 (Applicant: Sassan Mossanen, dba Talkeetna Restaurant; Staff: Mark Whisenhunt).

- B. **Resolution PC 21-09**, A Request To Modify A Conditional Use Permit In Accordance with MSB 17.25 – Talkeetna Special Land Use District, For The Expansion Of An Existing Commercial Use (Talkeetna Restaurant) Greater Than 4,000 Square Feet In Size, Located At 13605 E. Main Street (Tax ID #8088B12L014A-1); Within Township 26 North, Range 5 West, Section 24, Seward Meridian. Public Hearing: April 19, 2021 (Applicant: Sassan Mossanen, dba Talkeetna Restaurant; Staff: Mark Whisenhunt).

X. PUBLIC HEARING: LEGISLATIVE MATTERS  
(None)

XI. CORRESPONDENCE & INFORMATION

XII. UNFINISHED BUSINESS

XIII. NEW BUSINESS

XIV. COMMISSION BUSINESS

A. Upcoming Planning Commission Agenda Items

XV. DIRECTOR AND COMMISSIONER COMMENTS

XVI. ADJOURNMENT (Mandatory Midnight)

*In order to be eligible to file an appeal from a decision of the Planning Commission, a person must be designated an interested party. See MSB 15.39.010 for definition of “Interested Party.” The procedures governing appeals to the Board of Adjustment & Appeals are contained in MSB 15.39.010-250, which is available on the Borough Internet home page, <http://www.matsugov.us>, in the Borough Clerk’s office, or at various libraries within the Borough.*

**Disabled persons needing reasonable accommodation in order to participate at a Planning Commission Meeting should contact the Borough ADA Coordinator at 861-8432 at least one week in advance of the meeting.**

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# **MINUTES**

## **April 5, 2021**

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# **MINUTES**



The regular meeting of the Matanuska-Susitna Borough Planning Commission was held on April 5, 2021, at the Matanuska-Susitna Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6:00 p.m. by Chair Colleen Vague.

## **I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM**

Planning Commission members present and establishing a quorum:

Ms. Mary Anderson, Assembly District #1, Vice-Chair  
Mr. Jason Ortiz, Assembly District #2  
Ms. Patricia Chesbro, Assembly District #3  
Ms. Colleen Vague, Assembly District #4, Chair  
Mr. Chris Elder, Assembly District #5\*  
Mr. Stafford Glashan, Assembly District #6\*  
Mr. Sassan Mossanen, Assembly District #7\*

Planning Commission members absent and excused were:

Staff in attendance:

Mr. Alex Strawn, Planning & Land Use Director  
Ms. Shannon Bodolay, Assistant Borough Attorney  
Mr. Mark Whisenhunt, Acting Development Services Manager/Planner II  
Ms. Peggy Horton, Planner II  
Ms. Karol Riese, Planning Commission Clerk

\*Indicates that the individual attended telephonically due to COVID safety protocols.

## **II. APPROVAL OF AGENDA**

Chair Vague inquired if there were any changes to the agenda.

MOTION: Commissioner Anderson moved to move Item C. 1. Resolution PC 21-07 and have it on the April 19, 2021 meeting for Introduction. The motion was seconded.

VOTE: The main motion passed without objection.

MOTION: Commissioner Mossanen moved to correct the March 15, 2021 to reflect that Commissioner Mossanen did attend the meeting. The motion was seconded.

VOTE: The main motion passed without objection.

GENERAL CONSENT: The agenda was approved without objection.

## **III. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Peggy Horton.

## **IV. CONSENT AGENDA**

A. Minutes

1. March 15, 2021, regular meeting minutes

B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS

1. **Resolution PC 21-08**, A Request To Modify A Conditional Use Permit In Accordance With MSB 17.70 - Regulation Of Alcoholic Beverages Uses, For The Expansion Of An Existing Alcoholic Beverage Dispensary (Talkeetna Restaurant), Located At 13605 E. Main Street (Tax ID #8088B12L014A-1); Within Township 26 North, Range 5 West, Section 24, Seward Meridian. Public Hearing: April 19, 2021 (Applicant: Sassan Mossanen, dba Talkeetna Restaurant; Staff: Mark Whisenhunt).
2. **Resolution PC 21-09**, A Request To Modify A Conditional Use Permit In Accordance with MSB 17.25 – Talkeetna Special Land Use District, For The Expansion Of An Existing Commercial Use (Talkeetna Restaurant) Greater Than 4,000 Square Feet In Size, Located At 13605 E. Main Street (Tax ID #8088B12L014A-1); Within Township 26 North, Range 5 West, Section 24, Seward Meridian. Public Hearing: April 19, 2021 (Applicant: Sassan Mossanen, dba Talkeetna Restaurant; Staff: Mark Whisenhunt).

C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS

*(None)*

GENERAL CONSENT: The consent agenda was approved as amended without objection.

V. COMMITTEE REPORTS

*(There were no committee reports.)*

VI. AGENCY/STAFF REPORTS

*(There were no Agency/Staff Reports.)*

VII. LAND USE CLASSIFICATIONS

*(There were no land use classifications.)*

VIII. AUDIENCE PARTICIPATION (Three minutes per person.)

*(There were no persons to be heard.)*

*6:12PM brief recess – readjourned @ 6:15PM*

IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS

- A. **Resolution PC 21-04**, A Conditional Use Permit In Accordance With MSB 17.70 - Regulation Of Alcoholic Beverages Uses, For The Expansion Of An Existing Alcoholic Beverage Package Store, Located At 3065 N. Church Road (Tax ID #5667000L001C); Within Township 18 North, Range 1 West, Section 32, Seward Meridian (Applicant: Matt Gittlein, of KG Enterprises, LLC; Staff: Mark Whisenhunt).

Chair Vague read the resolution title into the record.

Mr. Whisenhunt provided a staff report

- staff recommended approval of the resolution with conditions.

Commissioners questioned staff regarding:

- About signage

Chair Vague opened the public hearing.

There being no one to be heard, Chair Vague closed the public hearing and discussion moved to the Planning Commission.

MOTION: Commissioner Anderson moved to approve Resolution PC 20-04. The motion was seconded.

Discussion ensued

VOTE: The main motion passed without objection.

**X. PUBLIC HEARING LEGISLATIVE MATTERS**

- A. **Resolution PC 21-03**, A Resolution Of The Matanuska-Susitna Borough Planning Commission Recommending Approval Of An Ordinance Amending MSB 17.55 To Exempt Signs From Setbacks To Rights-Of-Way And Property Lines (Staff: Alex Strawn, Planning & Land Use Director).

Chair Vague read the resolution title into the record.

Mr. Strawn provided a staff report:

- staff recommended approval of the resolution.

Commissioners questioned staff regarding:

- Sign change and neighborhoods, how many signs are not in compliance, is signs defined in code, comments from RSA or CC, setbacks, Special Use Districts, and if there is a process for putting signs on property and liability.

Chair Vague opened the public hearing.

The following persons spoke regarding Resolution PC 21-03:

Mr. Brian Gittlein, spoke with regarding to signs and retaining wall

There being no one else to be heard, Chair Vague closed the public hearing and discussion moved to the Planning Commission.

MOTION: Commissioner Chesbro moved to approve Resolution PC 21-03. The motion was seconded.

VOTE: The main motion passed without objection.

- B. **Resolution PC 21-06**, A Resolution Of The Matanuska-Susitna Borough Planning Commission Recommending Approval To Name A Lake Within The Matanuska-Susitna Borough As Dalteli Lake, Located Within Township 29 North, Range 6 West, Section 34 And Township 28 North, Range 6 West, Section 3 (Staff: Peggy Horton).

Chair Vague read the resolution title into the record.

Ms. Horton provided a staff report:

- staff recommended approval of the resolution.

Commissioners questioned staff regarding:  
*(No questions of Commissioners)*

Chair Vague opened the public hearing.

The following persons spoke in favor of Resolution PC 21-06:

Mr. Robinson, spoke to Trapper Creek CC and they had approved a recommendation for PC21-06.

Ms. Pam Robinson, thanked staff for considering this, Dalteli Lake has been used by Airtaxies and folks flying around and other property owners.

There being no one else to be heard, Chair Vague closed the public hearing and discussion moved to the Planning Commission.

MOTION: Commissioner Mossanen moved to approve Resolution PC 21-06. The motion was seconded.

Discussion ensued

VOTE: The main motion passed without objection.

Commissioner Mossanen left the meeting at 7:12PM.

**XI. CORRESPONDENCE AND INFORMATION**  
*(There was no correspondence and information.)*

**XII. UNFINISHED BUSINESS**  
*(There was no unfinished business.)*

**XIII. NEW BUSINESS** - *(There was no new business.)*

**XIV. COMMISSION BUSINESS**

A. Adjudicatory

B. Upcoming Planning Commission Agenda Items *(Staff: Alex Strawn)*

Mr. Strawn provided a brief update on projects that will be coming before the Planning Commission, new employees,

**XV. DIRECTOR AND COMMISSIONER COMMENTS**

Commissioner Anderson

- Cool to do the naming of the lake, nice to do some fun things. The signs definitions is a concern, you give an inch etc.; sign is a generic word.

**XVI. ADJOURNMENT**

The regular meeting adjourned at 7:18 p.m.

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COLLEEN VAGUE, Planning Commission  
Chair

ATTEST:

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KAROL RIESE, Planning Commission Clerk

*Minutes approved:* \_\_\_\_\_

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# **INTRODUCTION FOR PUBLIC HEARING LEGISLATIVE**

## **Resolution No. PC 21-07**

MSB 17.31 - Supplemental Wetlands Mitigation  
Provisions

(Page 13-52)

# **INTRODUCTION FOR PUBLIC HEARING**



CODE ORDINANCE

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 21-025**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 17.31 SUPPLEMENTAL WETLANDS MITIGATION PROVISIONS FOR PROJECTS REQUIRING UNITED STATES ARMY CORPS OF ENGINEERS INDIVIDUAL PERMITS UNDER SECTION 404 OF THE CLEAN WATER ACT THAT PERMANENTLY IMPACT 10 OR MORE ACRES OF WATERS OF THE UNITED STATES; AND AMENDING MSB 1.45.100 SCHEDULE OF FINES FOR INFRACTIONS.

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WHEREAS, the rationale and intent of this ordinance are found in IM No. 21-051 which accompanies this ordinance.

BE IT ENACTED:

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

Section 2. Adoption of chapter. MSB 17.31 is hereby adopted as follows:

**CHAPTER 17.31 SUPPLEMENTAL WETLANDS MITIGATION**

17.31.010 Purpose and Intent

17.31.020 Applicability

17.31.030 Application Requirements

17.31.040 General Standards for approval

17.31.050 Final Action

17.31.060 Nonconforming Uses

17.31.100 Violations, Enforcement and Penalties

17.31.110 Definitions**17.31.010 PURPOSE AND INTENT**

(A) The purpose of this chapter is to protect health and safety, property, infrastructure, and promote economic stability while maintaining functions of wetlands and aquatic resources.

(B) The intent of this chapter is to

(1) Seek full compensation for impacts to aquatic resources that:

(a) minimize public and private losses due to flood conditions;

(b) prevent and control water pollution;

(c) prevent soil loss and erosion of stream beds and banks;

(d) preserve natural drainage features and minimize the need to construct, repair, maintain, or replace structural water management systems;

(e) maintain and support stream base flow and temperature, lake levels, and shallow groundwater supplies; and

(f) preserve and improve fish and wildlife habitat, recreational opportunities, and open space.

#### **17.31.020 APPLICABILITY**

(A) This chapter applies to all private and public lands in the borough.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla.

(C) A Compensatory Mitigation Certificate of Compliance (CMCC) is required prior to discharge of dredged or fill material into Waters of the United States within the Matanuska-Susitna Borough authorized by a United States Army Corps of Engineers (USACE) Individual Permit.

(1) A CMCC is not required for discharges of dredged or fill material within the borough that:

(a) are authorized by a USACE Nationwide Permit or other General Permit as permitted by 33 CFR 325.5(C); or

(b) have a cumulative impact of less than 10 acres of Waters of the United States.

#### **17.31.030 APPLICATION REQUIREMENTS**

(A) Pre-Application Meeting. The applicant is encouraged to schedule an appointment with the Planning Department to discuss the proposed development and explain what information must be submitted.

(B) Application for a CMCC shall include, at a

minimum, the following:

- (1) CMCC application form;
- (2) A complete copy of the USACE application materials and mitigation determination;
- (3) USACE decisional documents associated with the project;
- (4) A calculation of the aquatic function debits associated with the proposed discharge or fill, and a specific proposal to fully offset the debits through compensatory mitigation; and
- (5) Appropriate filing fee as established by the assembly, payable to the borough.

**17.31.040 GENERAL STANDARDS FOR APPROVAL**

(A) The amount of compensatory mitigation shall be sufficient to fully offset the aquatic resource functions lost as a result of the discharge or fill.

(1) For the use of credits generated by permittee-responsible mitigation, authorized impacts shall be considered offset when the permittee submits documentation that the USACE has approved the final mitigation plan.

(B) The total number of credits purchased shall be equal to or greater than the number of debits calculated

for the discharge or fill.

(C) Credits purchased through a mitigation bank or in-lieu fee program shall be from an USACE approved provider within the Matanuska-Susitna Borough boundary.

**17.31.050 FINAL ACTION**

(A) The CMCC shall be issued by the director following review of the application and demonstration that the aquatic resource impacts authorized by the USACE individual permit have been fully offset in accordance with this chapter.

**17.31.060 NONCONFORMING USES**

(A) Individual permit applications that have been issued a permit decision document by the USACE on or before June 1, 2021, are considered to have pre-existing legal nonconforming status and are not required to obtain a CMCC under this chapter.

(1) Permit modifications resulting in expansion to USACE individual permit applications that have pre-existing legal nonconforming status under this chapter and cumulatively result in ten or more acres of dredged or fill material into Waters of the United States require a CMCC under this chapter, but the requirements of this chapter only apply to the additional acres resulting from the expansion.**17.31.100**

## **VIOLATIONS, ENFORCEMENT AND PENALTIES**

(A) Violations, enforcement and penalties shall be conducted in accordance with Chapter 1.45, Violations, enforcement and penalties.

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

### **17.31.110 DEFINITIONS**

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

- "Aquatic resources" mean surface waters, including wetlands, and the habitat they provide for both plant and animal communities.
- "Compensatory mitigation" means the restoration (re-establishment or rehabilitation), establishment, creation, enhancement, or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.
- "Credit" means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic



functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.

- "Debit" means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic functions at an impact or project site. The measure of aquatic functions is based on the resources impacted by the authorized activity.
- "Dredged material" means material that is excavated or dredged from waters of the United States.
- "Fill material" means material placed in waters of the United States where the material has the effect of:
  - (a) Replacing any portion of a water of the United States with dry land; or
  - (b) Changing the bottom elevation of any portion of a water of the United States. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create

any structure or infrastructure in the waters of the United States. The term fill material does not include trash or garbage.

- "Functions" means the physical, chemical, and biological processes that occur in ecosystems.
- "Individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this part and 33 CFR part 325, and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR 320.
- "In-lieu fee program" means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for USACE permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu

fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

- "Mitigation bank" means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by Department of Army permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.
- "Permittee-responsible mitigation" means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.
- "Waters of the United States" means those areas subject to the jurisdictional authority of the United

States Army Corps of Engineers under the Clean Water  
Act as defined in 33 CFR Part 328.

Section 3. Amendment of Subsection: MSB 1.45.100(C) is hereby  
amended by adding the following to the schedule of fines:

Code Reference	Description	Fine Amount
<b><u>17.31.020(C)</u></b>	<b><u>Failure to Obtain Compensatory Mitigation Certificate of Compliance</u></b>	
	<b><u>1st Offense</u></b>	<b><u>\$150</u></b>
	<b><u>2nd Offense</u></b>	<b><u>\$300</u></b>
	<b><u>3rd &amp; Subsequent Offenses</u></b>	<b><u>\$500</u></b>

Section 4. Effective date. This ordinance shall take effect  
upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day  
of -, 2021.

\_\_\_\_\_  
VERN HALTER, Borough Mayor

ATTEST:

\_\_\_\_\_  
LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

**Date:** 25 March 2021

**Re:** Wetland Background for Planning Commission Meeting on April 19<sup>th</sup>

Here are additional background materials for understanding wetlands as a context for considering a local wetlands management ordinance for the Matanuska-Susitna Borough.

**1. MSB Supplemental Wetland Mitigation Ordinance Project Page-**

**<https://www.matsugov.us/projects/wetland-mitigation-ordinance>**

- **[Story Map - Wetlands](#)** – This interactive GIS story map gives an excellent introduction to wetlands and the draft ordinance

**2. Matanuska-Susitna Borough Comprehensive Plan goals that pertain to the draft ordinance-** **[Matanuska-Susitna Borough - Borough-Wide Comprehensive Plan \(matsugov.us\)](#)**

Goal	Policy
Land Use Goal 4	1
Public Open Space Goal 2	1, 3
Community Quality Goal 1	1,2
Community Quality Goal 2	1

**3. Pertinent supporting documents follow.**

Adopted: 08/06/19

**MATANUSKA-SUSITNA BOROUGH  
RESOLUTION SERIAL NO. 19-074**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY TO CONTINUE DEVELOPING PROVISIONS FOR SUPPLEMENTAL WETLAND MITIGATION FOR LARGE-SCALE DEVELOPMENT PROJECTS THAT IMPACT WETLANDS AND SALMON HABITAT IN THE BOROUGH.

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WHEREAS, salmon fish populations in Borough rivers and streams have seriously declined over the past 30 years where 8 of the 16 salmon stocks of concern within the state of Alaska lie within the Borough; and

WHEREAS, the Borough was one of four originating organizations that established the Matanuska-Susitna Basin Salmon Habitat Partnership that has grown to over 60 organizations and individuals dedicated to restoring and sustaining our salmon runs; and

WHEREAS, the Borough Fish and Wildlife Commission was created in February 2007 to represent the interests of the Borough in the conservation and allocation of fish, wildlife, and habitat; and

WHEREAS, the Fish and Wildlife Commission has made positive strides in directing funds to local fisheries research and fish passage projects while encouraging stakeholder groups to prioritize fishery needs in Upper Cook Inlet and its critical watersheds; and

WHEREAS, the Matanuska-Susitna Borough Fish and Wildlife Commission has successfully worked with the Alaska State

Department of Fish and Game and the Alaska State Board of Fisheries to improve salmon returns for the Borough; and

WHEREAS, the Commission and the Borough continue to support robust opportunities for sport, subsistence, and personal use fisheries in the Borough and recognize the importance of restoring historic health to threatened fisheries and the associated wetlands that remain critical for supporting salmon populations; and

WHEREAS, the Borough Fish and Wildlife Commission recognizes the need for new development that may sometimes impact wetlands while supporting the concept of avoiding, minimizing, and mitigating these impacts; and

WHEREAS, some major developments that require wetland protection or mitigation may not be fully addressed by other agencies and regulatory bodies; and

WHEREAS, the Assembly hosted a work session with the United States Army Corps of Engineers, United States Environmental Protection Agency, Borough Fish and Wildlife Commission, Alaska State Department of Fish and Game, and Ms. Gail Terzi, Wetland and Compensatory Mitigation Specialist, in March 2019 to explore critical issues for sustaining salmon and their habitat within the Borough; and

WHEREAS, it was clear at the close of the work session in March that all agencies were open to the Borough having a role in mitigation; and

WHEREAS, the Borough Fish and Wildlife Commission approved resolution FWC 19-03 in support of the Borough being able to provide supplemental wetland mitigation, in addition to agencies and regulatory bodies, as they do in many other cities and counties across the United States, in order to protect, enhance and restore salmon populations in the Borough as it continues to develop and grow; and

WHEREAS, the Borough hosted the Principal Deputy Director for the United States Fish and Wildlife Service, along with other members of the Matanuska-Susitna Salmon Habitat Partnership, to review the activities that are now in progress to keep our salmon populations sustainable; and

WHEREAS, it is important that the Borough devote particular attention to the supplemental mitigation issue in preparation for the upcoming 3-year Upper Cook Inlet Board of Fish Meeting in February of 2020; and

WHEREAS, the proposed Borough certification process is intended to align seamlessly with the existing federal wetland permitting process, by reviewing only large development projects and related proposal documents required by the United States Army



Corps of Engineers, without adding to staff or project length review times; and

WHEREAS, the necessity for the Borough to become part of the supplemental mitigation process, like other municipalities across the United States, is being explored because all authorized impacts are not currently being offset or adequately considered for the importance of sustaining wetlands habitats that support restoration of critical salmon runs.

NOW, THEREFORE, BE IT RESOLVED, that the Assembly supports exploring supplemental wetland mitigation for projects with input from state and federal agencies that currently review and comment on large projects that require United States Army Corps of Engineers approval. (Matanuska-Susitna Borough Fish & Wildlife Commission Resolution Serial No. FWC19-03 attached to the accompanying Informational Memorandum).


ADOPTED by the Matanuska-Susitna Borough Assembly this 6 day  
of August, 2019.

  
VERN HALTER, Borough Mayor

ATTEST:

  
LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



YES: Sykes, Beck, Mayfield, and Boeve

NO: Sumner, Leonard, and McKee

RECEIVED

MAY 21 2019

CLERKS OFFICE

**MATANUSKA-SUSITNA BOROUGH**  
**FISH & WILDLIFE COMMISSION RESOLUTION SERIAL NO. FWC19-03**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH FISH AND WILDLIFE COMMISSION IN SUPPORT OF THE CONCEPT THAT THE MATANUSKA-SUSITNA BOROUGH PROVIDE FOR SUPPLEMENTAL WETLAND MITIGATION FOR LARGE DEVELOPMENT PROJECTS THAT IMPACT WETLANDS AND DEGRADE SALMON HABITAT IN THE BOROUGH.

WHEREAS, the Matanuska-Susitna Fish and Wildlife Commission was created in February 2007 to represent the interests of the borough in the conservation and allocation of fish, wildlife, and habitat; and

WHEREAS, salmonid fish populations using Matanuska-Susitna Borough rivers and streams have seriously declined over the past 30 years; and

WHEREAS, the Matanuska-Susitna Borough contains 8 of the 16 salmon stocks of concern as of April 2019 for the state of Alaska; and

WHEREAS, the Matanuska-Susitna Borough Fish and Wildlife Commission has made positive strides in directing funds to local fisheries research and fish passage projects while encouraging stakeholder groups to prioritize fishery needs in Upper Cook Inlet and its critical watersheds; and

WHEREAS, the Fish and Wildlife Commission has successfully worked with the Alaska Department of Fish and Game and the Alaska Board of Fisheries to improve salmon returns for the Matanuska-Susitna Borough; and

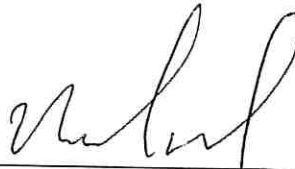
WHEREAS, the Commission continues to support robust opportunities for sport, subsistence, and personal use fisheries in the Matanuska-Susitna Borough and recognizes the importance of restoring historic health to threatened fisheries and the associated wetlands that remain critical for supporting salmon populations; and

WHEREAS, the Fish and Wildlife Commission recognizes the need for new development that may sometimes impact wetlands while supporting the concept of avoiding, minimizing, and mitigating these impacts; and

WHEREAS, some major developments that require wetland protection or mitigation may not be fully addressed by other agencies and regulatory bodies.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Fish and Wildlife Commission supports the concept that the Matanuska-Susitna Borough provide for supplemental wetland mitigation in addition to what other agencies and regulatory bodies may require in order to both protect and enhance the salmonid populations as the Matanuska-Susitna Borough continues to grow.

ADOPTED by the Matanuska-Susitna Fish and Wildlife Commission this 16<sup>th</sup> day of May, 2019.

  
\_\_\_\_\_  
MIKE WOOD, Chair

ATTEST:

  
\_\_\_\_\_  
TED EISCHEID, Staff

(SEAL)

**MATANUSKA-SUSITNA BOROUGH  
FISH & WILDLIFE COMMISSION RESOLUTION SERIAL NO. FWC 21-01**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH FISH AND WILDLIFE COMMISSION RECOMMENDING ASSEMBLY ADOPTION OF ORDINANCE 21-025 THAT PROVIDES FOR SUPPLEMENTAL WETLAND MITIGATION FOR LARGE DEVELOPMENT PROJECTS THAT IMPACT WETLANDS AND DEGRADE SALMON AND OTHER FISH AND WILDLIFE HABITAT IN THE BOROUGH.

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WHEREAS, the Matanuska-Susitna Fish and Wildlife Commission (Commission) was created in February 2007 to represent the interests of the Matanuska-Susitna Borough (Borough) in the conservation and allocation of fish, wildlife, and habitat; and

WHEREAS, Borough salmonid fish have seriously declined over the past 30 years; and

WHEREAS, the Cook Inlet contains 5 of the 13 salmon stocks of concern as of March 2021 for the state of Alaska; and

WHEREAS, the Borough has been the fastest-growing region of Alaska for years, and survey research indicates that Borough residents highly value salmon and other fish and wildlife and the economic benefits they create; and

WHEREAS, the economic impact from sport fishing in the Borough has historically been significant, with direct spending in 2017 of over \$57 million; and

WHEREAS, the Matanuska-Susitna Borough Fish and Wildlife Commission has made positive strides in directing funds to local fisheries research and fish passage projects while encouraging



stakeholder groups to prioritize fishery needs in Upper Cook Inlet and its critical watersheds; and

WHEREAS, since 2001, the Borough's fish passage program has constructed over 100 fish passage culverts that have opened up 66 miles of stream and 6,224 lake acres of fish habitat representing a conservative investment of over 20 million dollars; and

WHEREAS, the Commission has successfully worked with the Alaska Department of Fish and Game and the Alaska Board of Fisheries to improve salmon returns and other fish and wildlife populations for the Borough; and

WHEREAS, the Commission continues to support robust opportunities for sport, subsistence, commercial, and personal use fisheries in the Borough and recognizes the importance of restoring historic health to threatened fisheries and the associated wetlands that remain critical for supporting salmon and other fish and wildlife populations; and

WHEREAS, in May of 2019, the Commission passed resolution FWC 19-03 supporting the concept of requiring supplemental wetland mitigation for large development projects impacting wetlands; and

WHEREAS, the Commission recognizes the need for new development that may sometimes impact wetlands while supporting the concept of avoiding, minimizing, and mitigating these impacts; and

WHEREAS, significant developments that require wetland protection or mitigation may not be fully addressed by other agencies and regulatory bodies resulting in lost ecological functions and a corresponding negative impact on local fisheries.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Fish and Wildlife Commission recommends Assembly adoption of Ordinance 21-025 providing for supplemental wetland mitigation in addition to what other agencies and regulatory bodies may require to fully offset unavoidable wetland impacts to both protect and enhance the salmonid and other fish and wildlife populations as the Matanuska-Susitna Borough continues to grow.

ADOPTED by the Matanuska-Susitna Fish and Wildlife Commission this 18<sup>th</sup> day of March, 2021.

  
\_\_\_\_\_  
MIKE WOOD, Chair

ATTEST:

  
\_\_\_\_\_  
TED EISCHEID, Staff

(SEAL)





# Wetlands Fact Sheet #1

## What is a wetland and how can I identify it?

### What is a wetland?

The term “wetlands,” by federal definition, means:

“Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

### Principle Wetland Components

The primary components of wetlands are:

- **Hydrology:** soil must be saturated to the surface for at least 5% of the growing season (typically 2 weeks).
- **Soils:** must contain unique characteristics indicating the presence of water, such as a thick, dark organic layer, or discolorations in the soil indicating prolonged saturation.
- **Vegetation:** must be dominated by wetland species that are specifically adapted to prolonged saturation in wet soils.



*Riparian ecosystem wetlands lie in valley bottoms adjacent to streams. The large wetland area along the Little Susitna River is the largest single wetland polygon mapped.*

### Identifying Wetlands on Your Property

#### Wetland Delineations

If your property:

- Has low-lying areas where water collects in the spring or after heavy rain;
- Has an abundance of plants like alder, black spruce, or sedges; or
- Is located near a lake or stream;

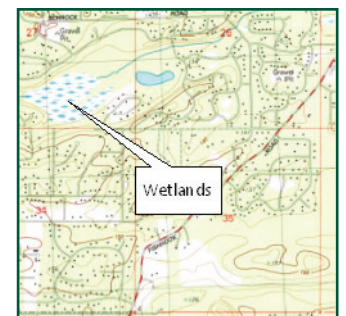
Then you may have wetlands on your property!

There are several resources that you can use to determine if and where there may be wetlands on your property.

- USGS Topographic Maps
- National Wetland Inventory Maps
- Plat Maps
- Mat-Su Wetland Mapping Project at <http://www.matsugov.us/wetlands/wetlands-map-viewer.html>.

Once you have reviewed the available information, the only way to determine exact wetland boundaries is to have a scientist perform a wetland delineation during the growing season.

Wetland delineations must be approved by the U.S. Army Corps of Engineers (Corps). To find out if there are wetlands on your property, contact the Corps for a listing of qualified wetland delineators at (907) 753-2712 or Toll Free at (800) 478-2712.





# What is a wetland and how can I identify it?

## Types of Wetlands in the Mat-Su

There are several different types of wetlands found within the Mat-Su. Plants that are commonly found in these wetlands include many species of sedges and grasses, black spruce, leatherleaf, sphagnum moss, and iris.

Not all wetlands are wet all the time. In the summer, vegetation is a good indicator of wetlands.

- **Glacial Lakebed Peatlands** develop over the deposits of former glacial lakes.
- **Discharge Slopes** occur over hydric mineral soils where shallow groundwater discharges at or near the surface. They often support only seasonally high water tables, and can be difficult to identify.
- **Kettles** are peatlands occupying depressions created when pockets of underlying ice melted at the end of the last glacial advance. They have a wetland or stream connection to Cook Inlet.
- **Depressions** are surrounded by uplands. They are common as peatlands on the glacial outwash deposits around Palmer and moraines south of Big Lake.
- **Spring Fens** are small peatlands surrounded by uplands. They occur between Butte and Houston below 1,000 feet elevation, in a region of moisture deficit, where evapotranspiration generally exceeds precipitation.
- **Headwater Fens** are small peatlands occupying headwater basins of first-order streams. There are few headwater fens in the area mapped.



Well-developed bogs in the Mat-Su are often forested by black spruce.



A glacial lakebed peatland, which develops over the deposits of a former glacial lake.

- **Relict Glacial Drainageways** are peatlands occupying old, sometimes abandoned, drainageway features. These are linear features which once drained more extensive glaciers.
- **Ripple Trough Peatlands** are uniquely arranged hills and valleys that are currently mapped as Rogen moraines, which are formed by deformation of till beneath a glacier. They have been reinterpreted as ripple features created by gigantic waves formed during catastrophic drainage of glacial Lake Atna down the Matanuska Valley.
- **Riverine Wetlands** lie in valley bottoms adjacent to streams. They are maintained by stream overflow, discharge through stream sediments, and groundwater discharge at the toe of valley walls.
- **Tidal Wetlands** are flooded by saltwater at least once per month; the frequency and duration of inundation creates distinct zones. Each zone supports a small number of characteristic salt-tolerant plants.
- **Drainageway-Tidal Wetlands** occur along the shores of Knik Arm. These wetlands are influenced by an extreme tidal range mixing large amounts of freshwater discharging from glacial sediments into already diluted saltwater.



This diagram depicts shallow groundwater flowing through relatively permeable sediments into and out of a wetland.





# Wetlands Fact Sheet #2

## The Functional and Economic Values of Wetlands

### Wetland Functions and Values

Wetlands provide important ecologic and economic benefits to the human, biological, and physical environment. These benefits are known as functions and values. Common wetland functions include:

- Fish and wildlife habitat
- Water quality protection
- Groundwater recharge and discharge
- Erosion protection and shoreline stabilization
- Recreation, education, cultural resources, and open space
- Flood control

Though wetlands perform a variety of functions, not all wetlands function equally and not all wetlands perform all functions. Factors affecting wetland function include location, size, vegetation diversity, hydrology, and disturbance level. Even though an individual wetland may not perform all wetland functions, the cumulative value of all wetlands in an entire watershed makes each important. Wetland values are the benefits to humans that are derived from a wetland's features, processes, or setting.

### Fish and Wildlife Habitat

Wetlands are among the most biologically productive habitats in the world, providing substantial biodiversity. Many fish and wildlife species rely on wetland habitat for a variety of reasons, including breeding, nesting, foraging, travel, and refuge. Wetlands are important transition areas between terrestrial and aquatic habitats and can support a great diversity of species. Moose and other wildlife feed and migrate through wetlands. Fish species rely on wetlands for food and protection from predators. Wetlands also provide summer staging and breeding grounds for resident and migratory birds, including a variety of waterfowl and shorebird species.



*Wetlands are critical for a healthy salmon population.*

### Water Quality

Wetlands help maintain water quality through filtration, purification, retention of sediment and toxic substances, and nutrient removal. Wetlands retain excess nutrients and filter sediments and other pollutants that might otherwise enter waterways. Examples of pollutants include fuel, oil, heavy metals, pesticides, and septic tank effluent. Peatlands, a common type of Mat-Su wetland, have a huge capacity to absorb sediments and pollutants. As water flows through wetlands, a large amount of suspended solids can be removed from the water.

Wetland vegetation also helps trap and filter suspended sediments. In urban and developing urban areas, trapping and retaining excess sediments, nutrients, and other pollutants is important, especially when a wetland is connected to groundwater or surface waterbodies important for fish habitat, drinking water, fishing, recreation, or other activities.

# The Functional and Economic Values of Wetlands

## Groundwater Recharge and Discharge

Wetlands can function as both recharge and discharge areas for groundwater. Wetlands absorb and hold surface water and allow it to slowly move into the groundwater. The replenishing of groundwater is particularly important in the Mat-Su because most residents and cities depend on groundwater for drinking water—especially the case in the Mat-Su Core Area, where wetlands help maintain the water quality and flow of shallow, unconfined aquifers. Wetlands are generally not isolated pockets, but rather are outcroppings of the water table: the same water used for drinking, washing, and cooking.

Many wetlands are created by groundwater discharge. Wetlands serve as the transition point between groundwater and surface water. The water exchange between groundwater aquifers and surface water provides a major pathway for the transfer of essential nutrients to plants. Discharged groundwater can serve as the primary source of water for wetlands, streams, lakes, and ponds. For example, wetlands can contribute to stream flow by allowing the groundwater to slowly be released into streams. This is an important function during dry periods of the year where the water levels of streams and water bodies may be low.

## Erosion Protection and Shoreline Stabilization

Wetlands located along lakes, ponds, rivers, and streams help protect and stabilize the shoreline soils from erosion. Wetland plants can reduce wave action and provide shoreline stability by binding the soil in place with their root systems. Wetland vegetation controls shoreline soil erosion adjacent to Mat-Su lakes, rivers, and streams, and can collect soil that has eroded from upland areas, preventing its entry into a waterbody.

## Recreation, Education, Cultural Resources, and Open Space

Wetlands and areas adjacent to wetlands support a wide range of recreational activities including fishing, dog mushing, snow machining, hunting, hiking, canoeing and boating, skiing, and wildlife viewing. These activities support our local economy and lifestyles. According to the MSB, Alaska residents visit the Mat-Su an estimated 3 million times each year for recreational purposes.

The sport fish industry is one of the key economic drivers in the Mat-Su. In addition to fishing, many residents and visitors hunt waterfowl and game species associated with wetlands, further adding to the local economy. The quality of these experiences depends in large measure on the health of the wetlands in the Mat-Su. In addition to these recreation opportunities, wetlands provide open space as well as educational and cultural resources opportunities.

## Flood Control

Wetlands help to regulate the flow of water. Although wetlands cannot prevent major flood events, they can serve to reduce damage and regulate stream flow during smaller, more common floods. Wetlands often function like sponges by slowing water or retaining it in underlying soils. Without wetlands, water would move much more quickly across the land and increase flooding and erosion of valuable soil, stream banks, homes, and fish habitat. By reducing the speed and amount of water entering rivers or streams, wetlands lessen the destructiveness of flooding. Repair of flood damages is expensive, whereas wetland protection can be a relatively low-cost preventative measure.

Wetlands absorb stormwater, which slows runoff and reduces flooding. This function is particularly important in urban areas where there are large areas of impervious surface, such as parking lots, which can lead to more rapid runoff and high peak flows.

## All wetlands are not created equal.

While wetlands provide many ecologically important functions and benefits, not all wetlands perform all functions. When wetlands lose a function such as fish or wildlife habitat, it may not be replaceable. The consequences to wetlands values can have negative effects on local recreation, tourism, hunting, and fishing industries. Avoiding negative effects to wetlands through careful planning and management is vital to maintaining their functions and values.



SALMON LOVE WETLANDS





# Wetlands Fact Sheet #3

## Permitting and Mitigation of Wetland Impacts

### Permitting

Development in wetlands is often challenging and expensive. Knowing wetland locations, functions, and values allows individuals to make informed decisions when planning for development.

Some wetland types are so difficult to work in that they are typically avoided, such as peatlands. Others are not as easy to identify, and are sometimes only discovered after a project has begun, yet developing them still presents challenges. Some challenges affect the immediate building site, while others affect neighbors and more distant resources.

A project on lands where wetlands may be present begins with determining where wetlands are located and identifying the functions and values of those wetlands to you and the environment. If there are wetlands on your property, have the U.S. Army Corps of Engineers (Corps) or a qualified wetland delineator define the boundary of your wetlands and avoid those areas if possible. If wetlands are to be impacted, you are required to gain authorization from the Corps prior to starting work.

By Federal Law (Clean Water Act and associated policy), wetlands are protected and carefully managed with the goal of pursuing no-net-loss of wetland functions and values. Specific Mat-Su land use and zoning regulations do not currently exist as a means to manage wetland resources in the Mat-Su area. Therefore, wetland management in the Mat-Su requires a community effort, beginning with awareness and education on management measures every landowner can implement.

### Do I need a permit?

The Corps requires permits for discharges and construction into most wetlands and “navigable waters.” Navigable waters must be semi-permanent and have defined bed and banks.



*Have a qualified delineator define the boundaries of your wetlands.*

All tidal waters are considered navigable and are regulated by federal law. Wetlands that are physically, chemically, or biologically connected to regulated navigable waters, including those that eventually drain into them through tributaries, are regulated by Section 404 of the Clean Water Act.

### Activities that require a permit

- Placing fill in wetlands
- Work in navigable waters
- Clearing or removing existing vegetation

### Activities that may not require a permit

- Normal agricultural practices (except filling, clear cutting trees, or constructing non-agricultural structures)
- Harvesting natural products or recreational activities
- Routine maintenance of existing functional structures
- Selective cutting of trees and harvesting fuel wood

Prior to placing fill or doing work in any waters of the US, it is recommended you contact the Corps regarding whether the activity is regulated or not.

Please keep in mind that vegetation clearing conducted at certain times of the year could impact nesting migratory birds. Impacts to migratory birds are protected under the Migratory Bird Treaty Act.

# Permitting and Mitigation of Wetland Impacts

## What kind of permit do I need?

The Corps is responsible for issuing all Section 404 permits in Alaska. For individual permits, after public review is complete, the Corps weighs the benefits of the project against the detriments. A permit is granted unless the proposal is found to be contrary to the public interest. Processing time usually takes about 60 to 120 days, or more, unless a public hearing is required or an environmental impact statement must be prepared.

The Corps issues two types of Section 404 permits: **Individual and General Permits**. General Permit applications are either nationwide or regional, and may not require additional public review. For Individual Permit applications, a public notice is issued and there is an opportunity for a public hearing to review the proposed activity.

Planning your project to meet appropriate permit requirements can save you considerable time and money. It is always a good idea to contact the Corps to verify whether notification or additional requirements are necessary. **It is much more costly to undo unauthorized environmental damage than to secure the necessary approvals before starting.**

## Avoiding and Minimizing Wetland Impacts

Federal Clean Water Act rules require “sequencing,” which means that you must first consider all possible ways to avoid wetland impacts. If there is no practicable way to complete your project without affecting a wetland, then you must consider all possible ways you can minimize impacts.

**Avoiding wetlands** is the most effective way to prevent direct impacts to the ecological and hydrological functions of a wetland, and avoid having to secure a costly and possibly time consuming permit. Consider the purpose of your project and whether or not the location, size, or configuration can be changed to avoid wetland impacts completely. There may also be low impact construction techniques such as porous pavement, directional drilling, and linear construction to avoid or further minimize secondary impacts of your project on adjacent and nearby wetlands and water resources.

Check with the Mat-Su Borough Planning Department or Corps office to determine if there are other ways to accomplish your project goals without permanent wetland impact:

**U.S. Army Corps of Engineers**

**Anchorage Area Office: (907) 753-2712**

**Toll Free: (800) 478-2712**

**Fax: (907) 753-5567**

**Mat-Su Borough Planning Department: (907) 745-9833**

## Mitigation

After all appropriate efforts have been made to avoid and minimize wetland impacts, the Corps will generally require compensatory mitigation for remaining environmental impacts. Compensatory wetland mitigation options include:

**Mitigation Bank Credit Purchase:** Mitigation banks are established by private or public third party entities who restore, enhance, or otherwise permanently preserve wetlands in perpetuity and generate credits which may be purchased by permittees to offset unavoidable wetland impacts. In the Mat-Su, there are two resources from which mitigation credits may be purchased:

### ***Su-Knik Bank***

Contact Information: Jerome Ryan

Email: [Jerome@envmp.com](mailto:Jerome@envmp.com)

Phone: 707-874-2780 (w), 415-990-0525(c)

Post Office Box 2281, Sebastopol, CA 95473

<http://www.su-knikmitigationbank.com>

### ***Pioneer Reserve***

Contact Information: Calli Donn or Scott Walther

Email: [pioneerreserve@hotmail.com](mailto:pioneerreserve@hotmail.com)

Phone: (907) 841-5250 or (907) 947-7042

3602 N. Montrose Ct., Wasilla, AK 99654

<https://www.edgertonreserve.com>

**In-Lieu Fee Payment:** This type of mitigation involves makes a payment to an In-Lieu Fee Payment Program Sponsor who then uses those funds, possibly pooled with other financial resources to acquire or complete a wetland mitigation project. In the Mat-Su Area, there are two In-Lieu Fee Payment-sponsored programs:

### ***The Conservation Fund***

Contact Information: Brad Meiklejohn

Email: [BradMeiklejohn@aol.com](mailto:BradMeiklejohn@aol.com)

Phone: (907) 694-9060 Fax: (907) 694-9070

2727 Hiland Road, Eagle River, AK 99577

<http://www.conservationfund.org/mitigation>

### ***Great Land Trust***

Mat-Su Office

Email: [info@greatlandtrust.org](mailto:info@greatlandtrust.org)

Phone: (907) 746-64006

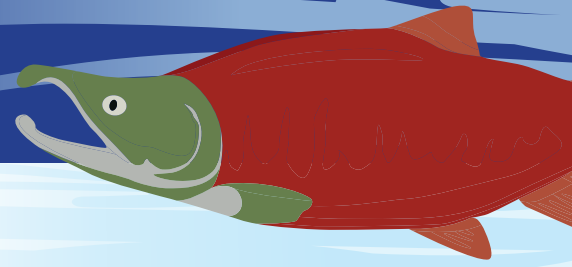
Koslosky Center, Suite 202

Palmer, AK 99645

<http://www.greatlandtrust.org/whatwedo/wetlandmitigation.html>



# Wetlands Help Salmon & Communities Thrive



## Healthy, functioning wetlands benefit everyone



**Individuals** rely on wetlands for fishing and recreation opportunities, and wetlands provide natural erosion and flood control that benefits landowners



**Businesses** and **local economies** benefit from flood control and rely on fisheries, hunting, tourism, and outdoor recreation opportunities that wetlands provide



The **Matanuska-Susitna Borough** benefits and saves money from wetlands that provide natural stormwater management, flood control, and filtration of pollutants to our watersheds and water supply

## What are wetlands?

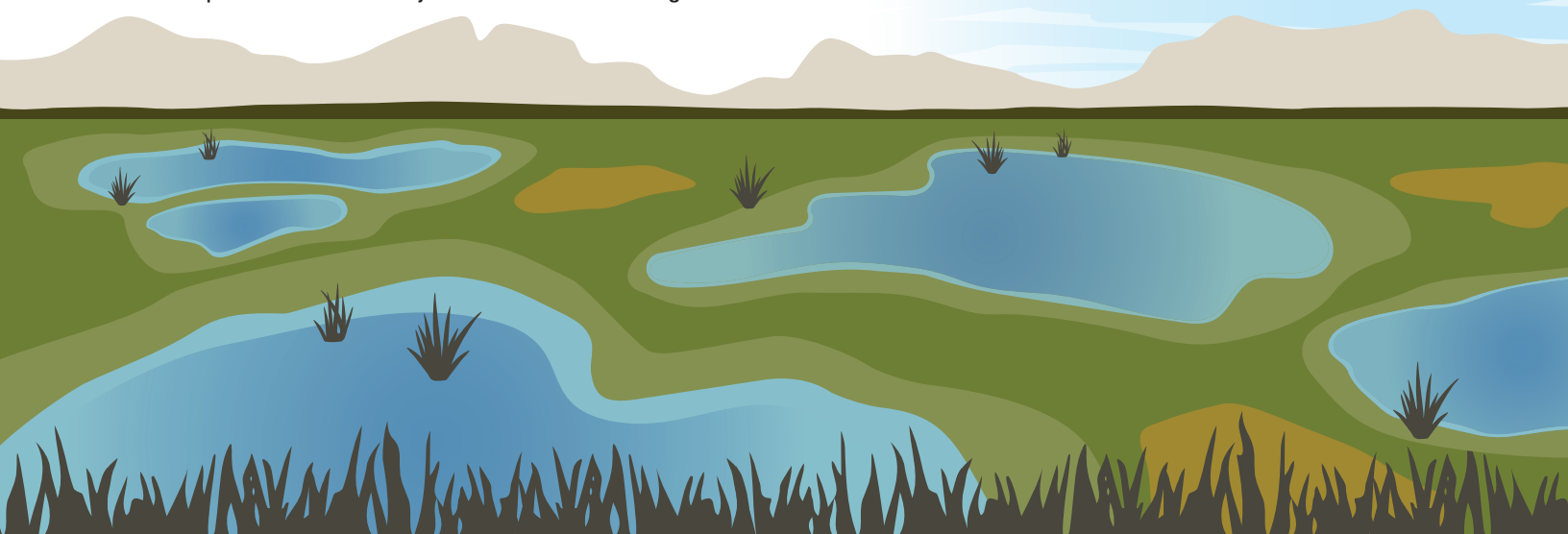
Wetlands are areas of land that are covered by or saturated with water, such as marshes or bogs. Surface water may be present seasonally or permanently. Wetlands are an important part of a watershed, connecting surface and subsurface waters of rivers, streams, lakes, and oceans.

Approximately 25% of the Matanuska-Susitna Borough's 25,258 square mile land mass is wetlands.<sup>1</sup> This vast amount of wetlands is one reason why the Mat-Su has such abundant salmon resources, as wetlands provide habitat for juvenile salmon rearing.

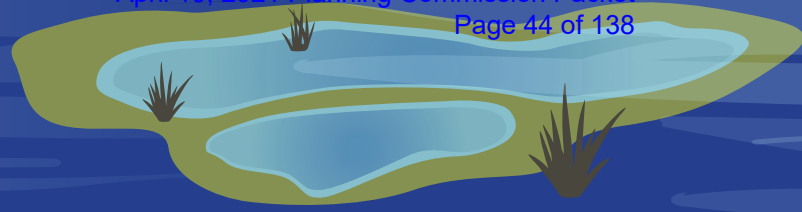
## Thriving salmon and healthy habitats make vibrant communities in the Mat-Su

The Mat-Su is a special place where vibrant communities and resilient wild salmon are closely linked. Generally, salmon numbers remain strong here; however, human use and development may be impacting habitat quality and causing localized declines in salmon numbers.

Other parts of the world have already seen the decline or extinction of salmon populations. We have a unique opportunity in the Mat-Su to safely develop our economy while ensuring the survival of wild salmon, an important natural and cultural resource that supports our communities and economies.



# What Services Do Wetlands Provide?



**Wetlands provide important economic, ecological and cultural services to the Mat-Su. Key services wetlands provide include:**

## **Fish and wildlife habitat**

- Provide important feeding and sheltered rearing habitat for salmon and other fish species
- Provide safe and healthy waterways important to spawning salmon
- Provide an ideal environment for the development of organisms that attract and feed many species, including salmon
- Support salmon-bearing waters by storing and releasing cooler water that helps regulate water temperature, stream flows and lake levels
- Support biodiversity by providing food, water and shelter for mammals and birds

## **Erosion and flood control**

- Stabilize shorelines and reduce erosion by distributing the flow of stream or river currents and holding soil together with plant roots
- Reduce flood water levels and flood-related damages to homes and businesses by acting like giant sponges
  - » Wetlands absorb, store and slowly release surface water, rain, snowmelt, and flood waters over time
  - » Vegetation slows the movement of water over floodplains, helping reduce erosion on adjacent lands

## **Water quality improvement and management**

- Protect and improve water quality by acting as giant environmental filters
  - » Wetlands slowly filter fertilizer, sediments, heavy metals, and pollutants before water seeps into rivers, streams, and underground aquifers
- Provide wellhead protection by replenishing and purifying groundwater/drinking water
- Manage stormwater and increased amounts of surface water runoff due to paved surfaces, which helps reduce the impacts of runoff, such as increased sedimentation and water pollution that disrupt water flow and affect fish habitat and egg development

## **Economic benefits**

All of these services provide economic benefits. For example, when wetlands purify groundwater and manage stormwater, our communities avoid the costs associated with the construction and continuous management of water and stormwater treatment facilities, saving millions of dollars.<sup>2</sup>

For example, in Minnesota, “the cost of replacing the natural flood control function of 5,000 acres of drained wetlands was found to be \$1.5 million annually.”<sup>3</sup>

## **National and local protections for wetlands**

*“The lack of state regulations combined with the broad scope of federal regulations make the need for local conservation and protection efforts all the more important.”*

*-Matanuska-Susitna Borough Wetlands Management Plan*

### **Clean Water Act Section 404**

Federal law requires a permit be obtained from the U.S. Army Corps of Engineers (USACE) before a wetland can be developed, filled or dredged. The USACE only has jurisdiction over wetlands if they are connected to navigable waters.

- Other agencies involved in or overseeing the permit review process: the Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Alaska Department of Environmental Conservation (ADEC), Alaska Department of Fish & Game’s Division of Habitat, and the Matanuska-Susitna Borough (MSB)
- USACE has decreased required mitigation plans for developments in recent years, reducing protections for wetlands

### **State of Alaska:\***

- No regulations that apply to the Mat-Su

### **Mat-Su Borough:**

- An ordinance regulating development along waterbodies and in floodplains requires a 75-foot setback for built structures from shorelines
- An ordinance regulating floodplain development requires all structures to conform to the minimum standards of development and obtain Flood Hazard Insurance
- The Su-Knik Wetlands Mitigation Bank is comprised of undeveloped, borough-owned wetlands. Landowners and developers can mitigate development of private wetlands by paying to protect banked wetlands.
- MSB Wetlands Management Plan provides guidance for developers and landowners<sup>1</sup>

### **Local governments:\***

- No direct control over wetlands through regulation, mitigation, or enforcement

*\* = gap in regulation*

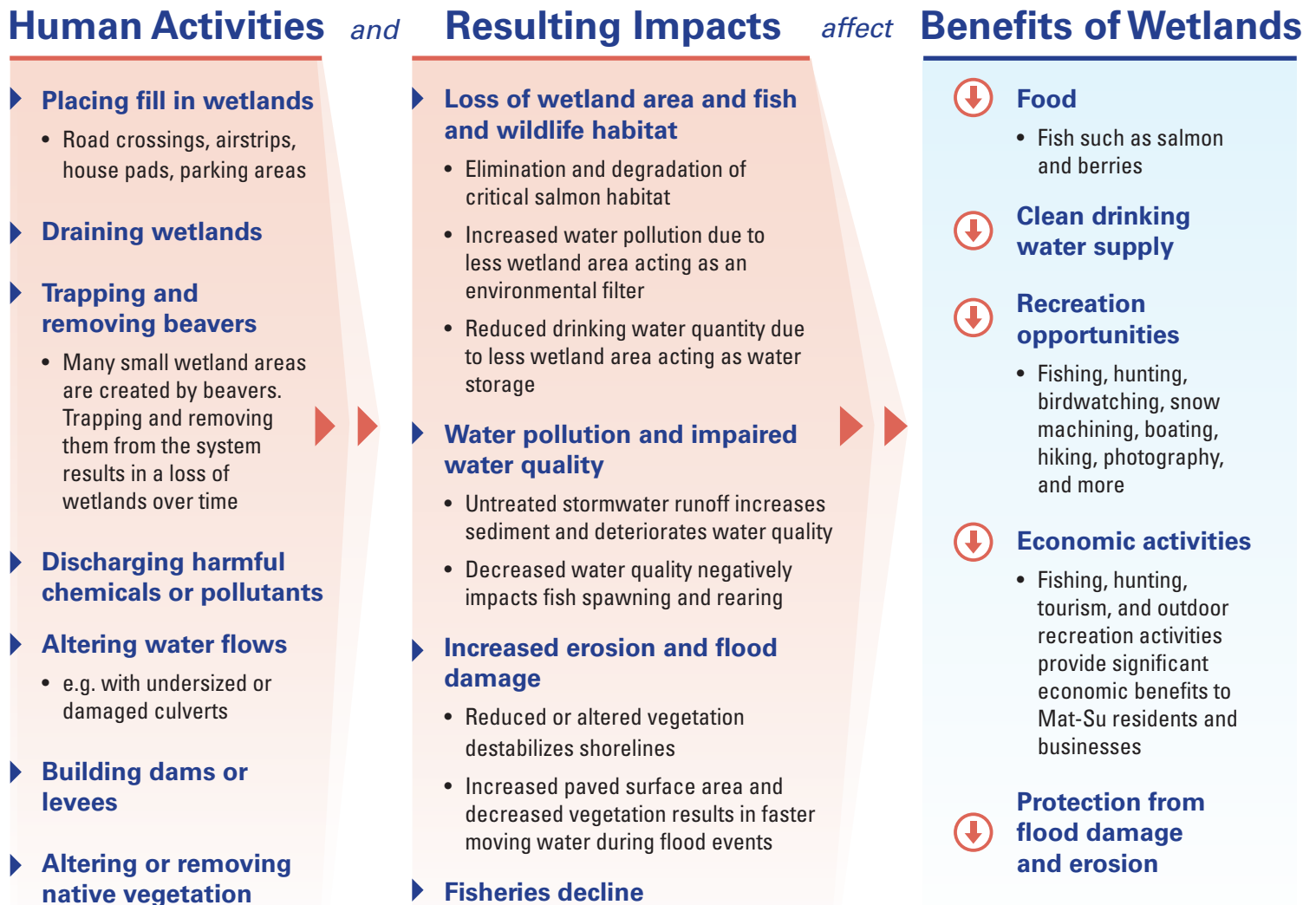


# What Challenges Do Wetlands Face?

*"As development continues, the demands for groundwater and surface water will increase. Undisturbed wetlands are critical to maintaining water supplies, balances, and quality."*

-Matanuska-Susitna Borough Wetlands Management Plan

Human activities and climate change cause the majority of challenges that wetlands face. Predominant stressors to wetlands include biological, chemical, and physical alterations to habitat. In the Mat-Su Basin, loss of wetlands is most often caused by urban development, jeopardizing these natural assets that support the Mat-Su way of life. In particular, the loss and filling of wetlands can have a range of detrimental impacts on salmon populations.



## 💰 Economic benefits of healthy salmon populations in the Mat-Su

Commercial and sportfishing support thousands of jobs and millions of dollars in earned wages in the Mat-Su.

**Commercial:** \$0.6-\$2.1 million annual earnings between 2004-2012 for Mat-Su resident permit holders only (*does not include supporting industries*)<sup>4</sup>

**Sportfish:** \$31-\$64 million annual earnings for Mat-Su residents (*includes supporting industries*)<sup>4</sup>

Residents also benefit economically from fishing by saving money at the grocery store.

# Best Practices

The best approach is conservation!

April 19, 2021 Planning Commission Packet  
“Avoiding negative impacts to wetlands through careful planning and management is vital to maintaining their functions and values,” and “maintaining current wetland functions will be less expensive than fixing a degraded system.”

- Matanuska-Susitna Borough Wetlands Management Plan

In many places in the Mat-Su Basin, salmon and their habitats are healthy so protective measures, like reservations of water, sustainable land management, voluntary land protection, and individual behaviors can prevent degradation. In other places, restoration is necessary to re-establish functioning wetlands and productive habitat.

*“Today, the survival of Pacific salmon depends upon our ability to manage harvests and protect, maintain, and improve salmon ecosystems in harmony with human development.”*

- ADF&G Alaska's Wild Salmon

## GOAL: Conserve wetlands

### Public and private land recommendations

- |   |   |   |
|---|---|---|
| <ul style="list-style-type: none"><li>• Develop/follow protection mechanisms<ul style="list-style-type: none"><li>» Tax incentives to protect wetland habitat</li><li>» Development setbacks or buffers</li><li>» Land swaps</li><li>» Set minimum flow rates and stream and lake levels to maintain viable aquatic systems</li><li>» Floodplain development</li></ul></li><li>• Encourage voluntary conservation easements and/or purchase wetlands from sellers</li></ul> | <ul style="list-style-type: none"><li>• Enhance degraded wetlands</li><li>• Mitigation options<ul style="list-style-type: none"><li>» On-site mitigation</li><li>» Mitigation banks: These banks “restore, enhance, or otherwise permanently preserve wetlands in perpetuity and generate credits which may be used to offset unavoidable wetland impacts”<sup>5</sup> in another location</li><li>» In-lieu fee programs: compensatory mitigation for impacts or unavoidable losses to wetlands due to development or other projects</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Due to potential declines in water quality from already-filled wetlands, consider limited to no additional filling of wetlands, or provide compensatory mitigation, in the following heavily impacted watersheds:<sup>6</sup><ul style="list-style-type: none"><li>» Wasilla Creek Watershed</li><li>» Cottonwood Creek Watershed</li><li>» Lucile Creek Watershed</li><li>» Meadow Creek Watershed</li></ul></li><li>• Avoid discharging warmed roadside ditch water directly into a stream; re-infiltrate ditch water on the downhill side of a road running parallel to a stream to reduce the risk of elevating stream temperatures<sup>7</sup></li></ul> |
|---|---|---|

### Are all wetland types created equal?

A variety of wetland types exist, and they all have different characteristics and functions depending on their location in the landscape. Individual wetlands contribute to the overall functioning of an entire watershed. Wetland development should be evaluated on both an individual basis and considering the collective health of a watershed.

### How much filling of wetlands is too much?

“Substantial declines in water quality may be expected after more than five percent of wetlands in a boreal watershed have been filled,”<sup>1</sup> though additional research is needed to confirm this. In some Mat-Su watersheds, around 10% of wetlands have already been filled. Many of these waterbodies have been designated as having “impaired” water quality.

### Are some wetlands more critical for salmon populations than others?

Some wetlands directly support salmon populations while others do not; however, some wetlands may indirectly support salmon by contributing to the overall health of a watershed. In Alaska, individual wetlands and their ecological roles regarding salmon need to be continually identified and assessed.

### References:

1. *Wetlands Management Plan*. Matanuska-Susitna Borough. 2012. <https://www.matsugov.us/environment/wetlands>
2. [matsu2050.org](http://matsu2050.org)
3. *Wetland Functions and Values*. U.S. Environmental Protection Agency. <http://www.epa.gov/watertrain>
4. *The Economic Geography Of Salmon*. Cultural Research North. [http://www.matsusalmon.org/dev/wp-content/uploads/2015/12/David\\_Holen-Mat-Su-Salmon-Symposium-2015.pdf](http://www.matsusalmon.org/dev/wp-content/uploads/2015/12/David_Holen-Mat-Su-Salmon-Symposium-2015.pdf)
5. *A Comprehensive Inventory of Impaired Anadromous Fish Habitats in the Matanuska-Susitna Basin, with Recommendations for Restoration, 2013*. Alaska Department of Fish & Game. [http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2013-2014/uci/anadromous\\_fish.pdf](http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2013-2014/uci/anadromous_fish.pdf)
6. Gracz, Mike. *Wetland Loss Assessment by Wetland Type and Watershed in an Expanded Core Area of the Matanuska-Susitna Borough*. <http://matsusalmon.org/wp-content/uploads/2018/08/MatSuWetlandLoss2018-7.pdf>
7. Haserodt, Megan. *Effects of Roads on Groundwater Flow Patterns in Peatlands and Implications for Nearby Salmon Streams on the Kenai Peninsula, AK*.

### Additional information:

- <http://greatlandtrust.org/priorities/habitat-conservation/>
- *Appendix 5.3 Wetland Habitats: Featured Species-associated Wetland Habitats: Freshwater Grass Wetland, Freshwater Sedge Wetland, Bog, and Salt Marsh (Estuarine)*. [https://www.adfg.alaska.gov/static/species/wildlife\\_action\\_plan/appendix5\\_wetland\\_habitats.pdf](https://www.adfg.alaska.gov/static/species/wildlife_action_plan/appendix5_wetland_habitats.pdf)
- *Conserving Salmon Habitat in the Mat-Su Basin: The Strategic Action Plan of the Mat-Su Basin Salmon Habitat Partnership, 2013*. <http://matsusalmon.org/wp-content/uploads/2012/10/2013-Strategic-Action-Plan.pdf>
- <https://www.fisheries.noaa.gov/national/habitat-conservation/coastal-wetlands-too-valuable-lose>
- *Alaska's Wild Salmon*. Alaska Department of Fish & Game. [https://www.adfg.alaska.gov/static/home/library/pdfs/ak\\_wild\\_salmon.pdf](https://www.adfg.alaska.gov/static/home/library/pdfs/ak_wild_salmon.pdf)

### Alaska District Offices

#### Main Office

2204 3rd Street  
Post Office Box 6898  
Elmendorf AFB, Alaska 99506-0898  
(907) 753-2712  
(800) 478-2712  
Fax (907) 753-5567

#### Anchorage Field Office

1600 A Street, Suite 110  
Anchorage, Alaska 99501  
(907) 753-2712  
(800) 478-2712  
Fax (907) 753-5567

#### Fairbanks Field Office

2175 University Avenue, Suite 201E  
Fairbanks, Alaska 99709  
(907) 474-2166  
Fax (907) 474-2164

#### Juneau Field Office

8800 Glacier Highway #106  
Juneau, Alaska 99801  
(907) 790-4490  
Fax (907) 790-4499

#### Kenai Field Office

805 Frontage Road #200C  
Kenai, Alaska 99611  
(907) 283-3519  
Fax (907) 283-3981

#### Sitka Field Office

Post Office Box 16  
Sitka, Alaska 99835  
(907) 350-5102



U.S. Army Corps of Engineers  
Regulatory Division  
Alaska District

## Mitigation in Alaska for Regulatory Permitted Activities



### Summary of New Mitigation Rule

On April 10, 2008, the United States Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) published a new rule, entitled "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule". The rule became effective on June 9, 2008. The rule emphasizes the sequence to be followed for mitigating impacts to aquatic resources that result from work authorized by permit under the Corps Regulatory Program. All practicable steps to avoid and/or minimize impacts to aquatic resources must be taken before proposing compensatory mitigation to offset project impacts. The rule establishes standards and criteria for all types of compensatory mitigation, including mitigation banks, in-lieu fee (ILF) mitigation, and permittee-responsible mitigation, to offset authorized unavoidable impacts to waters of the United States (U.S.), including wetlands.

### Mitigation Sequence

**Avoid**—Describe how, in your project planning process, you will avoid impacts to waters of the U.S. to the maximum extent practicable. Examples of avoidance measures include, but are not limited to, site selection, use of alternate routes, and modification of design configurations.

**Minimize**—Describe how your project design will incorporate measures that minimize unavoidable impacts to waters of the U.S. by limiting discharges of fill to the minimum amount/size necessary to achieve the project purpose.

**Compensatory Mitigation**—Once all efforts to avoid and minimize impacts have occurred, remaining impacts may be offset by compensatory mitigation. Describe how your proposed compensatory mitigation would offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project.

### Mitigation Sequence (Continued)

Compensatory mitigation involves actions taken to offset authorized unavoidable adverse impacts to waters of the U.S., including wetlands, streams and other aquatic resources (aquatic sites) authorized. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic resources.

### What you are responsible for as an applicant

#### Pre-application meetings (recommended)

**Nationwide Permit (NWP) Pre-Construction Notifications:** Provide information as required by General Condition 20 of the NWPs with your pre-construction notification.

**Standard Department of the Army (DA) Permit Application:** Submit a mitigation statement with your application that describes how you will avoid and minimize impacts to waters of the U.S. **AND** include a compensatory mitigation plan.

Provide rationale that describes how your choice of compensatory mitigation will compensate for the impacts to the aquatic resource as a result of your project **OR** rationale as to why compensatory mitigation is not necessary.

If you are proposing compensatory mitigation by purchasing credits from a mitigation bank or paying an ILF, it is your responsibility to contact the bank or ILF sponsor for estimates.

#### In-kind/Out-of-kind, On-site/Off-site

While considering the type and the amount of mitigation to propose, consideration is given to the location of the mitigation in comparison to the location of the impacts and the type of waters of the U.S. to be improved in comparison to the type of waters of the U.S. to be impacted. The amount of mitigation proposed must be appropriate for the types of impacts and size of impacts that will be authorized.



Types of Compensatory Mitigation

Compensatory mitigation can be accomplished through one type of mitigation or a combination of types.

The following are the types of compensatory mitigation available:

- MITIGATION BANKS
- IN-LIEU FEE MITIGATION
- PERMITTEE-RESPONSIBLE MITIGATION

Mitigation Banks

Defined as a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits.

All mitigation banks must have an approved banking instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits. Development of a mitigation bank requires site identification in advance, project-specific planning, and significant investment of financial resources.

When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

For information on the currently approved mitigation banks in your project area, please contact your local Corps office.

Types of Compensatory Mitigation  
(Continued)

In-Lieu Fee Mitigation

Defined as a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits.

All ILF programs must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits.

Similar to a mitigation bank, when permitted impacts are located within the service area of an approved ILF program, and the ILF has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

For information on the current in-lieu fee programs in your project area, please contact your local Corps office.

Permittee-Responsible Mitigation

This is an aquatic resource restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

The four types of permittee-responsible mitigation include:

**Restoration** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions (e.g. flood retention, etc.) to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Types of Compensatory Mitigation  
(Continued)

**Establishment** means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

**Enhancement** means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Preservation** means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

A mitigation plan for permittee-responsible mitigation should include:

- Objectives
- Site Selection Criteria
- Site Protection Instrument
- Baseline Information
- Determination of Credits
- Mitigation Work Plan
- Maintenance Plan
- Performance Standards
- Monitoring Requirements
- Long-term Management Plan
- Adaptive Management Plan
- Financial Assurances
- Other relevant information

Resources

Corps Alaska District Webpage:  
<http://www.poa.usace.army.mil/reg/>

Corps Compensatory Mitigation Webpage:  
[http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/final\\_mitig\\_rule.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/final_mitig_rule.pdf)

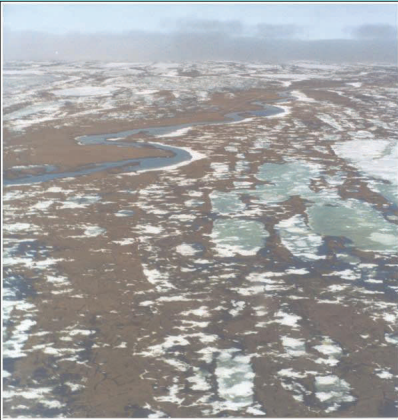
EPA Compensatory Mitigation Webpage:  
<http://www.epa.gov/wetlandsmitigation/>

Questions and Answers about Compensatory Mitigation Rule:  
[http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/comp\\_mitig\\_finalrule\\_qa.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/comp_mitig_finalrule_qa.pdf)

Wetlands Compensatory Mitigation Rule Fact Sheet:  
<http://www.epa.gov/owow/wetlands/pdf/MitigationRule.pdf>

Mitigation Banking Fact Sheet:  
<http://www.epa.gov/owow/wetlands/facts/fact16.html>

Guidelines for Specification of Disposal Sites for Dredged or Fill Material (404(b)(1) Guidelines):  
<http://www.epa.gov/owow/wetlands/pdf/40cfrPart230.pdf>



Wetlands on Alaska's North Slope

Introduced: April 5, 2021  
Public Hearing: April 19, 2021  
Action:

**MATANUSKA-SUSITNA BOROUGH**  
**PLANNING COMMISSION RESOLUTION NO. PC 21-07**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING ASSEMBLY ADOPTION OF ORDINANCE 21.025 ADOPTING MSB 17.31 SUPPLEMENTAL WETLANDS MITIGATION PROVISIONS FOR LARGE-SCALE PROJECTS REQUIRING UNITED STATES ARMY CORPS OF ENGINEERS INDIVIDUAL PERMITS UNDER SECTION 404 OF THE CLEAN WATER ACT; AND AMENDING MSB 1.45.100 SCHEDULE OF FINES FOR INFRACTIONS.

---

WHEREAS, in 2012 the Borough adopted the Wetlands Management Plan which documented the beneficial ecological services wetlands provide to Borough citizens along with best practices regarding wetland management that included consideration of a local wetland management ordinance; and

WHEREAS, beneficial and valuable ecological services wetlands provide include fish and wildlife habitat, flood control, groundwater recharge, erosion control, stormwater management, and improving water quality; and

WHEREAS, in 2017 over \$57 million in direct spending on sport fishing was generated that was supported by the prevalence of wetlands in the Borough; and

WHEREAS, since 2001, the Borough's fish passage program has invested over 20 million dollars to construct over 100 fish passage

culverts, opening up 66 miles of stream and 6,224 lake acres of fish habitat; and

WHEREAS, the Borough continues to be the fastest growing region in Alaska and has lost significant portions of its wetlands in particular watersheds to development; and

WHEREAS, water quality within the Borough has declined as evidenced by four water bodies being listed on the state's impaired waters list; and

WHEREAS, in March 2019 a special Assembly wetlands workshop presentation from agency stakeholders further explored wetland mitigation; and

WHEREAS, in May of 2019 the Borough's Fish and Wildlife Commission passed FWC19-03 supporting supplemental wetland mitigation on large development projects; and

WHEREAS, in August 2019 the Assembly adopted Resolution 19-074 directing planning staff to research a supplemental wetlands mitigation ordinance; and

WHEREAS, the supplemental wetland mitigation ordinance meets several goals in the Borough's Comprehensive Plan including Land Use Goal 4, Public Open Space Goal 2, Community Quality Goal 1, and Community Quality Goal 2; and

WHEREAS, this supplemental wetland mitigation ordinance supports adopted code on the Borough mitigation bank and flood damage prevention; and

WHEREAS, further loss of wetlands from large development projects without requiring full mitigation is contrary to the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends assembly adoption of ordinance 21-025 adopting MSB 17.31 Supplemental Wetlands Mitigation Provisions for large-scale projects requiring United States Army Corps of Engineers individual permits under section 404 of the Clean Water Act; and amending MSB 1.45.100 Schedule of Fines for Infractions.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this \_\_\_\_ day of \_\_\_\_, 2021.

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COLLEEN VAGUE, Chair

ATTEST

---

KAROL RIESE, Planning Clerk

(SEAL)

YES:

NO:

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# **PUBLIC HEARING QUASI- JUDICIAL**

## **Resolution Nos. PC 21-08 and PC 21-09**

Talkeetna Restaurant

(Page 53-56)

# **PUBLIC HEARING**





## MATANUSKA-SUSITNA BOROUGH

Planning and Land Use Department

Development Services Division

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7822


[www.matsugov.us](http://www.matsugov.us)

### MEMORANDUM

DATE: April 12, 2021

TO: Planning Commission

THROUGH: Alex Strawn, Planning & Land Use Director 

FROM: Mark Whisenhunt, Acting Development Services Manager 

SUBJECT: Request to Postpone the Public Hearings for Planning Commission Resolution 21-08 and 21-09

The applicable land use regulations coupled with the rich history of the Talkeetna Restaurant operation/property have made our review and recommendation significantly more laborious than normal. Unfortunately, due to staffing shortages, heavy workload, and absences due to illness, our office is not able to complete its review and recommendation in time for the April 19, 2021 Planning Commission meeting. Our office strives to produce accurate, professional, and timely recommendations to the Commission. Given the unique challenges our office is currently facing, we respectfully request the public hearings for Planning Commission Resolution 21-08 and 21-09 be postponed to the May 3, 2021 meeting. Postponement will allow our office to ensure our review and recommendation meet our standard of quality. Thank you for your time and consideration on this matter.

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**Marijuana Map**  
(Pages 57-60)

**COMSAT QUARRY**  
(Pages 61-132)

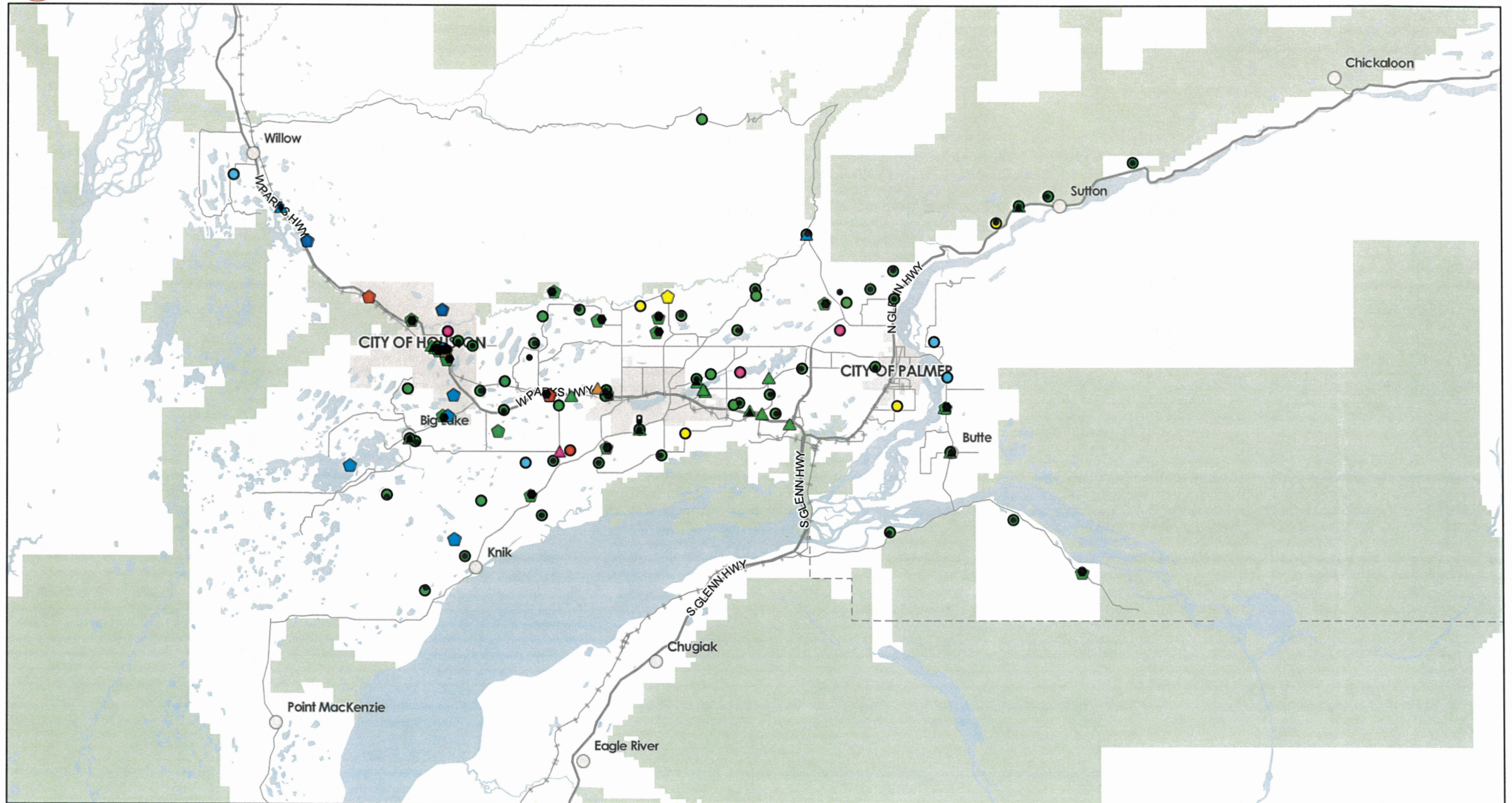
**CORRESPONDENCE & INFORMATION**







# MSB Marijuana Licenses (Data current as of



Date: 4/12/2021

## SOA - Marijuana Licenses

- Standard Marijuana Cultivation Facility
- Limited Marijuana Cultivation Facility
- ▲ Retail Marijuana Store
- ◆ Marijuana Product Manufacturing Facility
- ◆ Marijuana Concentrate Manufacturing Facility
- ◆ Marijuana Testing Facility

## MSB Marijuana Licenses

- Limited Marijuana Cultivation Facility, Active-Operating
- Limited Marijuana Cultivation Facility, Active-Pending Inspection
- Limited Marijuana Cultivation Facility, Complete
- Limited Marijuana Cultivation Facility, Delegated
- Limited Marijuana Cultivation Facility, Queue
- Limited Marijuana Cultivation Facility, Surrendered

- ▲ Retail Marijuana Store, Active-Operating
- ▲ Retail Marijuana Store, Complete
- ▲ Retail Marijuana Store, Delegated
- ▲ Retail Marijuana Store, Queue
- Standard Marijuana Cultivation Facility, Active-Operating
- Standard Marijuana Cultivation Facility, Active-Pending Inspection

- Standard Marijuana Cultivation Facility, Complete
- Standard Marijuana Cultivation Facility, Delegated
- Standard Marijuana Cultivation Facility, Expired
- Standard Marijuana Cultivation Facility, Returned
- <all other values>

This map is solely for informational purposes only. The Borough makes no express or implied warranties with respect to the character, function, or capabilities of the map or the suitability of the map for any particular purpose beyond those originally intended by the Borough. For information regarding the full disclaimer and policies related to acceptable uses of this map, please contact the Matanuska-Susitna Borough GIS Division at 907-861-7858

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# *Talkeetna Community Council, Inc.*

A non-profit, community service organization

Chair, MSB Planning Commission  
CC: Mayor Vern Halter

Re: CUP review request

Dear Chairwoman Vague,

The TCCI would like a review of the need and requirement for a CUP at the Comsat quarry site in Talkeetna. There are ample reasons to review the use of this land due to high conflicts with surrounding land use, inconsistency with local land use plans, and incongruence with major borough land use Goals and Policies. The MSB Planning Department has advised us the land is state owned, and thus exempted from the borough's CUP and Interim Material District ordinances, and they have declined to address community concerns beyond that statement. We believe the exemption is being improperly applied, and request this review, and a timely response to the Talkeetna Community Council as the TCCI continues its work to resolve these high conflict issues with the state. To be clear, we are not requesting any revision to the existing ordinance at this time, but a review of the applicability of the exemption to this site. The site is located at 26N04W32 NE1/4, near Christiansen Lake and XY Lakes, Talkeetna.

We reviewed the history of the Assembly's pertinent ordinances, the current language of the applicable borough ordinances in chapters 17 and 28, definitions as they apply to the MSB code, and the following land use plans: The Christiansen Lake LMP, Talkeetna Comprehensive Plan, Talkeetna Special Use District, Susitna Area Plan, Susitna Matanuska Area Plan, Mat-Su Borough Comprehensive Plan. We also reviewed documents provided by the State of Alaska Department of Natural Resources in response to public records requests, and documents provided to nearby residents by the Mat-Su Borough in response to public records requests.

The exemption cited by the borough is found in Chapter 17.30: Conditional Use Permit (CUP) For Earth Materials Extraction Activities, under 17:30.020 Applicability:

***Talkeetna Community Council, Inc.***  
***P.O. Box 608, Talkeetna AK 99676***

(H) This chapter shall not apply to earth material extraction activities on land owned by the state of Alaska that are in existence as of the date of adoption of the ordinance codified in this chapter except for such operations that extract materials within four feet of the water table. Where a site is exempt under this subsection the exemption is revoked if operations proceed to within four feet of the water table.

The challenge to the exemption is in the pre-existing language: (H) This chapter shall not apply to earth material extraction activities on land owned by the state of Alaska that are in existence as of the date of adoption of the ordinance.....

Language is put into an ordinance because it is meaningful, and the removal of this language would alter the meaning of the ordinance. An activity in existence on the date of adoption is a common theme in land use planning, and we found plenty of context in The Zoning Trilogy containing The Zoning Dictionary by Lehman and Associates. We reviewed the Intent of the CUP ordinance as well as the exemption language.

There were no earth material extraction activities in existence on this site as of December 2011, when the ordinance was adopted. There had been no authorized extraction activities documented since 1995. (Between 1979 and 1995, there had been just four documented extractions for 600 cu.y, 400 cu.y, 1000 cu.y and 1200 cu.y. Additional ADLs during this time period in the state files pertain to duplicates, denied applications, unfulfilled requests and ADNRR agency actions). There have been none of the examinations that determine the appropriate use of the land, including reviews required for both existing and newly designated material sites on state land, nor were any pre-existing legal non-conforming use provisions complied with at any time. Please see attachments.

To determine if the earth material activities were in "existence", we reviewed the language in the ordinances of the CUP and Interim Material District, for pre-existing, legal non-conforming uses as well as timelines for CUP and IMD expirations. In each of these cases, the borough code states that if the non-conforming or conditional use activity ceases for 5 years, the status expires.

The borough ordinance definitions themselves did not include a definition for in "existence", but 17.125.005 provides this guidance: "(B) In instances where a word is not included in this section nor in the applicable section, reference will be made first to the most recent publication of "The Illustrated Book of Development Definitions" then to "The Zoning Dictionary" by Lehman and Associates, then to "Webster's New Universal, Unabridged Dictionary."

***Talkeetna Community Council, Inc.***  
***P.O. Box 608, Talkeetna AK 99676***

“Existing Use” is defined by The Illustrated Book of Development Definitions as “The use of a property at the time that an application for development or redevelopment is made.” The Zoning Dictionary defines “Existing” as “Legally existing, being a reality or an actuality as of the date of passing of this By-law.” Webster’s Unabridged Dictionary defines “existing” as: “actual or present occurrence.” By these definitions, Comsat site earth material extracting activities were not in existence.

Because this is state land, we considered the state’s definition of existing use to be pertinent, in case their intent of their own land use should supersede the borough’s ordinance. We found it in 11 AAC 55.040. Classification (i) wherein an “...established source” of materials is a material site used within the preceding 10 years and not reclaimed or revegetated;...”. We also looked to the state’s 2012 Preliminary Decision and Final Finding of criteria used to meet qualification as a Designated Material Site, and this finding required Designated Sites to be those already in existence, as determined by having had a material sale or decision or ILMA since at least January 1, 2000, in addition to having previously met underlying evaluation studies described in the document. Whether the state applies the 10 year litmus test or the Preliminary and Final Finding’s designation’s timeline of 12 years, the Comsat site met neither of these criteria, nor has it had the underlying evaluations and public review required, according to public record requests documents provided by the state (attached). The site has never met any standards of the state for use as a material site. The state requires any sites that did not qualify as Designated Sites to undergo a process of evaluation prior to development, which also includes public notice. The state needs to resolve these problems with the Comsat location being improperly swept up in their statewide Designation, but nevertheless, it still provides clarification that the state only considered sites with activity within the recent 10-12 year range to be “existing” or to be “established” material sites.

#### History:

In 2005 the Assembly passed two ordinances that applied to all public and private lands in the borough, unless prohibited by a Special Use District:

ORDINANCE SERIAL NO. 05-124(SUB)(AM): AN ORDINANCE OF THE  
MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 17.30,  
CONDITIONAL USE PERMIT (CUP) FOR EARTH MATERIALS EXTRACTION  
ACTIVITIES. and,

***Talkeetna Community Council, Inc.***  
***P.O. Box 608, Talkeetna AK 99676***

ORDINANCE SERIAL NO. 05-123(SUB)(AM): AN ORDINANCE OF THE  
MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 17.28, INTERIM  
MATERIALS DISTRICT.

These ordinances required all earth extraction activities not already in existence on that date to obtain either a CUP or IMD. For activities that were already in existence on that date, those activities were allowed to continue as non-conforming uses provided chapter provisions were met, and a qualified application was made within 12 months. The state had an opportunity to apply for a non-conditional use permit with the adoption of these ordinances, but did not. It had an obligation to apply for a CUP or IMD if it wanted to extract material after that expiration date, but it did not. The site never met any standards of a non-conforming use, or conditional use.

On December 6, 2011, the Assembly passed another ordinance which exempted the State's earth extracting activities from the 2005 ordinances establishing Conditional Use Permits and Interim Materials Districts, if the extraction activities were in existence on that date of ordinance passage. If extraction activities were actually in existence on that date, there should have been a legal non-conforming use permit, a conditional use permit, or an Interim Material District in place on that date, which was required by the borough code for all earth extraction activity on public or private land, and would have established the existence of these activities.

Not only did this 2011 ordinance passage remove the protections afforded to all other borough residents, such as the examination and application of borough land use policy management guidelines, criteria and standards, but it also removed requirements of public notice. By then the state had passed its own legislation eliminating the requirement of public notice on a newly created category of Designated Material Sites, and swept the Comsat site up, under this law, despite the Comsat site failing to meet any of the establishment criteria, effectively removing it from ever having any public input (The land was ignored on the Area Wide Plans). The community was surprised and dismayed to suddenly find an active heavy industrial site, manufacturing and processing riprap, in the midst of two borough parks and lakes; one with established quiet hours, the other non-motorized, both with existing and established management plans, plus an adjacent SPUD with the most restrictive provisions in Talkeetna's District, in an otherwise quiet, residential neighborhood with clearly stated priorities to preserve the quiet, residential and recreational character.

***Talkeetna Community Council, Inc.***  
***P.O. Box 608, Talkeetna AK 99676***

The conflicts are numerous, and we have been working in good faith to resolve them, with both the borough and the state. With this request, we would appreciate a review as to how the Comsat site is allowed exempt status, wherein under any definition or contextual use we could find, it did not meet the ordinance criteria for exemption. Nor does allowing an excessively liberal interpretation of the exemption support the borough land use plan's goals and policies or the statements of intent guiding these specific land use ordinances, and it would not be supported by the state's own criteria.

Thank you for your review.



Joe McAneney  
TCCI Board of Directors  
Talkeetna Community Council, Inc.

cc: Tam Boeve  
Mayor Vern Halter

Attachments:

CUPORDinance.pdf  
CUP Exemption ordinance  
Interim sites MSB  
Assembly Meeting Discussion CUP Exempt  
2012 State Preliminary Decision Designated Material Sites  
PRA response letter to TCCI

***Talkeetna Community Council, Inc.  
P.O. Box 608, Talkeetna AK 99676***



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

## Department of Natural Resources

DIVISION OF MINING, LAND & WATER  
Program Support Section

550 West 7th Avenue, Suite 1070  
Anchorage, Alaska 99501-3579  
Main: 907.269.8511  
TTY: 711 or 800-770-8973  
Fax: 907.269.8904

July 29, 2020

VIA EMAIL to [contact@talkeetnacouncil.org](mailto:contact@talkeetnacouncil.org)

Joe McAneney  
Chair, Board of Directors  
Talkeetna Community Council, Inc.  
P.O. Box 608  
Talkeetna, AK 99676

Subject: Public Records Request re Comsat Material Site

Dear Mr. McAneney:

Your June 30, 2020 public records request seeks the production of documents that you characterize as having been generated or used for particular purposes. Your request specifically asked DNR to produce: 1) The material sale(s) subsequent to January 1, 2000 that was “used to demonstrate active use of the Comsat site;” 2) evaluations “used to meet” the “statement of fact” that DNR previously evaluated the Comsat material site; 3) The History and Archeology evaluation or survey of the site; and, 4) the DMLW approved plan for site development and the “document that establishes the ‘minimal and additional impact on the environment.’”

Your request in some instances presupposes the purpose or nature of certain documents, and asks DNR to accept those suppositions as it formulates its response. Please be advised that by responding to your records request DNR is not taking a position on your presuppositions. Rather, we have searched for and are producing documents, to the extent they exist, that relate to the subject matter of the request and not the associated suppositions. Therefore, DNR responds as follows:

Item 1: A review of the DNR Comsat Material site records reveals that there are no material sales authorized by DNR from 2000 to 2012 and therefore no records exist for this specific time period.

Item 2: A review of DNR Comsat Material site records reveals that there are no records of evaluations by DNR of the topography soils, water, minerals, materials improvements/facilities, access vegetation, wildlife, fisheries, and recreation resources issues specific to this site.

Item 3: A review of DNR Comsat Material site records reveals that there are no records of an existing survey or subsequent evaluation conducted by History and Archaeology staff for this site.

Item 4: A review of DNR Comsat Material site records reveals the enclosed documents related to DMLW approved site development or reclamation plans.

There is no charge associated with this production, due to the limited amount of time needed to search for, identify, and review responsive records.

Please feel free to contact me at 907.269.8511 with questions or concerns.

Sincerely,



Brandon McCutcheon  
Chief, Program Support Section, DMLW, DNR

Cc: Kris Hess  
Deputy Director, Division of Mining, Land & Water, DNR



**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND & WATER**

**PRELIMINARY FINDING AND DECISION  
Regarding**

**Proposed Alaska Department of Natural Resources, Material Sites  
Designations under AS 38.05.550(b) and AS 38.05.035(e)**

**And**

**Final Finding and Decision  
Regarding  
Interim Material Sites Designations under AS 38.05.550(b)**

**Designations of Material Sites and Locations for the Sale and Removal of Material**

**Proposed Action:**

In accordance with AS 38.05.550 - AS 38.05.565, and AS 38.05.035(e), the Division of Mining, Land and Water (MLW), Department of Natural Resources (DNR) is proposing to designate the sites listed or identified in Attachment "A" of this decision as Designated Material Sites under AS 38.05.550(b) for the long-term use as sites for the sale and extraction of materials as defined under AS 38.05.965(10).

These sites are all existing material extraction locations on state-owned lands for which MLW has,

- 1) since January 1, 2000, issued, or have had in place, a material sale decision on, or a sale contract for, the extraction of various amounts, quantities and types of materials under previous statutory authorities,
- 2) in place a valid existing authorization allowing another state or federal agency to use or manage a site as a material extraction source, or
- 3) in place a valid existing authorization allowing a state, federal, or political subdivision to use the site as a material extraction source under AS 38.05.810(a).

These are only locations for which existing material extraction operations have been previously established and use of these sites and the anticipated impacts of material removal have been previously considered and addressed in some form by the department. This decision does not amend or affect those existing material sale contracts that were issued prior to July 1, 2012.

A long-term designation means that the sites will be open continuously for the sale by the MLW and the extraction of material by purchasers until the site is closed by the division. Contracts for the sale of material may be issued by MLW either by negotiated, competitive, limited and public and charitable material sale methods. Contracts issued under AS 38.05.550-565 will be issued at a representative sale price per cubic yard determined by the commissioner or at fair market value determined by appraisal. Some sales under AS 38.05.565 may be without cost. Contracts issued under the authority of AS 38.05.810(a) Public and Charitable will be issued at less than the fair market.



## **Proposed decision regarding the Long-Term Designation of Material Sites and Locations for the Sale and Removal of Material**

### **Scope of Review and Finding:**

The scope of this proposed finding and decision is to designate existing material extraction locations identified in Appendix A as Designated Material Sites under AS 38.05.550(b) for the use and operation as material sites for the long-term sale and extraction of materials until closed by the division.

### **Justification for Action:**

Background: Before July 1, 2012 Alaska Law provided for the sale and extraction of materials through AS 38.05 .110-135, DISPOSAL OF TIMBER AND MATERIALS. In the implementation of those statutes, MLW's approval process focused primarily on the individual sales which took place from given sites. On May 22, 2012, CHAPTER 27 SLA 12 was signed into law and became effective July 1, 2012. This Act, in part, substantially changed the authority and process the department is to use in selling materials from state land. Under AS 38.05.550(b) a material source or site must be designated as a location from which the ongoing sale and extraction of materials is in the best interest of the state. The new law provides DNR a more efficient method dealing with material sales, focusing on the location and creation of new material sites sources or sites, rather than the numerous individual material sales. State-wide, numerous existing material sites have been in operation at various times since statehood. This decision focuses on those sites that have been in continuous or intermittent operations as material sale and extraction sites since at least as recently as January 1, 2000. Many of these sites were in use under some authorization since before statehood, and many continue to be actively used to the present. This proposed decision seeks to designate those existing material sources or sites as Designated Material Sites under AS 38.05.550(b). They have all been previously determined suitable for material extraction, though the method/process previously used to document the designate the suitability of existing sites as material sites was different than the recently adopted statute. Sites may have been created through a previous material sale(s), the existence of an authorization to another state agency allowing for material extraction, or authorizations to other political subdivisions. This decision seeks to acknowledge the sites that are actively in use under some authorization since January 1, 2000 and to officially designate them in line with the current statutory requirements.

The Alaska State Constitution directs the DNR to provide for a variety of uses on state land while conserving natural resources. DNR is directed to establish a balanced combination of land available for public and private purposes. It directs that the land and natural resources be available for the maximum use consistent with the public interest. To that end, MLW will continue to carefully review individual sale requests and operation plans once sites have been designated, to ensure resource considerations and multiple use issues are appropriately evaluated.

Legal Description: See Attachment "A". Sizes of the existing listed Material Sites range from 2 to 920 acres. The vast majority of these site fall within 5-20 acres in size. DNR will work to document the size of the authorized areas for these sites before the final finding and decision is issued.

### **Authority:**

AS 38.05.020 Duties of the commissioner  
AS 38.05.035 Duties of the director  
AS 38.05.550 - .565 Disposal of Materials  
AS 38.05.810(a) Public and Charitable  
AS 38.05.945 Public Notice  
AS 27.19.030-.050 Reclamation Plan

11 AAC 55 Classifications  
11 AAC 71 Timber and material sale

### **Administrative Records:**

The Administrative record contained in the following are incorporated by reference in this decision:

- a) Administrative ADL and LAS case files for material sales or material site opening decisions, sales or valid authorizations issued since January 1, 2000 by reference, See Attachment "A",
- b) DNR' S ADL and LAS case files for ILMAs and AS 38.05.810(a) material sites/conveyances in force as of January 1, 2000,
- c) Federal authorizations that remain valid on state land,
- d) DNR' S material sale receipts issued by DNR' s Financial Services Section of the Division of Support Services issued since January 1, 2000,
- e) Land Use Plans Listed below by reference,
- f) site-specific plans as applicable to material sites and sales issued since January 1, 2000 by reference,
- g) Alaska Constitution, Public Trust Doctrine, Submerged Lands Act of 1953, Alaska Statutes Title 38, and Alaska Administrative Code Title 11, by reference,
- h) US Department of Interior 962 NAV July 12, 1984 navigable bodies report by reference.

The administrative records contain background information on issues, existing resources, land status, land ownership patterns, management intent, and land classifications. The administrative records also contains background information for each material use site, such as: size, location, available type of material, history of previous material sale adjudications or site establishment decisions, title, agency comments, and typical forms and requirements for bonding and insurance. This assimilated administrative record for all the sites listed or addressed in Attachment "A" is incorporated in this decision by reference.

### **Land Planning:**

These proposed designated sites have been determined suitable for material extraction. The sites are all consistent with and do not conflict with land use designations or land use classifications. However, under 11 AAC 55.040(i)(5)(a), classification of land is not required if the material is taken from an established source such as those listed in Attachment "A".

The following land plans cover one or more of the proposed designated sites areas:

#### **AREA PLANS:**

- Bristol Bay Area Plan
- Central / Southern Southeast Area Plan
- Copper River Basin Area Plan
- Juneau State Land Plan
- Kenai Area Plan
- Kodiak Area Plan
- Kuskokwim Area Plan
- Northern Southeast Area Plan
- Northwest Area Plan
- Prince of Wales Island Area Plan
- Prince of Wales Island Area Plan Amendment
- Prince William Sound Area Plan
- Southeast Susitna Area Plan
- Susitna Area Plan

- Susitna Matanuska Area Plan
- Tanana Basin Area Plan
- Eastern Tanana Area Plan
- Yukon Tanana Area Plan
- Upper Yukon Area Plan
- Yakataga Area Plan

LAND MANAGEMENT PLANS:

- Dalton Highway Master Plan
- Denali to Wrangell - St. Elias
- Fish Creek Management Plan
- Haines State Forest Resource Management Plan
- Hatcher Pass Management Plan
- Knik River Public Use Area Management Plan
- Matanuska Valley Moose Range Management Plan
- North Access Visitor Facilities Study
- Nushagak and Mulchatna Rivers Recreation Management Plan
- Scenic Resources Along the Parks Highway
- Susitna Basin Recreation Rivers Management Plans
- Susitna Forestry Guidelines
- Turnagain Arm Management Plan

BOROUGHES: The following Boroughs may be affected by one or more of the proposed designated material sites:

- Aleutians East Borough
- Bristol Bay Borough
- City & Borough of Juneau
- City & Borough of Sitka
- City & Borough of Wrangell
- City & Borough of Yakutat
- Denali Borough
- Fairbanks Northstar Borough
- Haines Borough
- Kenai Peninsula Borough
- Ketchikan Gateway Borough
- Kodiak Island Borough
- Lake and Peninsula Borough
- Matanuska-Susitna Borough
- Municipality of Anchorage
- Municipality of Skagway
- North Slope Borough

- Northwest Arctic Borough

**Land Status:** The surface estate of these sites are owned by the State of Alaska, and managed by DNR or the Department of Transportation and Public Facilities under an Inter-agency Land Management Assignment (ILMA). These sites have all been previously utilized for the sales and extraction of materials of various types at various times and all of the sites have a documented authorization for material extraction valid since January 1, 2000 and many continued to be used for active material extraction since that date.

**Mineral Status:** These proposed designated material sites have been in intermittently or continuous operations as operating material sale and extraction sites since January 1, 2000. They are all suitable for material extraction and generally do not conflict with mining rights and operations. In cases where material sites are located over active mining claims, MLW will resolve any issues with the mining claimant before issuing a material sale contract.

**Access:** As existing sources for the sale and extraction material, these sites all have established physical and legal access. If additional or alternate access as required for future operations on the sites, DNR will assess on a case by case basis.

**Local land use and land planning:** Many of these existing material sites are known to the local municipal or borough governments. Should a local municipality or borough require authorizations, MLW will require material sale applicants to obtain any relevant local/borough approvals prior to beginning operations. Should a local land use or planning issue arise with the use or operation of one or more of these proposed designated sites, the local municipal government the appropriate regional office of MLW will address their concerns. Once notified, DNR will consult with the local municipal or borough government prior to any future sales of material out of these sites to work with that local governmental body to develop specific stipulations or conditions for operation within the site, to minimize or eliminate the concern or conflict. If substantial reasons are raised that convinces DNR that a more thorough review of a site designation is warranted, then DNR reserves the right to modify this decision, in whole or in part, to limit or repeal this designation for that site and close the site pending the issuance of a more detailed designation review and decision. Designation of a site does not constitute an approval for any given new application or contract. MLW will continue to review individual sale/extraction application/requests, and the applicants will still be required to obtain any relevant local/borough approvals prior to beginning operations.

**Resource Values, Current and Potential Uses:** As stated above, these are existing material sites that have all been previously utilized by the state for the sale and extraction of materials of various types. These sites have been previously evaluated by the DNR to Topography soils, Water, Minerals, Materials, Improvements/Facilities, Access, Vegetation, Wildlife, Fisheries and Recreation resource issues, and used on one or more occasions as materials have been sold through individual material sales contract over that time. Through those individual material sale decisions or findings, MLW has found little to no impact or conflict to these resources or uses for these sites and has found that the individual sales of material out of these sites have been in the state's best interest. This decision is to conform these numerous site identification decisions to the new standard under AS 38.05.550(b).

**Cultural and Heritage Resources:** A number of these sites have been evaluation for Alaska Heritage Resources Values in the past. Numerous individual material sale findings and decisions have found little to no known historic property in those areas. Secondly, since these sites have been used intermittently or continuous operations as operating material sale and extraction sites, the sites have been heavily impacted. As part of this preliminary finding and decision, MLW has provided the DNR's Division of Parks, Office of History and Archeology (H&A) with the list of these proposed Designated Material Sites in Attachment "A" along with a request that they evaluate designated sites not previously surveyed for cultural or heritage resources. Further, DNR will include a standard stipulation in all material sale

contracts requiring material purchasers to cease operations and notify H&A should material extraction operations uncover any cultural or heritage resources. Should information become available that convinces DNR that an additional historic survey are required on one or more of these sites, then DNR reserves the right to modify this decision, in whole or in part, to limit the use or to close the Designated Material Site as may be appropriate to protect cultural or heritage resources.

This decision proposes to confirm those numerous individual findings and material sale decisions, and to confirm, under AS 38.05.550(b), that the use of the listed material sites as a Designated Material Site is in the state's best interest. Should information become available that convinces MLW that use of one or more of these sites as a Designated Material Site is no longer in the state's best interest, then MLW reserves the right to modify this decision, in whole or in part, to limit the use or to close the Designated Material Site as may be appropriate to protect other resource values, and current potential uses.

**Public Notice:**

Public notice according to AS 38.05.945 will be initiated and posted on the Alaska Online Public Notice System and the DNR/MLW websites. In addition, notice will be published in the Anchorage Daily News, Fairbanks Daily News Miner, Juneau Empire, as well as applicable local newspapers. Notice will be sent to post offices located outside of a municipality, agencies, local governing authorities, and native organizations. This Preliminary Decision is subject to agency and public comments. If significant changes occur due to comments received in response to the notice, the Final Finding and Decision will address those changes and additional notice may be sent to those who provided written comments during this decision period. Only those who provided written comments during the comment period will be eligible to appeal the Final Finding and Decision.

**Other Permits and Authorizations:** It is the material sale applicant's responsibility to obtain other local, state or federal permits that may be necessary to extract materials under a sale contract once the sites are Designated Material Sites.

**Traditional Use Finding:** (AS 38.05.830) Some of the proposed Designated Material Sites are located in the unorganized borough. Traditional uses include of subsistence and recreational hunting. MLW has determined that the traditional existing uses for the sites listed or addressed in Attachment "A" are for the use and extraction of materials. For most of these sites, it is not expected, nor is there any evidence, that designation of these material sites will pose significant conflicts with other existing traditional uses of the lands, on or adjacent to, the proposed material sites. In some instances where conflict between traditional uses have been identified, mitigation measures will be stipulated in the individual sale contracts to reduce impacts. If further traditional uses become evident, they will be discussed in the Final Finding and Decision.

**Method of Excavation:** Methods for the excavation of the material from Designated Sites will be stipulated in the individual lands sale contracts issued under AS 38.05.550-565.

**Performance Guaranty:** The requirement of a performance guarantee will be determined on a case-by-case basis as ADNR issues individual material sales contracts under AS 38.05.550-565.

**Water Quality:** At the time of the sale of material from a designated Material site or source, DNR will include in the material sale contract, stipulations that require the applicant to comply with the requirement of the Alaska Pollutant Discharge Elimination System (APDES), and if applicable, to maintain and operate the site in accordance with an approved Storm Water Pollution Prevention Plan (SWPPP).

**Reclamation Plan:** In accordance with AS 27.19, reclamation is required of all mining operations, including material extractions. Each applicant for a material sale purchase will be required to submit a reclamation plan with the material sale application, and will be made a part of that individual material sale file.

**Environmental Risk Assessment:** As part of each individual material sale contract application process, the applicant will be required to submit a signed environmental questionnaire. The questionnaire asks for information on potentially hazardous materials that may be stored or used on the designated site. Based on the information provided in the questionnaire, MLW will develop site-specific, sale-specific stipulations to be included in the material sale contract.

**Insurance:** The requirement of whether insurance will be required of the applicant and the amount of any required insurance will be determined on a case-by-case basis as MLW issues individual material sales contracts under AS 38.05.550- 38.05.565.

**Preliminary Decision:**

MLW has completed a review of the information available and an examination of the documents and associated information germane to the proposed action. This decision considers ownership of the Designated Material Sites and the need for reasonable access to material sources in the state. The use of this material will enhance the development of the state's natural resources, assist with maintaining public infrastructure and facilitate economic activity. The proposed classifications on these sites meet the requirements of AS 38.05.300, 11 AAC 55.040(i) and AS 38.04.065. Operations in the sites will be consistent with a mining and reclamation plans to be required by the MLW.

It is the determination of the Division of Mining, Land and Water that it may be in the state's best interest to designate existing material sites listed in Attachment "A" as Designated Material Sites under AS 38.05.550(b), and that and that the sale and extraction of materials from those locations under AS 38.05.550- 565 may be in the best interest of the state.

Special Stipulations and Project Specific Stipulations, if needed, will be included in the individual material sales contract. Site specific stipulations identified during the public notice period may also be included. This application shall now proceed to public notice.

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Brent Goodrum,  
Director, Division of Mining, Land and Water, DNR

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Date



### **Interim Material Site Designations:**

Although existing authorizations issued before July 1, 2012 remain valid and operations will continue under the authority that was valid at the time of issuance, the MLW is issuing this Interim Material Site Designation decision to allow new contracts to be issued until the division makes its final decision regarding the long-term designation of material sites under AS 38.05.550(b). MLW recognizes need for, the public interest in, maintaining reasonable access to and availability of state owned materials pending a final decision regarding long-term designations of material sites. Access to and then use of the materials these sites provide will enhance the development of the state's natural resources, assist with maintaining public infrastructure and facilitate economic activity.

MLW has determined it to be in the best interest of the public to facilitate the continued operation of the state's material sales program, and the support it provides the public, communities, non-profit organizations, and industry, and that it is necessary that material sales continue until such time that the division can adequately assess and designate individual existing material sites for long-term designation under the act.

The MLW believes it necessary to make this short-term, provisional designation to align with the new statutes under AS 38.05.550(b) to allow continuity of operations until the full long-term site designation process is completed. Accordingly, MLW designates, on an interim basis, the existing material sites listed and addressed in **Attachment "A"** as Designated Material Sites under AS 38.05.550(b) for the immediate and short-term use as sites for material sales and extractions. This interim designation of these sites is a provisional designation and will be valid only through December 31, 2012, or until a final finding and decision regarding the long-term designation of these sites becomes effective, whichever comes first. MLW anticipates that by that date the division will have completed its public review and evaluation process regarding the suitability of these sites as long-term Designated Sites under AS 38.05.550(b) and made its final finding and decision. MLW believes it to be in the public's best interest to make this interim designation to maintain the department's ability to sell material to the public from existing sites on state lands during Alaska's construction season. The public, state, federal and political subdivisions are encouraged to review these sites and provide comment regarding the suitability of these sites as material source. MLW reserves the right to remove a site from the interim designation list at anytime.

During this interim designation period, new sales and operations from the Interim Designated Material Sites will be subject to the following conditions:

- 1) MLW will follow the appropriate provisions of 11 AAC 71.005 – 71.910 when making new individual material sales decisions under these provisional Material Site Designations;
- 2) New sales and extractions from any Interim Designated Material Site will be limited to the working areas already impacted by existing material extraction operations and no expansion of the existing disturbed areas will be permitted, without expressly authorization by the division, regardless of the total size of the authorized material site area,
- 3) New individual sale contracts will not be authorized for more than 25,000 cubic yards without notice to the public,
- 4) No new contract shall be issued for a period beyond December 31, 2012, and
- 5) If information is received that provides MLW with significant reason why it is not in the public interest to sell material out of a specific Interim Designated Material Site, the division may withdraw that site as an Interim Designated Material Site pending final decision regarding the long-term designation of the site.

### **Decision to Designate Material Sites as Interim Designated Material Sites:**

I find that it is in the best interest of the state to temporarily designate the existing material sites listed in Attachment "A" as interim Designated Material Sites under AS 38.05.550(b), and that the sale and extraction of materials from those locations under AS 38.05.550- 565 is in the best interest of the state.

Further I find that this decision shall expire at 12:00 a.m. December 31, 2012, or until a final finding and decision regarding the long-term designation of these sites becomes effective, which ever comes first.

Should information becomes available that convinces MLW that use of one or more of these sites as a Designated Material Sites is no longer in the state's best interest, then MLW reserves the right to modify this decision, in whole or in part, to limit the use of or to close a Designated Material Site as may be appropriate pending the issuance of a more detailed designation evaluation decision.

A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

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Brent Goodrum,  
Director, Division of Mining, Land and Water, DNR

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Date

A person affected by the Interim Designation decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 days of issuance as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to The Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by e-mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court.



## CHAPTER 17.30: CONDITIONAL USE PERMIT (CUP) FOR EARTH MATERIALS EXTRACTION ACTIVITIES

### Section

<a href="#"><u>17.30.010</u></a>	<a href="#"><u>Intent and purpose</u></a>
<a href="#"><u>17.30.020</u></a>	<a href="#"><u>Applicability</u></a>
<a href="#"><u>17.30.025</u></a>	<a href="#"><u>Nonconforming uses</u></a>
<a href="#"><u>17.30.030</u></a>	<a href="#"><u>Types of permits available</u></a>
<a href="#"><u>17.30.035</u></a>	<a href="#"><u>Application procedures</u></a>
<a href="#"><u>17.30.037</u></a>	<a href="#"><u>Material extraction below or within four feet of the seasonal high water table</u></a>
<a href="#"><u>17.30.040</u></a>	<a href="#"><u>Criteria to qualify for an administrative permit</u></a>
<a href="#"><u>17.30.050</u></a>	<a href="#"><u>Planning commission approval</u></a>
<a href="#"><u>17.30.055</u></a>	<a href="#"><u>Required compliance with state and federal laws</u></a>
<a href="#"><u>17.30.060</u></a>	<a href="#"><u>General standards for approval</u></a>
<a href="#"><u>17.30.110</u></a>	<a href="#"><u>Amendment of conditional use permit</u></a>
<a href="#"><u>17.30.120</u></a>	<a href="#"><u>Transfer of a conditional use permit</u></a>
<a href="#"><u>17.30.130</u></a>	<a href="#"><u>Termination of permit</u></a>
<a href="#"><u>17.30.140</u></a>	<a href="#"><u>Violations, enforcement, and penalties</u></a>
<a href="#"><u>17.30.150</u></a>	<a href="#"><u>Appeal procedures</u></a>

### 17.30.010 INTENT AND PURPOSE.

(A) It is the intent of the Matanuska-Susitna Borough to recognize the value and importance of promoting the utilization of natural resources within its boundaries. The purpose of this chapter is to allow resource extraction activities while promoting the public health, safety, order, prosperity, and general welfare of the Matanuska-Susitna Borough through regulation of land use to reduce the adverse impacts of land uses and development between and among properties. It is the further purpose of this chapter to promote compatible, orderly development. These purposes are accomplished by:

- (1) allowing for a public review process for earth materials extraction activities in the Matanuska-Susitna Borough;
- (2) enhancing the character and stability of residential, agricultural, business, commercial, and industrial areas, promoting the orderly and beneficial development of such areas by the owner/permittee in a manner that will not devalue the extraction site or neighboring properties for future beneficial uses upon completion of gravel extraction;
- (3) promoting diversified land use and economic opportunity;
- (4) encouraging the most appropriate uses of land;
- (5) enhancing the natural, manmade, and historical amenities of the Matanuska-Susitna Borough;
- (6) recognizing and preserving traditional uses of land within the Matanuska-Susitna Borough; and

- (7) protecting and enhancing the quality, peace, quiet and safety of the Matanuska-Susitna Borough neighborhoods.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

## **17.30.020 APPLICABILITY.**

(A) This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a special land use district. Where a special land use district regulates earth materials extraction as a conditional use, the granting of a conditional use permit shall require compliance with this chapter. Where this chapter is in conflict with the conditional use permit conditions of the special land use district, the more restrictive conditions shall apply.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla, or the Port MacKenzie Special Use District.

(C) This chapter applies to commercial earth materials extraction activities where the principal activity of use of the property is the extraction of earth materials.

(D) This chapter does not apply when earth material extraction activity is not intended for sale or barter.

(E) Annual extraction of more than 2,000 cubic yards of earth materials on property that has not been granted a permit or pre-existing legal nonconforming status as of the date of the enactment of this chapter is required to obtain a conditional use permit or administrative permit.

(F) *[Repealed by Ord. 11-153, § 13, 2011]*

(G) Extraction of 2,000 cubic yards or less annually on any one parcel does not require an administrative or conditional use permit. Where a site is exempt under this subsection the exemption is revoked if operations proceed within four feet of the seasonal high water table.

(H) This chapter shall not apply to earth material extraction activities on land owned by the state of Alaska that are in existence as of the date of adoption of the ordinance codified in this chapter except for such operations that extract materials within four feet of the water table. Where a site is exempt under this subsection the exemption is revoked if operations proceed to within four feet of the water table.

(Ord. 16-102, § 10, 2016; Ord. 12-096, § 3, 2012; Ord. 11-153, § 13, 2011; Ord. 08-043, §§ 2, 3, 2008; Ord. 07-130, § 2, 2007; Ord. 05-124(SUB)(AM), § 2 (part), 2005)

CODE ORDINANCE

By: Borough Manager  
Introduced: 07/19/05  
Public Hearing: 09/06/05  
Amended by Amended Substitute: 09/06/05  
Adopted: 09/06/05

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 05-123(SUB)(AM)**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING  
MSB 17.28, INTERIM MATERIALS DISTRICT.

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BE IT ENACTED:

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

Section 2. Adoption of chapter. MSB 17.28, Interim Materials  
District, is hereby adopted as follows:

SECTION

17.28.010 Intent and purpose

17.28.020 Applicability

17.28.025 Nonconforming uses

17.28.030 Interim materials district (IMD)

17.28.040 Required compliance with state and federal  
laws

17.28.050 Site development plan required

17.28.060 Site development standards

17.28.070 Setbacks

17.28.080 Procedures for initiating an interim  
materials district (IMD)

17.28.100 Variances

17.28.120 Flood damage prevention - application and  
procedures

17.28.200 Violations, enforcement, and penalties

17.28.210 Fees

**17.28.010 INTENT AND PURPOSE.**

(A) It is the intent of the Matanuska-Susitna Borough to recognize the value and importance of promoting the utilization of natural resources within its boundaries. The purpose of this chapter is to establish an interim materials district within the Matanuska-Susitna Borough to allow resource extraction activities as an interim use of land while promoting the public health, safety, order, prosperity, and general welfare of the Matanuska-Susitna Borough through regulation of land use to reduce the adverse impacts of land uses and development between and among properties. It is the further purpose of this chapter to promote compatible, orderly development. These purposes are accomplished by:

(1) designating areas for the extraction of earth materials important for the development of the Matanuska-Susitna Borough;

(2) enhancing the character and stability of residential, agricultural, business, commercial, and industrial areas, and promoting the orderly and beneficial development of such areas by the owner/permittee in a manner that will not devalue the extraction site or neighboring properties for future beneficial uses upon completion of gravel extraction;

(3) promoting diversified land use and economic opportunity;

(4) encouraging the most appropriate uses of land;

(5) enhancing the natural, man-made, and historical amenities of the Matanuska-Susitna Borough;

(6) recognizing and preserving traditional uses of land within the Matanuska-Susitna Borough; and

(7) protecting and enhancing the quality, peace, quiet and safety of the Matanuska-Susitna Borough neighborhoods.

**17.28.020 APPLICABILITY.**

(A) This district shall be established on private or public lands for earth materials extraction and processing activities on 20 contiguous acres or greater where material extraction is intended to be

for more than two years in all areas of the borough except where the use is prohibited by ordinance within a special land use district. Where this chapter is in conflict with the conditions of a special land use district, the most restrictive conditions shall apply.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla.

**17.28.025 NONCONFORMING USES.**

(A) At the date of adoption of this ordinance codified in this chapter, or amendments thereto, earth materials extraction activities which were in existence before the effective date of applicable regulations, are permitted to continue subject to the provisions of this section.

(B) Nonconforming status will be granted administratively, upon provision of the following:

(1) Application for nonconforming status must be submitted within 12 months of adoption of this ordinance. The application shall contain:

(a) site development plan which includes the following:



(i) identification of surrounding property owners, existing land uses, and wetlands and waterbodies within the notification area;

(ii) planned location of permanent and semi-permanent structures for verification of setback requirements;

(iii) proposed phases of mining activities;

(iv) noise mitigation plan, consistent with MSB 17.28.060(E); and

(b) documentation of required compliance with state and federal laws, consistent with MSB 17.28.040(A).

(C) Failure to provide documentation of compliance with existing requirements or violation of such requirements will nullify nonconforming status. If materials extraction activity ceases for 12 consecutive months or longer, nonconforming status will expire.

#### **17.28.030 INTERIM MATERIALS DISTRICT (IMD)**

(A) The extraction of earth materials is an interim use of the land in the Matanuska-Susitna Borough. An interim materials district shall be a

minimum of 20 contiguous acres in size, meet the site development standards specified in MSB 17.28.060, site development standards, and be in compliance with other applicable regulations as shown in MSB 17.28.040, required compliance with state and federal law.

(B) Allowed uses. The following principal uses are allowed in the interim materials district:

(1) removal of sand, gravel, rock, soil, peat moss, sphagnum, stone, pumice, cinders, clay or other minerals including but not limited to quarrying, extraction, and removal of unprocessed and processed materials to an off-site location; and

(2) processing of natural resources such as sand, gravel, rock, soil, peat moss, sphagnum, stone, pumice, cinders and clay or other minerals by screening, washing, crushing, grinding, milling, classification, storage, rail or truck loading, truck scaling, and sales.

(C) Accessory uses.

(1) agriculture;

(2) maintenance shops and storage buildings associated with the interim use;

(3) offices or buildings associated with sales and management of the interim use;

(4) temporary batch plants and ancillary facilities associated with the interim use;

(5) recycling of other natural resources including recycled asphalt and concrete to be crushed;

(6) residential use solely for employee housing or security; and

(7) storage of equipment associated with materials extraction and construction.

(D) Conditional uses. Permanent batch plants may be authorized by the planning commission as a conditional use within the interim materials district.

(E) Prohibited uses. Uses not meeting the requirements of this section or not allowed as a conditional use are prohibited.

**17.28.040 REQUIRED COMPLIANCE WITH STATE AND FEDERAL LAWS.**

(A) All applicants for interim materials district designation are required to demonstrate compliance with state and federal law. Prior to final approval of the interim materials district, the

applicant or agent shall provide written documentation of compliance with the following:

(1) mining license as required by the Alaska State Department of Revenue, pursuant to AS 42.65;

(2) mining permit as required by the Alaska State Department of Natural Resources (ADNR) if extraction activities are to take place on state land;

(3) reclamation plan as required by ADNR, pursuant to Alaska Statute 27.19;

(4) notice of intent (NOI) for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Environmental Protection Agency (EPA) pursuant to the National Pollutant Discharge Elimination System (NPDES) requirements; and

(5) United States Army Corps of Engineers permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity is to take place within wetlands, lakes and streams.

(B) In addition to the requirements in MSB 17.28.040(A), all activity shall be conducted in

compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement.

(1) Air quality.

(a) EPA air quality control permit is required for asphalt plants and crushers.

(b) ADNR burn permit is required for brush or stump burning. Combustibles shall be stockpiled separate from non-combustibles, and burn permit requirements shall be followed.

(c) ADEC dust control and air quality regulations pertaining to burning activities shall be followed.

(2) Water quality.

(a) EPA and ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze, and hydrocarbons.

(3) Use and storage of hazardous materials, waste and explosives.

(a) EPA regulations controlling use of hazardous materials shall be followed; and

(b) Federal Bureau of Alcohol, Tobacco, Firearms & Explosives (FBATFE) regulations shall be followed when storing or using explosives.

(C) Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the regulations of the interim materials district, and is subject to enforcement pursuant to MSB 17.28.200.

**17.28.050 SITE DEVELOPMENT PLAN REQUIRED**

(A) The application for an interim materials district shall include a site development plan. The site development plan shall include, but not be limited to the following, as required by the conditions of the site, and shall be consistent with the standards in MSB 17.28.060:

(1) identification of surrounding property owners, existing land uses, and wetlands and waterbodies within the notification area;

(2) planned location of permanent and semi-permanent structures for verification of setback requirements;



- (3) proposed phases of mining activities;
- (4) roads and access plan;
- (5) visual screening measures;
- (6) noise mitigation measures; and
- (7) proposed lighting.

**17.28.060 SITE DEVELOPMENT STANDARDS.**

(A) Standards for the interim materials district site development plan are as follows:

(1) identification of surrounding property owners, existing land uses, and wetlands and waterbodies within one quarter mile of the site;

(2) phases of proposed mining activities including a map showing the area to be mined, a description of the topography and vegetation, approximate time sequence for mining at particular locations, and general anticipated location of semi-permanent equipment such as conveyor belts, crushers, dredges, batch plants, etc;

(3) the road and access plan shall include anticipated routes and traffic volumes, and shall be approved by the director. If the level of activity exceeds the minimum levels specified in MSB 17.61.090

(traffic standards), a traffic control plan consistent with state regulations may be required;

(a) road maintenance may be required of permittee;

(4) visual screening measures shall include a detailed description of the type of visual screening to be utilized, and shall be maintained as necessary during the course of extraction activities. Visual screening may include, but is not limited to, berms, natural vegetation, solid fences, walls, evergreen hedges or other means as approved by the commission. If mining is planned to be conducted within 300 feet of the property line, berms or other visual screening methods shall be a minimum of 10 feet in height. If mining is planned to be conducted greater than 300 feet from the property line, the applicant shall utilize commission-approved screening methods to minimize visual impacts of the mining operation. The commission shall adopt policies and procedures to assist applicants in developing screening plans. In its discretion, the commission may waive screening requirements where the topography of the property or the placement of natural barriers makes screening not

feasible or not necessary. Screening requirements shall be required in consideration of and in accordance with existing uses of adjacent property at the time of designation of the interim materials district. An interim materials district shall not be required to screen the district from uses which arise after the designation of the interim materials district;

(5) noise mitigation measures shall include a description of measures to be taken by the applicant to mitigate or lessen noise impacts to surrounding properties and shall include, but not be limited to, hours of operation of noise producing equipment, erecting noise barriers (i.e. berms a minimum of ten feet in height) between noise producing equipment and adjacent uses, location of noise producing equipment (i.e. below grade in excavated pit areas), and measures to utilize equipment with noise reduction features.

(a) no sound resulting from the earth materials extraction activities shall create a sound level that exceeds the limits set forth for the existing receiving land use category in table 1 when

measured at or within the property boundary of the receiving land use:

Table 1. Sound Levels by receiving land use

Receiving Land Use Category	Time	Sound Level Limit (dB(A))
Residential area	7 a.m. - 10 p.m.	60
	10 p.m. - 7 a.m.	50
Commercial area	7 a.m. - 10 p.m.	70
	10 p.m. - 7 a.m.	60
Industrial area	At all times	80

(b) in the case of new residential development (defined as platting actions finalized after adoption of this section) next to existing earth materials extraction operations, it shall be the responsibility of the developer (or subdivider) of the new residential development to erect noise buffers sufficient to ensure the levels established in table 1;

(c) for any sound that is of short duration, between the hours of 7 a.m. and 7 p.m. the levels established in table 1 may be increased by:

(i) five dB(A) for a total of fifteen minutes in any one hour; or

(ii) ten dB(A) for a total of five minutes in any hour; or

(iii) 15 dB(A) for a total of one and one half minutes in any one hour period.

(6) Lighting standards are:

(a) exterior lighting shall be located and shielded to direct the light towards the ground, in order to minimize light spillage onto adjacent properties and upward into the night sky.

(b) illumination or other fixtures mounted higher than 20 feet or 150 watts or more shall have downward directional shielding.

(7) water quality protection shall be ensured by requiring that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other waterbody, including wetlands, (unless permitted by U.S. Army Corps of Engineers 404 Permit, MSB 17.28.040(A)(5)). This regulation shall not apply to man-made waterbodies being constructed

during the course of the materials extraction activities.

**17.28.070 SETBACKS.**

(A) A 25 foot setback is required from all property lines for structures, permanent or portable facilities, and equipment or material storage.

**17.28.080 PROCEDURES FOR INITIATING AN INTERIM MATERIALS DISTRICT (IMD).**

(A) An interim materials district may be initiated on a property which meets the standards for designation as an IMD by:

(1) the owner of the property or their authorized representative;

(2) the department of planning and land use upon its own initiative;

(3) the planning commission, upon its own motion; or

(4) the assembly, upon its own motion.

(B) The applicant for an interim materials district designation under MSB 17.28.080(A)(1) shall submit the following to the department of planning and land use:



(1) a completed application on a form provided by the department of planning and land use (incomplete applications will not be accepted);

(2) a site development plan in accordance with MSB 17.28.050 and MSB 17.28.060; and

(3) a fee in the amount designated in MSB 17.99.

(C) The planning commission shall conduct at least one public hearing prior to making a recommendation to the assembly on designation of an interim materials district.

(1) The public hearing shall be held in conformance with MSB 15.04.016, and notice of the hearing shall be made pursuant to the standards of MSB 17.03, except that the notification area will be one mile from the exterior boundary of the subject property.

(2) The commission shall report to the assembly on whether the applicant has met the standards delineated in MSB 17.28.050-060 and what effect the proposed interim materials district would have on the public health, safety, and general welfare of the Matanuska-Susitna Borough. The commission in

its report to the assembly shall recommend to the assembly, approval, denial, modifications, or conditions of approval for the proposed action, and shall include findings on the following:

(a) whether the proposed interim materials district is compatible with the goals and objectives of the comprehensive plan;

(b) whether the proposed interim materials district negatively affects public health, safety or general welfare; and

(c) whether the proposed interim materials district has met the site development standards of this chapter including compliance with all required local, state, and federal laws.

(D) The assembly shall review the recommendation of the planning commission, hold a public hearing and vote on whether to designate the proposed area as an interim materials district.

#### **17.28.100 VARIANCES.**

(A) Applications and procedures for obtaining variances from standards of this chapter shall be as prescribed in MSB 17.65.

#### **17.28.120 FLOOD DAMAGE PREVENTION - APPLICATION AND PROCEDURES.**

(A) Applications and procedures for obtaining a development permit within any designated special flood hazard area under this chapter shall be as prescribed in MSB 17.29.

**17.28.200 VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

(A) Unless specified otherwise, any violation of this chapter is an infraction.

(B) Enforcement of the provisions of this chapter and associated penalties shall be consistent with the terms and conditions of MSB 1.45.

**17.28.210 FEES.**

(A) Fees required under this chapter will be established in accordance with MSB 17.99.

Section 3. Effective date. This ordinance shall take effect upon adoption by the Matanuska-Susitna Borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 6 day  
of September, 2005.

**/S/**

TIMOTHY L. ANDERSON, Borough Mayor

ATTEST:

**/S/**

MICHELLE M. MCGEHEE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Woods, Allen, Colberg, Kvalheim, Simpson,  
Colver, and Vehrs

**MATANUSKA-SUSITNA BOROUGH  
ASSEMBLY**

**REGULAR MEETING  
DECEMBER 6, 2011**

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**I. CALL TO ORDER**

The regular meeting of the Matanuska-Susitna Borough Assembly was held on December 6, 2011, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6 p.m. by Mayor Larry DeVilbiss.

**II. ROLL CALL**

Assembly members present and establishing a quorum were:

Mr. Warren Keogh, Assembly District No. 1  
Mr. Noel Woods, Assembly District No. 2  
Mr. Ronald Arvin, Assembly District No. 3 (*Deputy Mayor*) (*arrived at 6:01 p.m.*)  
Mr. Steven Colligan, Assembly District No. 4  
Mr. Darcie K. Salmon, Assembly District No. 5 (*entered telephonically at 6:15 p.m.*)  
Mr. Jim Colver, Assembly District No. 6  
Mr. Vern Halter, Assembly District No. 7

Staff in attendance were:

Ms. Lonnie R. McKechnie, Borough Clerk  
Mr. John Moosey, Borough Manager  
Ms. Elizabeth Gray, Assistant Borough Manager  
Mr. Nicholas Spiropoulos, Borough Attorney  
Ms. Jamie Newman, Deputy Borough Clerk  
Ms. Tammy Clayton, Finance Director  
Ms. Shaune O'Neil, Public Works Director  
Ms. Eileen Probasco, Acting Planning and Land Use Director  
Mr. Alex Strawn, Permitting Services Manager  
Mr. Dennis Brodigan, Emergency Services Director  
Ms. Patty Sullivan, Public Affairs Director

**III. APPROVAL OF AGENDA**

Mayor DeVilbiss inquired if there were any changes to the agenda.

GENERAL CONSENT:      The agenda was approved as presented without objection.

**IV. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mr. Doug Griffin, Palmer City Manager.

## **V. MINUTES OF PRECEDING MEETINGS**

- A. Joint Assembly/Planning Commission Meeting: 10/25/11
- B. Regular Assembly Meeting: 11/01/11
- C. Special Assembly Meeting: 11/03/11
- D. Regular Assembly Meeting: 11/15/11

Mayor DeVilbiss inquired if there were any corrections to joint meeting minutes of October 25, 2011, the regular meeting minutes of November 1, 2011, the special meeting minutes of November 3, 2011, or the regular meeting minutes of November 15, 2011.

Assemblymember Colver requested that language be added to the November 1, 2011, regular meeting minutes to document that he re-entered the meeting after the Assembly concluded business on legislation in which he did not participate due to a declared conflict of interest.

Ms. McKechnie advised that the change would be made as requested.

GENERAL CONSENT: The minutes were approved as amended without objection.

[Clerk note: the change requested was made to the November 1, 2011, regular meeting minutes.]

## **VI. REPORTS/CORRESPONDENCE**

### **A. AGENCY REPORTS**

#### **1. Reports from cities**

##### Palmer City

Ms. DeLena Johnson, Mayor:

- reported that budget deliberations are underway at the City;
- expressed appreciation to the Assembly for expanding the Dorothy Swanda Jones Building in Palmer;
- noted she looks forward to working with Borough officials on the parking plan relative to the expansion project; and
- remarked that working with Borough staff is a pleasure.

##### Wasilla City

Mr. Verne Rupright, Mayor:

- spoke to the conveyance of land by the Borough to the City for the purpose of constructing a library complex on four acres of property at the Wasilla Middle School;
- further added that the City is not seeking dispensation from the Borough rather a partnership that will enhance the Borough as a whole;
- voiced that the Planning Commission and Assembly approved the revised Wasilla Comprehensive Plan that specifically called out for partnership approaches that leverage funding to build a new library within the Wasilla downtown core area;



- further added that the project is supported by the School Board, as well as the Superintendent of schools; and
- affirmed that ownership rights to the property must be vested in the City otherwise attempts to garner grant funds and bonds are futile.

Assemblymember Colligan reported that legislation related to the proposed Wasilla library complex does not appear on the agenda.

Mayor DeVilbiss advised that legislation was approved on November 15, 2011, directing the Manager to gather information for Assembly consideration on options for deeding or leasing the land for the construction of a new library in Wasilla.

MOTION: Assemblymember Colligan moved to suspend the rules to allow the Borough Manager to speak to the matter.

VOTE: The motion passed without objection.

Mr. Moosey spoke to the options of deeding or leasing property to the city of Wasilla for a library.

2. Matanuska-Susitna Borough School District

*(There was no report provided.)*

B. COMMITTEE REPORTS

1. Joint Assembly/School Board Committee on School Issues

Assemblymember Cover:

- reported that the Committee met on Thursday, December 1, 2011;
- remarked that much of the discussion focused on the timing and logistics of projects slated for construction under the bond package; and
- noted that communication between the Borough's Finance Director and School District personnel is underway regarding bond package items that may be administered by the District through the procurement process.

MOTION: Assemblymember Colver moved to suspend the rules to allow School Board Member Lynn Gattis an opportunity to address the body.

VOTE: The motion passed without objection.

Ms. Gattis affirmed that the School Board will be meeting with the Borough Area School Site Selection Committee to select a site for the construction of a new middle/high school located on Knik-Goosebay Road.

2. Assembly Public Relations

Assemblymember Keogh:

- reported that he recently attended a two-day energy seminar;
- noted that topics of discussion included emerging policies, new regulations, markets and resources with a focus on oil and gas;
- noted the value of the seminar; and
- encouraged future attendance by members of the Assembly.

Mayor DeVilbiss reported that he will be meeting with representatives from the Alaska Industrial Development and Export Authority in regard to the impact on fish in the Susitna drainage relative to the proposed hydroelectric project.

#### E. MANAGER COMMENTS

1. State/Federal Legislation
2. Strategic Planning Issues

Mr. Moosey reminded the Assembly of the joint meeting with the legislative delegation on December 12, 2011.

Ms. Probasco:

- reported that Cook Inlet beluga whales are on the endangered species list and as such a recovery plan must be developed;
- further added that a science group and a stakeholders group have been established as part of the recovery action plan to formulate steps to remove the whales from the list; and
- stated that she now serves as a member of the stakeholders group, representing the Borough's interests related to Port MacKenzie.

Assemblymember Woods asked if native Alaskans were permitted to harvest the whales in the area.

Mr. Spiropoulos:

- spoke to the regulation of wildlife under the jurisdiction of the state or federal government; and
- advised regulations governing substance hunting may be enacted.

#### A. ATTORNEY COMMENTS

*(There were no comments provided.)*

#### B. CLERK COMMENTS

Ms. McKechnie:

- spoke regarding the upcoming meeting schedule;
- noted that agendas have been distributed for next week's meetings;
- reported that it has been requested that the Assembly schedule their planning session earlier than February 4, 2012, and

- requested direction from the Assembly as to the scheduling request.

Assemblymember Colligan:

- noted that the Governor's budget is published on December 15, 2011, and the legislature is scheduled to convene in mid-January 2012;
- stressed the importance of reviewing the Borough's priorities prior to the start of session;
- remarked on the importance of giving the Manager and staff ample time to prepare for upcoming budget deliberations; and
- spoke in support of holding the planning session as soon as possible, preferably between Christmas and the New Year.

Discussion ensued regarding the availability of Assemblymembers during the month of December.

MOTION: Assemblymember Salmon moved to reschedule the February 4, 2012, planning meeting to December 29, 2011, at 10 a.m.

VOTE: The motion passed without objection.

Assemblymember Keogh:

- spoke to the joint Assembly/School Board meeting that was canceled by Mayor DeVilbiss;
- requested that the Mayor withdraw his cancellation as both bodies are expected to meet quorum requirements;
- further added that a shared dinner and entertainment has been scheduled;
- remarked that the school Superintendent is prepared to hold the meeting and Mr. Neal Fried, Economist for the State of Alaska is scheduled to make a presentation;
- noted that he is sponsoring legislation slated for introduction on December 13, 2011, and
- questioned why the work session scheduled at 4 p.m. on December 13, 2011, was not canceled in conjunction with the joint meeting.

Mayor DeVilbiss:

- stated that neither he nor the School Board President are available to attend the joint meeting;
- expressed that he sought the concurrence of the School Board President in regard to the cancellation; and
- noted his non objection with the Assembly moving forward with the meeting.

MOTION: Assemblymember Keogh moved to reinstate the joint Assembly/School Board meeting on December 13, 2011, at 6 p.m.

Assemblymember Keogh:

- opined that Borough code does not explicitly allow the mayor or three members of the assembly to cancel a meeting, however it does allow the mayor or three members of the assembly to schedule a meeting; and
- suggested that in this instance only three assembly members are needed to move the meeting forward.

Mayor DeVilbiss opined that Borough code implies that the mayor has the authority to schedule or cancel a meeting.

VOTE: The motion passed without objection.

**C. CITIZEN AND OTHER CORRESPONDENCE**

1. MSB Board/Committee Minutes:
  - a. Board of Ethics: 05/09/11
  - b. Emergency Medical Services Board: 08/03/11
  - c. Greater Willow RSA Board of Supervisors: 04/28/11
  - d. Library Board: 08/20/11
  - e. Local Road Service Area Advisory Board: 06/16/11
  - f. MSB Fish and Wildlife Commission: 08/18/11, 09/15/11
  - g. Planning Commission: 09/19/11, 10/03/11
  - h. Platting Board: 09/15/11, 10/06/11
2. Community Council Correspondence:
  - a. Big Lake Community Council: 03/09/11, 04/13/11, 05/11/11, 06/08/11, 07/13/11
  - b. Chase Community Council: 04/28/11
  - c. Meadow Lakes Community Council: 01/12/11, 02/09/11, 03/09/11

The citizen and other correspondence were presented and no comments were noted.

**D. INFORMATIONAL MEMORANDUMS**

1. IM No. 11-279: AN INFORMATIONAL MEMORANDUM (REVISOR OF ORDINANCE) REGARDING A REVISION TO MSB 17.60.030(A), PERMITS REQUIRED, MAKING CHANGES TO ORDINANCE SERIAL NO. 11-074.

Assemblymember Colligan inquired as to the lack of a bracket at the end of the paragraph in MSB 17.60.030.7, Permit Required.

Ms. McKechnie noted that the bracket was unintentionally omitted and would be added.

**VII. UNFINISHED BUSINESS**

*(There was no unfinished business.)*

**VIII. VETO**

*(There were no vetoes presented.)*

**IX. SPECIAL ORDERS (to begin at 7 p.m.)**

- A. PERSONS TO BE HEARD (Three minutes per person.)

1. Ms. Patricia Rosnel – MSB Policy and Procedure No. 09-PUB

The following person spoke to concerns with the Borough's public records request policy and requested the addition of a fee waiver to the policy: Ms. Patricia Rosnel.

B. PUBLIC HEARINGS (Three minutes per person.)

1. Ordinance Serial No. 11-153: AN ORDINANCE AMENDING MSB 17.28, INTERIM MATERIALS DISTRICT; MSB 17.30 CONDITIONAL USE PERMIT FOR EARTH MATERIALS EXTRACTION ACTIVITIES; AND MSB 17.125, DEFINITIONS, TO INCLUDE PROVISIONS FOR MATERIAL EXTRACTION BELOW THE SEASONAL HIGH WATER TABLE AND RECLAMATION.
  - a. IM No. 11-246

Mayor DeVilbiss opened the public hearing.

The following person spoke in support of Ordinance Serial No. 11-153: Ms. Kay Slack, Mat-Su Business Alliance; Ms. Lorali Simon; and Mr. Doug Glenn.

The following person spoke in opposition to Ordinance Serial No. 11-153: Mr. Joe Nolting, Mr. William Bruu; Mr. Mark Masteller; Mr. Jim Sykes; Ms. Michelle Church; and Mr. David Church.

The following persons spoke to suggested changes to Ordinance Serial No. 11-153: Mr. Wyn Menefee, Division Operations Manager of the Alaska Department of Natural Resources; Mr. Tom Healy, Director of the Alaska Rock Products Association; Mr. Marc Cottini; Mr. Wes Vander Martin, Vice President and General Manager of Anchorage Sand and Gravel; and Mr. Steve Cowley, Resource Manager to Granit Construction.

There being no others present who wished to testify, the public hearing closed and discussion moved to the Assembly.

*(The meeting recessed at 7:30 pm. and reconvened at 7:41 p.m.)*

Ms. Probasco and Mr. Strawn provided a staff report.

MOTION: Deputy Mayor Arvin moved to adopt Ordinance Serial No. 11-153.  
Assemblymember Woods:

- expressed that he has lingering questions about the legislation; and
- voiced support for scheduling a work session to thoroughly vet the legislation.

MOTION: Assemblymember Woods moved to postpone Ordinance Serial No. 11-153 to a time certain of December 20, 2011.

Assemblymember Arvin:

- spoke in opposition to the motion to postpone;

- noted that over a dozen meetings have been held on the issue;
- opined that there appears to be some level of consensus; and
- encouraged the Assembly to begin work on the legislation at this time.

Assemblymember Keogh:

- spoke in favor of the motion to postpone; and
- expressed discomfort in moving forward at this time due to unanswered questions and conflicting testimony.

Assemblymember Colver:

- expressed that the legislation is difficult and takes work;
- noted that the issue has been under consideration for several years; and
- encouraged the Assembly to begin work on the legislation at this time.

VOTE: The motion to postpone failed with Assemblymembers Keogh, Woods, and Salmon in favor.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.020(A), by striking the number “40” after the words “greater than” and inserting in its place “20.”

Assemblymember Colligan:

- noted that the reference to 40 acres appears throughout the legislation; and
- queried if the intent of the primary amendment was to remove the reference in its entirety.

Assemblymember Keogh clarified that the primary amendment conforms with the recommendation of the Alaska Rock Association, as well as staff.

Mr. Strawn:

- stated that there are two sections of the legislation that require amendment to accomplish the intent of the primary amendment: and
- recommended amendment to MSB 17.30.020(C).

MOTION: Assemblymember Halter moved a secondary amendment to strike all references to 40 acres and insert 20 acres throughout the legislation.

VOTE: The secondary amendment passed without objection.

VOTE: The primary amendment passed as amended without objection.

CONFLICT OF INTEREST: Mayor DeVilbiss declared a conflict of interest noting he has a gravel pit on his farm and the material extracted from the pit is generally used on the farm but does leave the farm on occasion.

Mr. Spiropoulos:

- remarked that the definition of “extraction” is to take and remove earth materials from the subject site to an off-site location;
- noted that site is defined as a group of lots under common ownership or common use;
- opined that if you have a pit and are extracting earth material from the pit and using it on the same land or adjacent land under common ownership, the action is not considered extraction under the Borough code; and
- requested a recess to learn more about the Mayor’s operation to determine if a conflict exists.

*(The meeting recessed at 8:24 p.m. and reconvened at 8:29 p.m.)*

VOTE: Assemblymember Arvin ruled that Mayor DeVilbiss had a conflict of interest.

*(Mayor DeVilbiss exited the meeting and the duties of the Chair passed to Deputy Mayor Arvin.)*

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.125.010, by replacing the definition of “Qualified professional” to read: “Qualified professional means a professional hydrologist, geologist, or registered engineer that has specific education and experience with groundwater hydrology.”

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.060.(A)(5), by inserting a new (d) to read: “(d) an interim materials district or a conditional use permit for earth materials extraction activities shall not be required to provide noise mitigation measures to mitigate or lessen noise impacts if a land use requiring lesser noise levels than for an industrial area arise on properties adjacent to earth materials extraction sites after the designation of the interim materials district or the effective date of the conditional use permit.”

Assemblymember Keogh asked if the Attorney or planning staff had concerns with the proposed primary amendment.

Mr. Strawn expressed no concern.

Mr. Spiropoulos expressed no legal concern.

Assemblymember Halter:

- spoke in favor of the primary amendment; and
- summarized that an existing pit located adjacent to undeveloped property should not be required to upgrade its noise mitigation standards when the vacant land undergoes development.

Discussion ensued regarding the decibel level of industrial noise provided for in Borough code.

VOTE: The primary amendment passed without objection.



**MOTION** Assemblymember Colligan moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.025(f) and MSB 17.30.025(F), by inserting the words “or earth materials processing” after the word “extraction” to read: Nonforming status shall expire if materials extraction activity ceases for longer than five years” and inserting in its place “Nonconforming status shall expire if materials extraction or earth material processing activity ceases for longer than five years.”

Assemblymember Keogh inquired as to the implication of adding the words “or earth material processing” as stated in the primary amendment.

Assemblymember Arvin advised that mining could be ongoing, however if the operation slows down for a few years, yet a large stock pile of material remains, the stockpile could be considered activity.

Assemblymember Colver voiced his support of the amendment.

**VOTE:** The primary amendment passed without objection

**MOTION:** Assembly Colver moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.020 and 17.30.020, by adding a new section to read: “This chapter shall not apply to earth material extraction activities on land owned by the State of Alaska that are in existence as of the date of adoption of this ordinance except for such operations that extract materials within four (4) feet of the water table. Where a site is exempt under this subsection, the exemption is revoked if operations proceed to within four feet of the water table.”

Assemblymember Colver:

- remarked that currently the state of Alaska is exempt from regulation related to earth material extraction;
- noted that state officials have historically spoken in opposition to the enactment of regulations governing their existing pits;
- opined that it is not in the public interest to over regulate public sector projects;
- added that the exemption applies only to existing pits; and
- further added that that the exemption does not apply to the development of future pits within the water table.

Assemblymember Keogh expressed concern as a matter of fairness the exemption of public entities and not private entities.

Deputy Mayor Arvin:

- remarked that he agrees with the sentiment expressed by Assemblymember Keogh; and
- further added that the State generally develops pits for a defined project with determined quantity and length of time versus a private operator working under a Conditional Use Permit or an Interim Materials District.

Assemblymember Halter opined that exempting the State would benefit road projects in remote areas where private pits do not exist.

VOTE           The primary amendment passed without objection.

*(Assemblymember Salmon exited the meeting at 9:02 p.m.)*

MOTION:       Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.067(A), to strike “For all extraction operations permitted under this chapter, reclamation of each phase of operation shall be completed in accordance with this section within two growing seasons of a phase becoming complete and inserting in its place “ For all extraction operations permitted under this chapter, reclamation of each phase of operation shall be completed in accordance with this section within four growing seasons and a two year extension may be granted as needed due to conditions.”

Mr. Spiropoulos:

- remarked the primary amendment relates to an Interim Materials District which is defined as a zone; and
- questioned the intent of the primary amendment as to when the extension would take effect when who has the authority to grant the extension.

Assemblymember Halter:

- remarked that his intent is to authorize staff to grant the extension;
- noted that reclamation should and could be complete within two years; and
- further added that the applicant should have the ability to obtain an extension under certain circumstances such as weather.

Assemblymember Colver spoke to a possible secondary amendment to insert the words “and a two year administrative extension.”

Mr. Spiropoulos:

- opined that the Assembly does not have the authority to grant discretion to a zoning official without establishing evaluation standards; and
- further added that if standards are established, the matter, under State law, would become a decision by an official applying a land use decision which is appealable to the Board of Adjustment and Appeals thus the Borough would have to give notice to interested parties.

WITHDRAW:       Assemblymember Halter withdrew the primary amendment.

There was no objection noted.

MOTION:       Assembly Member Halter moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.067(A), to strike the word “two” and insert the word “four” after the word “within” to read: For all extraction operations permitted under this chapter, reclamation of each phase of operation shall be completed in accordance with this section within four growing seasons of a phase becoming complete.”

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved to postpone Ordinance Serial No. 11-153, to a date certain of December 20, 2011.

Assemblymember Keogh:

- expressed that the legislation has been on the table for over two hours;
- noted that much public testimony has been presented, as well as reports from staff;
- further added that multiple documents related to the legislation have been presented to the Assembly; and
- remarked that due to the time and the amount of business remaining on the agenda the legislation should be postponed.

Assemblymember Colver:

- spoke in opposition to the postponement;
- stated that much progress has been made thus far; and
- encouraged the Assembly to finalize the legislation at this time.

VOTE: The motion to postpone to a time certain of December 20, 2011, failed with Assemblymembers Keogh and Halter in favor.

MOTION: Assemblymember Colligan moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.060(A)(7), to insert the following sentence, at the end of the paragraph, to read “This regulation shall not apply to manmade waterbodies being constructed during the course of the materials extraction activities.”

Assemblymember Colligan asked staff why the sentence was originally proposed to be removed from code.

Mr. Strawn:

- noted the proposed removal was an oversight; and
- did not express objection to leaving the language in the ordinance.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colligan called for the question (to stop debate).

VOTE The motion passed failed Assemblymembers Woods, Colligan, and Halter in favor (requires 5 votes).

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28 to insert section 17.28.063, to read: A reclamation plan shall be submitted which clearly defines steps the applicant will take to restore and revegetate the site in accordance with the reclamation standards outlined in MSB 17.28.067. The reclamation plan shall include the following: (1) an approximate time sequence for reclamation at particular locations; (2) proof that

reclamation financial assurance has been filed with the State of Alaska in accordance with AS 27.19.040, except, (a) those operations which qualify for an exemption under AS 27.19.050 are exempt from this requirement.”

Mr. Strawn:

- affirmed that the language referenced in the primary amendment was inadvertently omitted from the legislation;
- further remarked that the language has been reviewed by the Planning Commission and industry; and
- recommended approval of the primary amendment as the language is pivotal to the legislation.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-153, MSB 17.28.067(F)(1), to strike the words “with a silt loam or loam texture and less than fifteen percent gravel or cobble content by volume” after the word “growth” to read: “natural substances that have water and nutrient holding capacity conducive to plant growth may be used as a substitute for topsoil.”

Deputy Mayor Arvin:

- spoke in favor of the primary amendment; and
- opined that a sample can have a stone in it that outweighs the organic material, therefore the reference to a percentage of weight should be removed.

MOTION: Assemblymember Halter a secondary amendment to add after the words “natural” “substances” the words “topsoil, dirt, and peat”

Deputy Mayor Arvin

- commented that there are organic woody materials that support the growth of plants and the proposed amendment would prohibit that from taking place, and
- noted his opposition to the secondary amendment.

Assemblymember Halter explained that the language in the subsection indicates that there is insufficient topsoil on site, therefore topsoil would need to be brought in to the site during the redemption process.

VOTE; The secondary amendment failed with Assemblymembers Keogh and Hater in favor.

MOTION: Assemblymember Colligan moved a secondary amendment to add the words “and organic material” after the words “natural substances.”

Assemblymember Keogh:

- expressed concern with the broad term natural substances; and
- further remarked that sawdust and wood chips are natural substances yet they not an appropriate substitute for topsoil.

VOTE           The secondary amendment passed with Assemblymembers Keogh and Halter opposed.

VOTE           The primary amendment as amended passed with Assemblymembers Keogh and Halter opposed.

VOTE:           The main motion as amended passed with Assembly Keogh opposed.

*The meeting recessed at 9:29 p.m. and reconvened at 9:40 p.m.)*

*(Mayor DeVilbiss re-entered the meeting and resumed the duties of the Chair.)*

2.       Resolution Serial No. 11-155:   A RESOLUTION ADOPTING THE CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2013 THROUGH FISCAL YEAR 2018.

a.       IM No. 11-253

Mayor DeVilbiss opened the public hearing.

There being no one present who wished to testify, the public hearing closed and discussion moved to the Assembly.

MOTION:       Deputy Mayor Arvin moved to adopt Resolution Serial No. 11-155.

MOTION:       Assemblymember Woods moved a primary amendment to insert the “Port McKenzie Deep Draft Dock Expansion, under Unfunded Projects, Public Transportation in FY2013-2018.

Assemblymember Woods remarked that the project was inadvertently omitted from the legislation.

VOTE:           The primary amendment passed without objection.

MOTION:       Assemblymember Woods moved a primary amendment to strike the Lake Lorraine Development Plan under MSB Recommended Planning Related Projects (Un-Prioritized).

Assemblymember Woods advised that the Lake Lorraine Development plan is premature as the land use designation for the adjoining property will not be identified until approximately 2018.

Deputy Mayor Arvin:

- described Lake Lorraine as a unique asset;
- spoke to whether removing it from a planning related development plan is a wise decision as Lake Lorraine is a waterbody residing within a industrial district; and
- stated his opposition to the proposed primary amendment.

Assemblymember Keogh asked if the Lake Lorraine is currently underway.

CODE ORDINANCE

By: Borough Manager  
Introduced: 07/19/05  
Public Hearing: 09/06/05  
Amended by Amended Substitute: 09/06/05  
Adopted: 09/06/05

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 05-124(SUB)(AM)**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 17.30, CONDITIONAL USE PERMIT (CUP) FOR EARTH MATERIALS EXTRACTION ACTIVITIES.

---

BE IT ENACTED:

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

Section 2. Adoption of chapter. MSB 17.30, conditional use permit (cup) for earth materials extraction activities, is hereby adopted as follows:

SECTION

17.30.010 Intent and purpose

17.30.020 Applicability

17.30.025 Nonconforming uses

17.30.030 Types of permits available

17.30.035 Application procedures

17.30.040 Criteria to qualify for an administrative permit

17.30.050 Criteria to qualify for a conditional use permit

17.30.055 Required compliance with state and federal laws

17.30.060 General standards for approval

17.30.110 Amendment of conditional use permit

17.30.120 Transfer of a conditional use permit

17.30.130 Termination of permit

17.30.140 Violations, enforcement, and penalties

17.30.150 Appeal procedures

**17.30.010 INTENT AND PURPOSE.**

(A) It is the intent of the Matanuska-Susitna Borough to recognize the value and importance of promoting the utilization of natural resources within its boundaries. The purpose of this chapter is to allow resource extraction activities while promoting the public health, safety, order, prosperity, and general welfare of the Matanuska-Susitna Borough through regulation of land use to reduce the adverse impacts of land uses and development between and among properties. It is the further purpose of this chapter to promote compatible, orderly development. These purposes are accomplished by:

(1) allowing for a public review process for earth materials extraction activities in the Matanuska-Susitna Borough;



(2) enhancing the character and stability of residential, agricultural, business, commercial, and industrial areas, promoting the orderly and beneficial development of such areas by the owner/permittee in a manner that will not devalue the extraction site or neighboring properties for future beneficial uses upon completion of gravel extraction;

(3) promoting diversified land use and economic opportunity;

(4) encouraging the most appropriate uses of land;

(5) enhancing the natural, man-made, and historical amenities of the Matanuska-Susitna Borough;

(6) recognizing and preserving traditional uses of land within the Matanuska-Susitna Borough; and

(7) protecting and enhancing the quality, peace, quiet and safety of the Matanuska-Susitna Borough neighborhoods.

**17.30.020 APPLICABILITY.**

(A) This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a special land use district. Where a special land use district regulates

earth materials extraction as a conditional use, the granting of a conditional use permit shall require compliance with this chapter. Where this chapter is in conflict with the conditional use permit conditions of the special land use district, the more restrictive conditions shall apply.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla.

(C) This chapter applies to commercial earth materials extraction activities less than 40 contiguous acres in size.

(D) This chapter does not apply when earth material extraction activity is conducted on a parcel for use on that parcel and is not intended for sale or transfer to third parties.

(E) An owner of less than 40 contiguous acres where earth materials extraction is not in existence as of the date of the enactment of this chapter is required to obtain a conditional use permit or administrative permit, or apply for designation as an interim materials district in accordance with MSB 17.28.

(F) An annual exemption from an administrative permit for 500 cubic feet or less annually.

#### **17.30.025 NONCONFORMING USES**

(A) At the date of adoption of this ordinance codified in this chapter, or amendments thereto, earth materials extraction activities of less than 40 contiguous acres which were in existence before the effective date of applicable regulations, are permitted to continue subject to the provisions of this section.

(B) Nonconforming status will be granted administratively, upon provision of the following:

(1) application for nonconforming status must be submitted within 12 months of adoption of this ordinance. The application shall obtain:

(a) site development plan which includes the following:

(i) identification of surrounding property owners, existing land uses, and wetlands and waterbodies within the notification area;

(ii) planned location of permanent and semi-permanent structures for verification of setback requirements;

(iii) proposed phases of mining activities; and

(iv) noise mitigation plan, consistent with MSB 17.28.060(E).

(b) documentation of required compliance with state and federal laws, consistent with 17.28.040(A);

(C) Failure to provide documentation of compliance with existing requirements or violation of such requirements will nullify nonconforming status. If materials extraction activity ceases for 12 consecutive months or longer, nonconforming status will expire.

**17.30.030 TYPES OF PERMITS AVAILABLE.**

(A) There are two types of permits available for earth materials extraction:

(1) Administrative Permit - a use permit approved by the director with public notification may be issued if the proposed development meets the minimum thresholds for an administrative decision.

(2) Conditional Use Permit - a conditional use permit granted by the planning commission after a public hearing, when the proposed development goes

beyond the minimum threshold for an administrative permit.

**17.30.035 APPLICATION PROCEDURES.**

(A) The applicant for an administrative permit or a conditional use permit for a materials extraction site shall submit the following to the department:

(1) a completed application form provided by the department (incomplete applications will not be accepted);

(2) a site development plan in accordance with MSB 17.28.050 and MSB 17.28.060; and

(3) the fee in the amount designated in MSB 17.99.

(B) The director may reject any application which is incomplete or fails to meet the requirements of this section. The rejection shall be in writing and shall state the deficient items. Once the deficiencies have been corrected, the complete application will be processed.

(C) If the minimum criteria for an administrative permit can be met, the director will notify surrounding property owners in accordance with

MSB 17.03 public notification, except that the notification area will be one-half mile. Within 30 days of acceptance of the application, the administrative permit will be issued with conditions to address concerns raised by neighboring property owners, and as deemed appropriate by the director, to protect the public health, safety and general welfare.

(D) If the applicant disagrees with the determination of the director on the administrative permit, they may request that the application be elevated to the planning commission for consideration of granting a conditional use permit.

(E) If the application is elevated or if the proposed development exceeds the minimum criteria for an administrative permit, a public hearing before the planning commission shall be conducted within 45 calendar days of the acceptance of a complete application or elevation of an administrative permit, in accordance with MSB 17.03 public notification,

except that the notification area will be one-half mile. The applicant may waive the 45 day limit.

(F) The planning commission shall hear any interested parties and shall render a decision on the application for a conditional use permit within 30 calendar days from the date of public hearing, unless the applicant agrees to a time extension. In the granting of a conditional use permit, the planning commission shall state in writing the conditions of approval of the permit.

**17.30.040 CRITERIA TO QUALIFY FOR AN ADMINISTRATIVE PERMIT.**

(A) To qualify for an administrative permit, all of the following criteria must be met:

(1) the cumulative continuous activity is less than 40 acres in size;

(2) extraction activities subject to the permit shall not exceed:

(a) 24 months. A one time extension of six months may be granted administratively upon written request from the applicant, provided that all conditions of the permit have been met;  
or



(b) annual volume of 7,000 cubic yards  
(one cubic yard equals 1-1/2 tons) or less; and

(3) any proposed batch plant use shall not  
exceed 24 months.

(B) The director may also set basic conditions  
of approval for issuance of the administrative permit,  
as appropriate for the area in which the development  
is sited, for the following:

(1) setbacks (no less than minimum setback  
requirements as established in 17.55, however, may be  
increased as appropriate for existing surrounding  
development);

(2) visual screening, noise mitigation,  
lighting restrictions and roads/access restrictions as  
appropriate for surrounding development and in  
accordance with development standards referenced in  
MSB 17.28.060 Site Development Standards; and

(3) road maintenance may be required by  
permittee.

**17.30.050 CRITERIA TO QUALIFY FOR A CONDITIONAL USE  
PERMIT.**

(A) To qualify for a conditional use permit, all  
of the following criteria must be met:

(1) the cumulative continuous activity is less than 40 acres in size; and

(2) extraction activities may be on-going.

(B) The commission may set conditions of approval for issuance of the conditional use permit, as appropriate for the area in which the development is sited, for the following:

(1) setbacks (no less than minimum setback requirements as established in MSB 17.55, however, may be increased as appropriate for existing surrounding development);

(2) visual screening, noise mitigation, lighting restrictions and roads/access restrictions as appropriate for surrounding development and in accordance with development standards referenced in MSB 17.28.060 site development standards;

(3) road maintenance may be required of the permittee; and

(4) length of time of operation and location of batch plants.

**17.30.055 REQUIRED COMPLIANCE WITH STATE AND FEDERAL LAWS**

(A) All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent shall provide written documentation of compliance with the following:

(1) mining license as required by the Alaska State Department of Revenue, pursuant to Alaska Statute 42.65;

(2) mining permit as required by the Alaska State Department of Natural Resources (ADNR) if extraction activities are to take place on state land;

(3) reclamation plan as required by ADNR, pursuant to AS 27.19;

(4) notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Environmental Protection Agency (EPA) pursuant to the National Pollutant Discharge Elimination System (NPDES) requirements; and

(5) United States Army Corps of Engineers permit pursuant to Section 404 of the Clean Water Act,

33 U.S.C. 1344, if material extraction activity is to take place within wetlands, lakes and streams.

(B) In addition to the requirements in subsection A of this section, all activity shall be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement.

(1) Air quality.

(a) EPA air quality control permit is required for asphalt plants and crushers.

(b) ADNR burn permit is required for brush or stump burning. Combustibles shall be stockpiled separate from non-combustibles, and burn permit requirements shall be followed.

(c) ADEC dust control and air quality regulations pertaining to burning activities shall be followed.

(2) Water quality.

(a) EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

(3) Use and storage of hazardous materials, waste and explosives

(a) EPA regulations controlling use of hazardous materials shall be followed

(b) Federal Bureau of Alcohol, Tobacco, Firearms & Explosives (FBATFE) regulations shall be followed when storing or using explosives.

(C) Failure to comply with any of the requirements in MSB 17.30.055(A) and (B) is a violation of the permit, and is subject to enforcement pursuant to MSB 17.30.140.

#### **17.30.060 GENERAL STANDARDS FOR APPROVAL**

(A) In granting an administrative permit or a conditional use permit, the director or commission must make the following findings:

(1) that the use is not inconsistent with the applicable comprehensive plan;

(2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;

(3) that the applicant has met all other requirements of this chapter pertaining to the use in question;

(4) that granting the permit will not be harmful to the public health, safety and general welfare; and

(5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB 17.30.050(B).

**17.30.110 AMENDMENT OF CONDITIONAL USE PERMIT.**

(A) A conditional use permit may be amended by application to the department and approval by the planning commission. The applicant shall provide the department an update of all information required in the original permit, shall describe the proposed changes in detail, and shall provide copies of any additional state and federal permits which the amendments may require. The notice and hearing provisions of this chapter shall apply to an amendment to the permit.

**17.30.120 TRANSFER OF A CONDITIONAL USE PERMIT.**

(A) A permit may be transferred subject to the conditions of MSB 17.60.180.

**17.30.130 TERMINATION OF PERMIT**

(A) A permit shall terminate under this chapter subject to the conditions in MSB 17.60.190.

**17.30.140 VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

(A) Unless otherwise specified, any violation of this chapter is an infraction.

(B) It is a violation to conduct commercial earth material extraction activities on less than forty (40) contiguous acres without a permit issued under this chapter unless designated as an interim materials district in accordance with MSB 17.28.

(C) It is a violation to operate with a permit issued under this chapter but in violation of any criteria or condition which was necessary for the issuance of the permit.

(D) Enforcement of the provisions of this chapter and associated penalties shall be consistent with the terms and conditions of MSB 1.45.

**17.30.150 APPEAL PROCEDURES.**

(A) The provisions of MSB 15.39 govern appeals from a decision of the planning commission granting, denying, modifying, or revoking a conditional use permit under this chapter. The provisions of



MSB 15.39 govern an appeal of a planning department enforcement action or decision.

Section 3. Effective date. This ordinance shall take effect upon adoption by the Matanuska-Susitna Borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 6 day of September, 2005.

**/S/**

TIMOTHY L. ANDERSON, Borough Mayor

ATTEST:

**/S/**

MICHELLE M. MCGEHEE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Woods, Allen, Colberg, Kvalheim, Simpson,  
Colver, and Vehrs



## MATANUSKA-SUSITNA BOROUGH

**Planning and Land Use Department**  
350 East Dahlia Avenue • Palmer, AK 99645  
Phone (907) 861-7822 • [www.matsugov.us](http://www.matsugov.us)  
[planning@matsugov.us](mailto:planning@matsugov.us)

April 12, 2021

Martin Parsons, Director  
State of Alaska  
Division of Mining, Land, and Water  
550 W. 7th Ave., Suite 1070  
Anchorage, AK 99501-3579

RE: Comsat Pit – ADL 231512

Mr. Parsons,

This letter is in regards to a state-owned gravel extraction site within the boundaries of the Matanuska-Susitna Borough (MSB) located off of Comsat Road near Talkeetna, Alaska. The extraction site has garnered a lot of interest by the surrounding community and many questions and concerns have been raised regarding the local, state, and federal permitting requirements associated with the site.

In 2005, the MSB adopted regulations for extraction of earth materials within the boundaries of the Borough (MSB 17.30). On December 20, 2011, the MSB made modifications to the earth materials extraction regulations exempting “*earth materials extraction activities on land owned by the State of Alaska that are in existence as of the date of adoption of this ordinance...*” (MSB 17.30.020(H)). A thorough review of the DNR Land Administration System indicates that the site was not “in existence” in December 2011 as it had been inactive for over 16 years leading up to adoption of the exemption. Additionally, it appears that last summer’s extraction activities breached a shallow aquifer as evidenced by the band of water seeping out of the hillside on the edge of the active extraction area. Material extraction within or below the seasonal high water table requires additional permitting in accordance with MSB 17.30.037 and is grounds for revocation of the exemption for state pits established by MSB 17.30.020(H).

Based on the above, it appears a conditional use permit in accordance with MSB 17.30.020(E) is required prior to any further earth materials extraction at this location. If you have additional factual information which you think has a bearing on this matter, please forward it to my attention at your earliest convenience.

Please also consider removing this site from the *2012 Final Finding and Decision Regarding Material Sites Designations* as the Comsat site appears to have not met the three criteria required to be originally designated for the same reasons noted above.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex Strawn". The signature is fluid and cursive, with the first name "Alex" and last name "Strawn" clearly distinguishable.

Alex Strawn  
Planning and Land Use Director

Cc: Brent Goodrum, Deputy Commissioner

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# **COMMISSION BUSINESS**

## **Upcoming PC Agenda Items**

(Page 133-138)


# **COMMISSION BUSINESS**





**MATANUSKA-SUSITNA BOROUGH**  
**Planning and Land Use Department**  
350 East Dahlia Avenue • Palmer, AK 99645  
Phone (907) 861-7822  
Email: [planning.commission@matsugov.us](mailto:planning.commission@matsugov.us)

## MEMORANDUM

DATE: April 8, 2021  
TO: Planning Commissioners  
FROM: Alex Strawn, Director of Planning and Land Use   
SUBJECT: Items tentatively scheduled for future PC Meetings or Administrative Actions and Updates on PC items sent to the Assembly

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**May 3, 2021** (*MSB Assembly Chambers*)

### **Introduction for Public Hearing Quasi-Judicial**

1. **Resolution PC 21-10**, A Conditional Use Permit In Accordance With MSB 17.60 - Conditional Uses; Allowing For The Operation Of A Marijuana Cultivation Facility, Located Along The North Shore of Big Lake (No Site Address); Tax ID #17N04W25D005; Within Township 17 North, Range 4 West, Section 25, Seward Meridian (Applicant: Casey Wilkins for Northern Alliance; Staff: Peggy Horton).

### **Introduction for Public Hearing Legislative** (None)

### **Agency/Staff Reports** (None)

### **Land Use Classifications** (None)

### **Public Hearing Quasi-Judicial**

1. **Resolution PC 21-07**, A Resolution Of The Matanuska-Susitna Borough Planning Commission Recommending Assembly Adoption Of An Ordinance Adopting MSB 17.31 - Supplemental Wetlands Mitigation Provisions For Large-Scale Projects Requiring United States Army Corps Of Engineers Individual Permits Under Section 404 Of The Clean Water Act; And Amending MSB 1.45.100 Schedule Of Fines For Infractions  
Public Hearing: May 3, 2021 (Staff: Ted Eischeid).



**Public Hearing Legislative**

*(None)*

**Unfinished Business**

*(None)*

**New Business**

*(None)*

**Commission Business**

- Upcoming Planning Commission Agenda Items

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**May 17, 2021** *(MSB Assembly Chambers)*

**Introduction for Public Hearing Quasi-Judicial**

*(None)*

**Introduction for Public Hearing Legislative**

*(None)*

**Agency/Staff Reports**

*(None)*

**Land Use Classifications**

*(None)*

**Public Hearing Quasi-Judicial**

1. **Resolution PC 21-10**, A Conditional Use Permit In Accordance With MSB 17.60 - Conditional Uses; Allowing For The Operation Of A Marijuana Cultivation Facility, Located At Along The North Shore of Big Lake (No Site Address); Tax ID #17N04W25D005; Within Township 17 North, Range 4 West, Section 25, Seward Meridian (Applicant: Casey Wilkins for Northern Alliance; Staff: Peggy Horton).

**Public Hearing Legislative**

*(None)*

**Unfinished Business**

*(None)*

**New Business**

*(None)*

**Commission Business**

- Upcoming Planning Commission Agenda Items
-

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## Upcoming PC Actions

### Quasi-Judicial

- D&S Alaskan Trail Rides, Inc. – Denali SpUD, 29N05W33D012 and 29N05W33D0028 (Staff: Mark Whisenhunt).
- QAP – Sylvan Pit – Conditional Use Permit for Earth Materials Extraction, 17N02W10C001 (Staff: Mark Whisenhunt).
- Alaskan Originals – Marijuana Retail Facility, 5060B01L001A (Staff: Mark Whisenhunt).
- Bad Gramm3r – Modification to Conditional Use Permit for Marijuana Retail Facility, 1068000L020 (Staff: Mark Whisenhunt).
- BAM Alaska, Inc. – Marijuana Cultivation Facility – 2080B02L007 (Staff: Mark Whisenhunt).
- 2nd Amendment, LLC – Marijuana Cultivation Facility – 17N04W35C001 (Staff: Peggy Horton).
- Green Degree (Clapp) – Marijuana Retail Facility – 1011B01T001-2 (Staff: Peggy Horton)

### Legislative

- Lake Management Plan update (Staff: Kelsey Anderson).

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## PC Decisions Currently Under Appeal

- **Resolution PC 20-29**, A Resolution Of The Matanuska-Susitna Borough Planning Commission Adopting Findings Of Fact And Conclusions Of Law Supporting The Denial Of PC Resolution 20-18 Concerning A Request For A Variance From MSB 17.55 To Allow An Existing Single-Family Residence To Encroach Into The Required 75-Foot Waterbody Setback At 5782 S. Big Lake Road (Tax ID# 6142000L006); Within Township 17 North, Range 3 West, Section 29, Seward Meridian (Applicant: Dennelle Seetomona on behalf of Janice Ellsworth, Staff: Mark Whisenhunt).  
**BOAA Case #20-03.**  
**The decision of the Planning Commission was upheld.**  
**Filed in Superior Court.**
- **Resolution PC 20-30**, A Conditional Use Permit (CUP) In Accordance With MSB 17.60 – Conditional Uses; Allowing The Operation Of A Junkyard/Refuse Area, Located At 743 West Sunrise Drive (Tax ID# 640500L006); Within Township 18 North, Range 2 West, Section 33, Seward Meridian (Applicant: Dewayne Creech for Creech's Junkyard, Staff: Mark Whisenhunt).  
**BOAA Case #20-04.**  
**BOAA Hearing: December 28, 2020.**  
**The decision of the Planning Commission was upheld.**
- **Resolution PC 20-46 (PC 20-41)**, A Conditional Use Permit Request In Accordance With MSB 17.70 – Regulation Of Alcoholic Beverage Uses; Has Been Submitted By Ashlee Stetson, On Behalf Of The Office, For The Operation Of A Beverage Dispensary (Bar) Located At 1987 E. Bogard Road, Tax ID

#9057000L002; Within Township 17 North, Range 1 West, Section 2, Seward Meridian (Applicant: Ashlee Stetson, on behalf of The Office; Staff: Mark Whisenhunt).

**BOAA Case #21-02**

**BOAA Hearing: March 22, 2021**

**BOAA reversed the Planning Commission decision; they approved the Conditional Use Permit with four conditions.**

- **Resolution PC 20-47**, A Resolution Of The Matanuska-Susitna Borough Planning Commission Approving The Modification Of An Existing Conditional Use Permit For the Operation Of A Marijuana Retail Facility At 3361 West Machen Road, Tax ID# 2420B02L001; Located Within Township 17 North, Range 1 West, Section 7, Seward Meridian (Applicant: Kerby Coman, Staff: Mark Whisenhunt).

**BOAA Case # 21-03**

**BOAA Hearing: April 22, 2021 @ 10:00 AM.**

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**Updates on PC items before the Assembly (Pending/Complete)**

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Planning Commission		Assembly	
Reso		ORD/Reso #	IM
<b>Resolution PC 20-44</b> , Recommending Approval Of An Ordinance Amending MSB 17.60 To Create An Administrative Permit Process For Marijuana Cultivation Facilities And Changing The Applicability Of MSB 17.60 To Include Facilities That Are Less Than 500 Square Feet (Staff: Alex Strawn).		ORD # 20-071	IM # 21-143
Actions:	11/16/20 – PC Introduction 12/07/20 – PC Public Hearing –Failed 02/02/21 – Assembly Introduction 02/16/21 – Assembly Public Hearing 02/16/21 – Assembly Decision: Postponed Indefinitely.		
Reso		ORD/Reso #	IM
<b>Resolution PC 20-45</b> , Recommending Approval Of An Ordinance Amending MSB 17.60 To Create Hours Of Operation For Marijuana Retail Facilities And Adding Additional Standards For Retail Facilities With Marijuana Consumption Areas (Staff: Alex Strawn).		ORD # 20-071	IM # 21-143
Actions:	11/16/20 – PC Introduction 12/07/20 – PC Public Hearing –Failed 02/02/21 – Assembly Introduction 02/16/21 – Assembly Public Hearing 02/16/21 – Assembly Decision: Postponed Indefinitely.		