

## MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION AGENDA

Edna DeVries, Mayor

PLANNING COMMISSION  
Doug Glenn, District 1  
Richard Allen, District 2  
C. J. Koan, District 3  
Mike Rubeo, District 4  
Bill Kendig, District 5  
Wilfred Fernandez, District 6  
Curt Scoggin, District 7



Michael Brown, Borough Manager

PLANNING & LAND USE  
DEPARTMENT  
Alex Strawn, Planning & Land Use Director  
Kim Sollien, Planning Services Manager  
Jason Ortiz, Development Services Manager  
Fred Wagner, Platting Officer  
Karol Riese, Planning Clerk

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

March 20, 2023  
REGULAR MEETING  
6:00 p.m.

### Ways to participate in the meeting:

**IN PERSON:** You will have 3 minutes to state your oral comment.

**IN WRITING:** You can submit written comments to the Planning Commission Clerk at [msb.planning.commission@matsugov.us](mailto:msb.planning.commission@matsugov.us). Written comments are due at noon on Friday prior to the meeting.

### 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.

**OBSERVE:** observe the meeting via the live stream video at:

- <https://www.facebook.com/MatSuBorough>
- Matanuska-Susitna Borough - YouTube

- I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM
- II. APPROVAL OF AGENDA
- III. PLEDGE OF ALLEGIANCE  
Civil Air Patrol based out of Birchwood Composite squadron will post the colors
- IV. CONSENT AGENDA
  - A. MINUTES  
Regular Meeting Minutes: March 6, 2023
  - B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS
  - C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS
- V. COMMITTEE REPORTS
- VI. AGENCY/STAFF REPORTS
- VII. LAND USE CLASSIFICATIONS
- VIII. AUDIENCE PARTICIPATION (*three minutes per person, for items not scheduled for public hearing*)
- IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS  
(*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.*)
- X. PUBLIC HEARING: LEGISLATIVE MATTERS
  - Resolution 23-03** A resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance amending MSB 17.55 and MSB 17.80 to allow buildings to be built within 75 feet of a water body. (Staff: Alex Strawn, Planning and Land Use Director)
  - Resolution 23-07** A resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance amending MSB 15.24.031 – Initiation and Amending Lake Management Plans. (Staff: Kelsey Anderson, Planner III)
- 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*)

**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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**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION MINUTES**

**REGULAR MEETING  
March 6, 2023**

The regular meeting of the Matanuska-Susitna Borough Planning Commission was held on March 6, 2023, 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 Kendig.

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

Planning Commission members present and establishing a quorum:

Mr. Doug Glenn, Assembly District #1  
Mr. Richard Allen, Assembly District #2  
Ms. C. J. Koan, Assembly District #3  
Mr. Michael Rubeo, Assembly District #4  
Mr. Bill Kendig, Assembly District #5  
Mr. Wilfred Fernandez, Assembly District #6  
Mr. Curt Scoggin, Assembly District #7

Staff in attendance:

Mr. Alex Strawn, Planning and Land Use Director  
Ms. Shannon Bodolay, Assistant Attorney  
Ms. Corinne Lindfors, Development Services Division Administrative Specialist

**II. APPROVAL OF AGENDA**

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

**MOTION:** Commissioner Scoggin moved to Amend the Consent Agenda by pulling Resolution 23-08 from New Business. The motion was seconded. by Commissioner Glenn

Discussion ensued

**VOTE:** The motion passed as Amended with Commissioner Allen and Fernandez opposed.

**MOTION:** Commissioner Koan moved to Accept the Agenda as Amended. The motion was seconded by Commissioner Scoggin.

**VOTE:** The main motion passed as amended without objection.

**GENERAL CONSENT:** The agenda was approved as amended.

**III. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Jim Sykes.

**IV. CONSENT AGENDA**

A. Minutes Regular Meeting Minutes: February 6, 2023

B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION MINUTES**

**REGULAR MEETING  
March 6, 2023**

**C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS**

**Resolution 23-03** A resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance amending MSB 17.55 and MSB 17.80 to allow buildings to be built within 75 feet of a water body. Public Hearing: March 20, 2023. (Staff: Alex Strawn, Planning and Land Use Director)

**Resolution 23-07** A resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance amending MSB 15.24.031 – Initiation and Amending Lake Management Plans. (Staff: Kelsey Anderson, Planner III)

GENERAL CONSENT: The consent agenda was approved.

**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.)**

The following people spoke regarding Resolution 23-08: Patty Fisher, Gary Foster, Andrew Traxler, Shelia Heffner, Steve Colligan, Randy Hillman, Stephanie Nowers, Pat Daniels, and Candis Yehle

The following people spoke regarding Resolution 23-03: Andrew Couch and Jim Sykes

**IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS**

**X. PUBLIC HEARING LEGISLATIVE MATTERS**

**Resolution 23-05** A resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance of the Matanuska-Susitna Borough Assembly prohibiting onsite consumption of marijuana until such time as the State of Alaska adopts a numerical standard for operating a vehicle while under the influence of marijuana or a numerical standard for the presumption of being under the influence of marijuana. Referred by Assembly – due back to Assembly by July 3, 2023. (Staff: Alex Strawn, Planning and Land Use Director)

Chair Kendig read the resolution title into the record.

Mr. Strawn provided a staff report.

Chair Kendig opened the public hearing.

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION MINUTES**

**REGULAR MEETING  
March 6, 2023**

The following persons spoke in regarding Planning Commission Resolution 23-05: Randy Hillman and Becky Stoppa (Telephonic) for Thrive Alaska

Chair Kendig invited staff to respond to questions and statements from the audience.

Mr. Strawn stated that they had nothing further to add.

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

**MOTION:** Commissioner Scoggin moved to approve Planning Commission Resolution 23-05. The motion was seconded. by Commissioner Fernandez.

Discussion ensued

**MOTION:** Commissioner Rubeo moved a primary amendment to change the title of the Resolution. The motion was seconded. By Commissioner Glenn.

A Resolution Of The Matanuska-Susitna Borough Planning Commission Recommending Approval Of An Ordinance Prohibiting Onsite Consumption Of Marijuana.

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

Commissioner Rubeo began attending the meeting remotely at 6:17 pm.

**MOTION:** Commissioner Allen moved a secondary amendment to strike the last three whereas clauses. Below are the statements that were removed:

WHEREAS, the State of Alaska does not currently have a numerical level of criminality, or a numerical level of presumption of being under the influence of marijuana while driving; and

WHEREAS, there should be numerical standards in place before the MSB allows marijuana retail establishments to have onsite consumption of marijuana; and

WHEREAS, a numerical standard will help the general public and patrons of onsite consumption to be able to clearly and intelligently evaluate the rules.

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION MINUTES**

**REGULAR MEETING  
March 6, 2023**

The motion was seconded. By Commissioner Scoggin

VOTE: The secondary amendment passed without any objection.

MOTION: Commissioner Koan moved a third amendment to amend the Now, Therefore, be it resolved to read:

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends the Matanuska-Susitna Borough Assembly prohibit onsite consumption of marijuana.

The motion was seconded. By Commissioner Glenn

VOTE: The third amendment passed without any objection.

VOTE: The main motion passed as amended without objection.

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

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

**XIII. NEW BUSINESS – This item was removed from the Agenda**

**Resolution 23-08** A resolution of the Matanuska-Susitna Borough Planning Commission rescinding Planning Commission resolution 23-02 and recommending denial of an ordinance amending MSB 17.30 Conditional Use Permit for Earth Materials Extraction Activities to allow for an exemption of 10,000 cubic yards annually without a permit. (Commissioner Richard Allen)

**XIV. COMMISSION BUSINESS**

A. Upcoming Planning Commission Agenda Items *(Staff: Alex Strawn)*  
*(Commission Business was presented, and no comments were noted.)*

**XV. DIRECTOR AND COMMISSIONER COMMENTS**

Director Strawn: Introduced and thanked clerk Corinne Lindfors for stepping in for Karol Riese

Commissioner Glenn: Commented on gravel resolutions and suggests/invites commissioners take a helicopter tour to view gravel pits in the borough.

Commissioner Koan: Good meeting and expresses appreciation.



**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION MINUTES**

**REGULAR MEETING  
March 6, 2023**

- Commissioner Scoggin: Commented on Amendments and preparation in advance. Improvements are being made.
- Commissioner Fernandez: Commented on loving the public process and gratitude for commission members, staff, and expresses gratitude
- Commissioner Allen: Commented on ruffling feathers on the commission, apologized, and clarified his intent. Spoke about public comments he received and requested to bring back for public comment. Expressed appreciation for the process and fellow commission members.
- Commissioner Rubeo Expressed appreciation and comments on having to leave early and be by phone. Thanks, fellow commissioners.
- Commissioner Kendig: Had a good meeting, likes process, thanked clerk.

**XVI. ADJOURNMENT**

The regular meeting adjourned at 7:36 p.m.

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WILLIAM KENDIG  
Planning Commission Chair

ATTEST:

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CORINNE LINDFORS  
Planning Commission Clerk

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

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**PUBLIC HEARING**  
**LEGISLATIVE**

**Resolution No. 23-03**

**A resolution of the Matanuska-Susitna  
Borough Planning Commission  
recommending approval of an ordinance  
amending MSB 17.55 and MSB 17.80 to  
allow buildings to be built within 75 feet of a  
water body.**

(Pages 11-72)

**PUBLIC HEARING**



**SUBJECT:** AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 TO ALLOW STRUCTURES TO BE BUILT WITHIN 75 FEET OF A WATERBODY.

**AGENDA OF:** December 20, 2022

**ASSEMBLY ACTION:**

**MANAGER RECOMMENDATION:** Refer to Planning Commission for 90 days.

**APPROVED** <sup>for</sup> ~~BY~~ MICHAEL BROWN, BOROUGH MANAGER: *[Signature]*

Route To:	Department/Individual	Initials	Remarks
	Originator - Planning Director <i>A. Strawn</i>	<i>(S)</i>	
	Community Development Director	<i>EP</i>	
	Public Works Director	<i>[Signature]</i> 12/18/22	
	Borough Attorney	<i>[Signature]</i>	
	Borough Clerk	<i>[Signature]</i> 12/13/22 <i>RP</i>	

**ATTACHMENT(S):** Fiscal Note: YES  NO  X  
 Shoreland Setbacks Analysis & Recommendation (1999) (23 pp)  
 Planning Commission Resolution 23-\_\_ ( pp)  
 Ordinance Serial No. 23-002 (6 pp)

**SUMMARY STATEMENT:**

This ordinance is at the request of Assembly Members Yundt and Tew.

A 75-foot waterbody setback was originally adopted in 1973 by assembly ordinance. The setback was briefly lowered to 45 feet in 1986 and again increased to 75 feet by voter initiative in 1987.

Over the years, hundreds of homes have been constructed in violation of the 75-foot waterbody setback ordinance. Most of the construction went undetected due to lack of any permitting requirement for development within the Borough. Additionally, when

This ordinance allows structures to be built within 75 of a water body as long as long as they are built and designed in accordance with plans developed by a structural engineer. Nothing in this ordinance affects setbacks from property lines or public easements, including to-and-along easements.

**RECOMMENDATION OF ADMINISTRATION:**

Staff recommends the assembly refer this ordinance to the Planning Commission for review for 90 days.

# Matanuska-Susitna Borough Shoreland Setbacks Analysis and Recommendation



Prepared by:

Land Design North  
510 L Street, Suite 101  
Anchorage, Alaska 99501



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### *Introduction*

Since 1973, the Matanuska Susitna Borough has been struggling with the designation and implementation of an appropriate waterbody setback distance from area lakes, streams, and wetlands to protect water quality and fish and wildlife habitat. From 1973 to the present, structural setbacks from waterbodies have ranged from 45 to 75 feet and have allowed accessory uses such as piers, marinas, boathouses and docks over the water. The setbacks to date have only regulated structure placement and have not regulated uses or activities within the setback zone. For example, there are currently no requirements to maintain natural vegetation or limit the amount of impervious surfaces.

The inherent challenge of the project is that people have varying goals and values relative to the use of water resources and lands. Over the years, arguments have been presented to maintain, increase, and decrease the setback distance. Arguments in favor of a lesser setback generally cite private property rights, undue hardships on developing land, increased views and access to waterbodies. Those in favor of greater setbacks cite improved water quality, enhanced fish and wildlife habitat, noise reduction, and improved aesthetic values.

In 1998, a Shorelands Steering Committee was formed to recommend goals and strategies to analyze and improve the management of shorelands and develop a Shorelands Management Plan. The results of their work can be found in Appendix A. In summary, the long-term goal of the Matanuska-Susitna Borough Shorelands Management Plan is to determine how inland lake basins, streams and wetlands function as ecosystems within the watershed and how to manage the many resources and values present in these systems in a sustainable manner. While this is an admirable goal, this long-term goal can be reached only through a comprehensive watershed study and the long-term investment of dollars, expertise and collaborative effort by government, universities and the private sector.

This report is intended to meet the more immediate need of resolving the shoreland setback issue and to establish effective performance standards for uses within the setback zone to minimize future requirements for mitigation or restoration of disturbed areas and degraded water quality. As the Mat-Su Borough continues to grow in population and becomes one of the most popular recreational destinations in Alaska, the threat of degradation to its waterbodies increases. An altered water system is not only difficult to restore, it is expensive and may never fully recover. This can mean declining property values, loss of recreational activities, loss of water-dependent businesses, and a decline in fish and wildlife populations. Simply put, no one wants to live, recreate or conduct business on a polluted waterbody.

This purpose of this report is to review and incorporate by reference the work done to date on the Shoreland Management Plan and recommend a setback distance that will protect water quality in the Mat-Su Borough. This interim report also seeks to:

- Understand the intent and history of structural setback regulations in the Mat-Su Borough
- Define and understand the function of the relatively narrow strip of land (the riparian zone) surrounding a waterbody
- Review the role of setbacks as a management tool to enhance and protect water quality from residential, commercial and industrial development based on the literature review conducted by the Mat-Su Borough and supplemented by work done as part of the Big Lake, Lake Management Plan.
- Recommend a structural setback and performance standards

Finally, to help provide information of similar efforts in other jurisdictions, a literature review done by the Mat-Su Borough as part of the Shoreland Management Plan is provided in Appendix A. It briefly describes available literature on how other jurisdictions establish setbacks and manage shorelands, the use of buffer zones, the role of riparian vegetation, and the balancing of private property rights, public access and safety, and environmental issues. It should be noted that this review only provided a brief summary of the literature and did not analyze or document the different setbacks studied. For this reason, an analysis of setbacks done as part of the Big Lake, Lake Management Plan is being used for this report.

### *Setback History*

An important aspect of evaluating regulations is to clearly understand their intent and historical context to determine if the existing regulation has been effective. Presented below is a brief synopsis of the Matanuska-Susitna Borough (MSB) setback ordinances and the Mat-Su Borough Coastal Management Program policy regarding setbacks to date.

- 1973. Borough adopts a 75-foot Setback (MSB ordinance 73-6). "Structures shall not be closer than 75 feet from the normal high water mark of a water course or body of water in a shoreland. The Commission may require a greater setback if it finds that a specific body of water possesses unique characteristics such as outstanding fish and aquatic life, shore cover, natural beauty or other ecological attribute. Boat houses may be located over the water provided they are not used for habitation and do not contain sanitary facilities." In subsequent years the ordinance was amended to legalize docks, piers and marinas over the water and require that they conform to state and federal regulations.

- **1984.** The Mat-Su Borough Coastal Management Program (MSBCMP) goes into effect which, as outlined in Coastal Habitats Policy 2, upholds the 75 foot setback but eliminates all provisions to allow the Platting Board to reduce setback distances if certain conditions are met. Approved by the Coastal Policy Council (CPC) in 1983, this policy raised issues of compliance with MSB ordinances and eliminated flexibility in the existing regulations.
- **1986.** Borough adopts a 45-foot setback (MSB ordinance **86-101**). "No structure or footing shall be located closer than 45 feet from the high water mark of a watercourse or body of water, except docks, piers, marinas, and boathouses may be located closer than 45 feet and over the water provided they are not used for habitation and do not contain sanitary facilities." "Exception: Does not apply to structures where construction was completed prior to January 1, 1987 if the present owner or owners of the property had no personal knowledge of any violation of the setback requirements prior to substantial completion of the structure."
- **1987.** The MSB submits revisions to the MSBCMP Coastal Habitats Policy 2 in order to create a more flexible policy. The Division of Governmental Coordination (DGC), staff to the CPC, determines that the proposed policy lacks enforceable language, and in cooperation with the MSB and the state, develops alternative policy language consistent with the Alaska Coastal Management Program. The revised policy is adopted by the CPC in March of 1988, with provisions that the proposed uses and activities within 75 feet of the high water line "must be reviewed to ensure protection of water quality and fish and wildlife habitat." Additionally, water-dependent structures (including docks, piers, marinas, boathouses and floatplane hangars) are allowable within 75 feet provided "they are constructed and used in a way that minimizes adverse impacts to water quality and fish and wildlife habitat." Finally, the policy states that other uses and activities within 75 feet are also allowable if the proposed development "will have no significant adverse impacts on water quality and fish and wildlife habitat, and complies with other applicable federal, state, and local requirements."
- **1987.** Borough reinstates a 75-foot setback (MSB ordinance **87-59**). The setback is changed to 75 feet with the provision that water dependent structures such as docks, piers and marinas are allowable within 75 feet if they conform to all applicable state and federal statutes and regulations, and so long as they "are not used for habitation and do not contain sanitary or petroleum fuel storage facilities."
- **1988.** Clarification and amendments (MSB ordinance **88-190**). The term "Shorelands" is defined, and the setback remains at 75 feet with the provision that "the Director of the Planning Department or the designee of the director shall upon application **by** a property owner, determine whether a property qualifies for an exception." There is also a subsection allowing the Planning Commission **to** increase the distance of a subsurface sewage disposal system from any body of water beyond the 100-foot zone "where necessary to protect waters within the Borough."

Based on a review of above history, the two critical flaws in the current setback have been identified:

- (1) The intended purpose of the waterbody setback appears to be to protect water quality and in turn fish and aquatic habitat; however, it is not clearly defined. It is recommended that the intent of the waterbody setback be clearly stated up front in future ordinances to facilitate enforcement and compliance. A property owner is more willing to comply with a regulation if they clearly understand its purpose and believe that the regulation is effective at achieving its purpose. To evaluate the effectiveness of a setback, it is critical to understand what is trying to be accomplished with the regulation. An example purpose statement might read as follows:

“The intent of the waterbody setback is to preserve the integrity of the Borough’s lakes, streams, rivers, and wetlands by maintaining and improving water quality, shore cover, fish and wildlife habitat, and aesthetic values.”

- (2) The setback only addresses the placement of structures. It does not address what can and cannot be done within the 75-foot setback area. The flaw with this approach is that locating buildings back from the waterbody may or may not meet the intent of the regulation. One of the greatest threats to water quality is Non Point Source (NPS) pollution. NPS pollution is defined as pollutants carried in runoff originating from various sources; precipitation moves over and through the ground and picks up pollutants from these sources and carries them into rivers, lakes, and groundwater. Some of the major sources and causes of NPS pollution adjacent to waterbodies are erosion and sedimentation (from cleared lots), septic systems, and runoff (carrying oils, chemicals, fertilizers and pesticides). A structure that is placed 75 feet back with vegetation cleared to the edge of the shoreline may increase the threat to water quality and in turn harm fish and wildlife habitat and the aesthetic qualities of the site by increasing the amount of NPS running into the waterbody. Whereas a structure setback of only 45 feet with vegetation retained between the structure and the shoreline may do more to protect water quality. The vegetation can slow runoff, trap sediment, and act as a natural filter to remove pollutants.

Another challenge with the history of setbacks in the Borough is the fluctuating distances and general lack of compliance by property owners. The low compliance is at least partially symptomatic of the lack of understanding of the ordinance’s purpose. This has resulted in inconsistent development around waterbodies and in turn has made enforcement very difficult.

#### *Function of Buffer Zones (Setbacks)*

Literature associated with the protection of water quality defines buffer zones or setbacks as corridors of undisturbed natural vegetation or, where this is not present, grass or other erosion resistant vegetation, between a waterbody or wetland and an area of more intensive land use such as residential development. The use of natural buffer zones to protect water resources from pollution is attracting considerable attention within the United States and globally. Early research in this area stemmed from adverse impacts associated with timber and agriculture industries and has since evolved to consider the impacts of urban development including residential, commercial and industrial uses.

To understand the impacts from development, it is important to understand the watershed concept. A watershed includes the entire land form drained by streams and rivers and is the ultimate water source for a lake. The visible area of a watershed is the surface on which rain and snow fall. The larger, invisible portion of the watershed lies beneath the surface where water seeps into the ground. A raindrop travels from a mountain top to a lake in three ways: (1) some is absorbed by the soil; (2) some collects on the ground in depressions; and (3) some flows overland. It is the overland flow or runoff that poses the greatest threat to water quality. With the overland flow, the raindrop forms rivulets, which in turn join to form streams, and the streams join to form rivers, and so on. Whatever that raindrop picks up from the land along its journey ends up in the water. The greater the amount and speed of runoff the greater the potential impacts. The primary benefits of a waterbody setback are:

- **Maintain and Protect Water Quality** – Improve the quality of water passing through the buffer zone by trapping suspended sediments and removal of toxic substances, nutrients and pathogens carried in the surface water runoff.
- **Anchor Shoreline and Stream Banks and Control Erosion** – The shallow water table in the riparian zone makes water available during the growing season, creating a healthy terrestrial plant habitat for both soil and woody-debris-rooted plants. These in turn reduce erosion by anchoring the soil and trapping suspended sediments.
- **Provide Flood Control** – During periods of high runoff riparian and upland wetlands store and convey flood water. This storage function has the dual effect of moderating peak flows during high runoff events and augmenting ground and surface water flows during low runoff periods.
- **Protect Fish and Wildlife Habitat** - Riparian zones typically support greater numbers and diversity of fish and wildlife. Many terrestrial and aquatic animals use this area for foraging and feeding, breeding and rearing their young, and taking protective cover during 1 or more life stage.
- **Promote Scenic, Recreational, and Quality of Life Values** – The setback serves as a physical buffer between human activities on land and on the water. Scenic, recreation and wildlife assets are enhanced by buffer zones and can increase property values. Setbacks around busy recreational lakes and rivers can also help to reduce noise impacts on surrounding land uses.

While most people can agree on the function of a buffer zone, research reveals that the width of setbacks varies greatly. It is generally accepted that the use of buffers is most effective when the setback criteria reflect:

- Site-specific characteristics of the development area (slope, topography, vegetation, vulnerability to soil erosion, surface and groundwater hydrology)
- Type of proposed disturbance or land use
- Existing land uses around streams and lakes within the watershed

- Function of the buffer zone (sediment filtering, shading, shoreline stabilization by vegetation root systems, food and cover for fish and other wildlife)
- Resource aspects of greatest sensitivity and vulnerability to disturbance
- Flexibility in implementation

Unfortunately, this site-specific approach to defining setback distances requires significant resources to inventory all lands, develop a fair implementation process to avoid arbitrary and capricious decisions, and to enforce. For this reason, most governing bodies designate a set distance from a waterbody for structures and include minimum performance standards regulating the use of the buffer zone.

A number of studies have been conducted to understand the relationship of buffer strips of various distances to fish populations and aquatic habitat productivity in affected streams and the effects of development activities on lake water quality. Studies have also examined the effects of development activities which occur adjacent to or in proximity to lakes and streams to determine the actual effects of the disturbance and demonstrable reductions in impact with varying levels of separations (setbacks) between the development and the waterbody. Environmental parameters studied have included changes to:

- Stream flows
- Light intensity
- Water temperature
- Concentrations of suspended and settled sediments
- Presence of large woody debris
- Nutrient loads in surface runoff and groundwater
- Water-transported contaminants such as pesticides, herbicides, and fungicides

Below is a summary of some of the studies reviewed and the buffer widths that are recommended for the resource protection and the protection of fish and aquatic populations:

- **Stream Temperature:** For development or resource extraction activities which entail the removal of overstory vegetation along streams, buffer strips are one of the most effective means for maintaining water temperature in a range and seasonal pattern most beneficial to fish. Buffers greater than **100 feet** have been found to provide as much shade as old growth undisturbed forest. Undisturbed buffer strips from **50 to 100 feet** in width were found to maintain water temperatures with a normal range under some circumstances, partially dependent on stream course orientation and the buffer placement.

- **Erosion and Sedimentation:** In the Pacific Northwest, buffer strips **50 to 100** feet wide reduced stream sedimentation from adjacent patch-timber harvest activities; however, the sediment levels in the stream using the 50 to **100** foot buffer were **still** 50 percent greater than an undisturbed portion of the watershed. A more sensitive indicator of the effects of introduced sediments on streams is the measurement of changes to the permeability of streambed gravels. Streambed permeability has a more direct bearing on the success of survival for developing eggs and egg sac fry present in the gravels of the stream. Logging activities conducted with an adequate stream setback buffer have shown minimal changes to stream gravel permeability. Logging activities that did not incorporate setback buffers were found to decrease stream gravel permeability more than **50** percent for at least **6** years following logging.
- **Large Woody Debris:** Removal of nearly all riparian trees along streams can eliminate the source of large woody debris in second growth forests and old growth forests for a period of **40 to 100** years after disturbance. Associated effects on fish habitat can include changes to riffle and pool frequency and loss of overhanging and undercut banks important to juvenile fish and changes in availability of critical overwintering habitat. For logging activities and similar clearing disturbances, studies have shown that buffer strips of **50 to 425** feet (British Columbia) and **15 to 130** feet (Southeast Alaska) produced more juvenile salmon in the summer and sheltered more juvenile salmon during the winter than areas without buffers.
- **Water Quality:** Buffer strips have been shown to improve or avoid declines in dissolved oxygen concentrations in streams primarily by keeping clearing debris and sediments out of streams and providing shade conditions that maintain natural water temperatures (cooler water contains higher levels of dissolved oxygen). Buffers of **20 to 130** feet have been shown to be effective in preventing logging slash from entering streams in the Pacific Northwest.

Cities and Boroughs throughout the United States and Canada use also setback criteria to protect development structures from the potential effects of flooding, stream bank migration, winter icing and to protect water quality and fish and wildlife habitat. Typically the setbacks are included as part of a more extensive zoning ordinance or Shoreland Protection Ordinance and detailed minimum development standards are used in conjunction with structural setbacks. Development standards typically regulate the type of uses, amount of impervious surfaces, and restrict tree cutting and the clearing of vegetation within the setback zones. Presented below is a summary of representative setbacks/buffer strips used by local governments including the key conditions that must be met as part of the setback.

<i>Location</i>	<i>Setback (from ordinary high water mark)</i>
Municipality of Anchorage Title 21- Stream Protection	<ul style="list-style-type: none"> <li>• A minimum of 25 feet wide on either side of the stream</li> <li>• No vegetation may be cleared or disturbed, no grading or excavation may be done, and no structures, fill or paving may occur within 15 feet of the stream.</li> <li>• Within the stream protection setback, located between 15 and 25 feet from the stream, landscaping is permitted.</li> </ul>
Anchorage Wetlands Management Plan 1995 Setbacks from Wetlands	<ul style="list-style-type: none"> <li>• Minimum setback is 25 feet.</li> <li>• 100 feet from anadromous fish streams</li> <li>• 85 feet from certain headwaters and tributaries</li> <li>• 65 feet from all other water bodies.</li> <li>• Allows for customized setback as part of the permitting process</li> <li>• Requires undisturbed buffers between 15 and 25 feet depending on wetland types and interactions</li> <li>• Setbacks and buffers shall remain undisturbed to the maximum extent</li> </ul>
Willow Sub-Basin Area Plan Logging Buffer (Undisturbed Vegetation) Strips	<ul style="list-style-type: none"> <li>• Minimum 50-foot buffer, larger setbacks to be determined on a site-specific basis</li> </ul>
Susitna Area Plan - Logging Buffer (Undisturbed Vegetation) Strips	<ul style="list-style-type: none"> <li>• Minimum 100 feet from anadromous fish streams or other acceptable measures</li> <li>• 100 feet to ¼ mile (greater than 300 feet for visual quality, recreation, and wildlife habitats</li> <li>• 100 foot buffer for wetlands greater than 100 acres with a locatable stream outlet</li> <li>• 60 foot buffer for wetlands 40 to 100 acres with no locatable stream outlet</li> </ul>
Hatcher Pass Management Plan - Logging Buffer (Undisturbed Vegetation) strips	<ul style="list-style-type: none"> <li>• 200 foot buffers on specific streams</li> <li>• 100 feet on all other perennial streams to include all riparian vegetation (but not less than 50 feet)</li> </ul>
Alaska Department of Fish and Game – Timber Harvest Activity Buffer (Undisturbed Vegetation) Strips	<ul style="list-style-type: none"> <li>• 100 foot setback buffer from stream or lake shoreline, the upland edge of all stream/lake contiguous wetlands, all fish streams, and all lakes connected by surface drainage to fish streams</li> </ul>
Pacific Northwest - Logging Buffer (Undisturbed Vegetation) Strips	<ul style="list-style-type: none"> <li>• Recommended 50 to 100 feet</li> </ul>
Southeast Alaska - Logging Buffer (Undisturbed Vegetation) Strips	<ul style="list-style-type: none"> <li>• Recommended 15 to 130 feet</li> </ul>
Department of Environmental Programs, Metropolitan Washington Council of Governments	<ul style="list-style-type: none"> <li>• A minimum setback buffer of 20 feet is recommended</li> <li>• 100 to 300 feet for adequate removal of the smaller sized sediment particles found in urban runoff</li> </ul>
Bellevue, Washington Shoreline Overlay District	<ul style="list-style-type: none"> <li>• No clearing, grading, excavating, or fill within 25 feet</li> <li>• No commercial parking facilities within 25 feet,</li> <li>• 25 foot setback for structures except docks, piers, and boathouses</li> <li>• Requires plan indicating methods for preserving shoreline vegetation and control of erosion</li> </ul>



<b>Location</b>	<b>Setback (from ordinary high water mark)</b>
York, Virginia Watershed Overlay District	<ul style="list-style-type: none"> <li>• 200 foot buffer strip from tributary streams and public water supply reservoirs, maintained in natural state or planted with erosion resistant vegetation</li> </ul>
Lake Tahoe Shorezone Tolerance Districts	<p>Explicit development standards are based on physical characteristics for 8 shorezone districts. Three districts are summarized:</p> <ul style="list-style-type: none"> <li>• Backshore (defined as the area of wave run-up or instability plus 10 feet – whichever is greater) - Allowable base land coverage in this zone is 1%. Naturally occurring vegetation shall not be removed or damaged unless otherwise authorized under a permit.</li> <li>• District 1 (generally the beach area that separates lakes from marshes and wetlands) – Access to the shoreline shall be restricted to planned footpaths which minimize the impact to the backshore. Vegetation shall not be manipulated or otherwise disturbed except when permitted.</li> <li>• Districts 2 and 3 – Permitted development may be conditioned upon installation and maintenance of vegetation to stabilize backshore areas and protect eroding areas from further destruction.</li> </ul>
Dodge County, Wisconsin Shoreland Protection	<ul style="list-style-type: none"> <li>• 75 feet for all buildings except piers, marinas, boathouses</li> <li>• Boathouses must be set back 2 feet.</li> <li>• Tree cutting – No more than 30 percent of the length shall be clear cut to the depth of the strip. Cutting of the strip shall not create a clear cut opening in the strip greater than 30 feet wide for every 100 feet of shoreline. In the remaining 70% length of the strip, cutting shall leave sufficient cover to screen cars, dwellings, accessory structures (except boathouses) from the water.</li> </ul>
Douglas County, Wisconsin	<ul style="list-style-type: none"> <li>• Minimum protection zone - 75 feet</li> <li>• Moderate protection zone - 100 feet</li> <li>• Maximum protection zone - 125 feet</li> </ul>
Minnesota Department of Natural Resources	<ul style="list-style-type: none"> <li>• Recommends shoreline vegetative buffers of a minimum of 15 to 25 feet</li> <li>• 30 feet setbacks will accommodate the needs of most shoreline wildlife</li> </ul>
Statewide Standards for Management of Shoreland Areas - Minnesota	<ul style="list-style-type: none"> <li>• Setbacks based on density and lot size. Setbacks range from 75 to 265 feet. 40,000 square foot lot with single family home requires 150 foot setback</li> <li>• At least 10 feet for accessory structures.</li> <li>• Limited clearing of trees and shrubs and cutting and pruning, and trimming of trees to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented accessory structures as well as providing a view to the water from the principal dwelling site in shore and bluff impact zones is allowed provided that:                         <ul style="list-style-type: none"> <li>- The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer leaf on conditions, is not substantially reduced.</li> <li>- Along rivers, existing shading of water surfaces is preserved.</li> </ul> </li> <li>• Impervious surface coverage of lots must not exceed 25 % of the lot area.</li> </ul>
Landscape Planning Environmental Applications William Marsh, 1991.	<p>Buffers widths generally greater than 50 to 100 feet in urban areas have been shown to be extremely efficient in sediment removal (up to 90 percent or more) if they meet the following design criteria:</p> <ul style="list-style-type: none"> <li>• Continuous grass/turf cover</li> <li>• Gentle gradients, generally less than 10 percent</li> <li>• Shallow runoff depth, generally not exceeding the height of the grass.</li> <li>• In hilly terrain, buffers should be located on upland surfaces and integrated with depression storage and soil filtration measures</li> </ul>

### *Recommended Setback*

Properly incorporated into planning, design, permitting, and construction criteria, setback buffers are an invaluable tool for minimizing future requirements for mitigation or restoration of disturbed areas. It is recommended that the Borough retain the 75-foot setback and regulate the activities within the setback using performance standards to ensure that the intent of the setback is met. A 75-foot setback is justified for the following reasons:

- A comprehensive scientific evaluation of effective shoreline setback distances in the Borough has not been completed. Due to the magnitude of such a project and limited resources, it is unlikely it will be completed in the near future. In addition, the literature reveals that the widths of setbacks vary significantly even when based on sound scientific research. Literature generally supports site-specific setbacks; however, this is an unrealistic approach with the Borough's limited resources.
- Lacking scientific data gathered along the shorelands of the Mat-Su Borough, a change in the setback is politically unpopular and is a highly charged issue. Those in compliance with the 75-foot setback do not want to see a lesser setback and are concerned about view obstructions and other impacts to the waterbody environment. Regulating agencies and environmental groups would also resist a lesser setback because of adverse impacts and would like to see at least a 100-foot setback. A larger setback could result in more variances being required, increased non-compliance, and lengthy challenges.
- A process still exists to apply for a variance to reduce the setback if it presents the property owner with an undue hardship.
- Literature supports a setback of between 50 and 100 feet with the inclusion of minimum development standards. This indicates that 75 feet is a reasonable distance to offer at least some protection to natural resources under a variety of development scenarios.

### *Recommended Minimum Performance Standards*

Effective performance standards or Best Management Practices are enforceable and can be consistently applied to all property owners. This will add increased protection to the Borough's waterbodies as they become more popular and more heavily populated, and it will help to bring Mat-Su Borough ordinances on shoreline development into compliance with the provision of the Mat-Su Borough Coastal Management Program (MSBCMP) that "proposed uses and activities within 75 feet of the high water line must be reviewed to ensure protection of water quality and fish and wildlife habitat."

Regulation of activities within the 75-foot setback must focus on the following **two** concerns which can have a significant impact on water quality, fish and wildlife habitat, and the aesthetics of shorelands and waterbodies:

- **Loss of riparian vegetation:** Removal of existing vegetative cover in the riparian zone to provide shoreline access for boats, create lawn, or for other activities is likely to lead to erosion and sediment transport in runoff waters into the waterbody. Vegetation in this zone helps to filter sediment, nutrients, and pollutants out of surface runoff, while stabilizing banks, controlling erosion, and dissipating floodwaters. Additionally, many terrestrial and aquatic animals use this area for foraging, breeding and rearing their young, and taking protective cover.
- **Use of impervious surfaces:** An impervious, or nonporous surface is one that will not allow water infiltration such as blacktop, concrete and rooftops. Runoff water from these surfaces increases the rate at which pollutants and excess nutrients are carried the water. Impervious surfaces also interrupt natural drainage patterns and can cause shore degradation through concentration of runoff and erosion.

Uniform application and consistent enforcement of specific performance standards can effectively address the above concerns before development starts, at a point when such measures are both inexpensive to the property owner and easy to implement. Moreover, the following measures will also address visual impacts and can serve to buffer and reduce noise generated on the waterbodies.

1. Preserve a minimum 25-foot wide buffer of undisturbed native vegetation across a total of 30 percent of the parcel's shoreline. **This** zone is a permanent planting and should be left untouched, except for the removal of select or fallen trees. In the remaining 70 percent of the buffer zone, limited clearing of trees and shrubs and cutting and pruning of trees is permitted to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented accessory structures as well as providing a view to the water from the principal dwelling site is allowed provided that:
  - The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer leaf on conditions, is not substantially reduced.
  - Along rivers, existing shading of water surfaces is preserved.

These provisions shall not apply to the removal of dead, diseased or dying trees.

2. In cases where the following land uses are present within the 75-foot buffer zone, an additional **15-foot** wide vegetative buffer, the same length as the use, must be in place between the use and the shoreline to intercept runoff. Non-native vegetation can be used in this zone.
  - Driveway
  - Parking lot
  - Road
  - Car wash
  - Dog kennels
  - Boat Maintenance and Other Repair Activities
3. Any paved, impermeable, or roofed surfaces within the 75-foot buffer zone must have an infiltration bed of sufficient size to control the velocity and volume of runoff.
4. Impervious surface coverage of lots must not exceed **25** percent of the lot area.
5. Boathouses must be set back 2 feet from the water's edge, and are of a height and color so as not to detract from the natural beauty of the shoreline and shall not be used for human habitation.
6. Development shall be accompanied by a site plan indicating methods of preserving shoreline vegetation and for control of erosion during and following construction.
7. **All** structures, accessory buildings and ancillary facilities, other than those related to water use such as **docks**, piers, and boat houses shall be set back a minimum of 30 feet from the ordinary high water mark.
8. Parking shall not be permitted over water or within 30 feet of the shoreline.

In cases where a property owner seeks a variance from the 75-foot buffer, it is recommended that the above performance standards still apply.

### *Conclusion*

Some regulation is necessary to preserve the value and enjoyment of the Borough's waterways, especially as they grow in popularity for residential and recreational use. A recommended **75-foot** setback with minimum performance standards begins to address the protection of water quality and fish and wildlife habitat. In addition, the vegetated setback also serves an important function in the protection of values associated with quality of life to include noise reduction and aesthetics.

However, because water quality is intrinsically linked to the day to day activities of residents and users on and surrounding the waterbody, education is also critical to preserving the resource. Therefore, it is also recommended that in addition to the Matanuska-Susitna Borough's Property Owner's Guide to Shoreline Landscaping, a booklet containing Best Management Practices for waterfront property owners be developed promoting responsible development. Example Best Management Practices might include the following.

- Protect bare soil surfaces. Vegetation is the best protection because it both absorbs and uses water. Seed and mulch exposed soil within the watershed as soon as possible after disturbance (gardens, construction sites, etc.).
- Use fertilizer sparingly. All fertilizers are carried in runoff and dissolve into the groundwater. Use non-phosphate varieties.
- Do not concentrate or channelize water flow unless absolutely necessary. On undisturbed slopes, water percolates through soil slowly. When all runoff is focused on one spot, such as a culvert or roof gutter, the natural protection of the ground surface is often not sufficient to prevent this extra **flow** from breaking through to bare soil. If runoff must be directed, protect the outflow area with an energy dissipator, such as rock or securely anchored brush, that will withstand storm flows.
- Prevent water from running off roads, driveways, roofs or lawns directly into lakes and streams. Direct surface runoffs into natural depressions, or flat, wooded areas, where the water can seep into the ground slowly.
- Keep septic tanks maintained. Pump every 2-3 years for year-round homes: every 5-6 years for seasonal cottages. This expense is well worth every penny. Pumping is the key to keeping your septic system working. It is far less expensive to pump than to have a new leaching field installed.
- Avoid the use of phosphate containing detergents.
- Don't wash vehicles near the waterbodies.
- Use lawn clippings and leaves as mulch for shrubs and gardens. Pile these where they will not be washed into the waterbodies by heavy rains.
- Don't provide feed for wild ducks and geese. As pretty as these may be, large numbers of Canada Geese have become major problems and polluters (fecal coliform) of lakes elsewhere in the state.
- Place manure and composting piles as far as you can from the waterbodies or from drains or ditches which lead directly to lakes or streams.
- Limit human use or animal use of vulnerable areas. Trails can channel the **flow**.
- Establish temporary berms during construction to contain runoff overflow.

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DRAFT  
October 28, 1998



## MATANUSKA-SUSITNA BOROUGH

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### SHORELANDS MANAGEMENT STUDY QUESTIONNAIRE

The Planning Department of the Matanuska-Susitna Borough has an FY99 309 Enhancement Grant from the Alaska Coastal Management Program (ACMP) to study how people want the *shorelands* to be managed. As the communities of the Borough, especially their outdoor activities and amenities, continue to attract new residents, businesses, and visitors, how much value will people place on integrating the natural framework of creeks, rivers, lakes, and drainage basins with the life-styles and economic opportunities of the Borough?

The Planning Department is asking for help from a broad spectrum of interests. Whatever your background, the Borough is interested in your local knowledge, phrasing of problems, and ideas for managing the *shorelands*. How can the *shorelands* be integrated into a community that places great value on private market activities and community organizations, and has a strong dislike for government regulation?

1. What are **your current activities** and **uses** of the *shorelands*?

- |                          |                                      |                          |  |
|--------------------------|--------------------------------------|--------------------------|--|
| <input type="checkbox"/> | residence<br>or<br>second<br>home    | <input type="checkbox"/> | walking, bicycling, <b>skiing</b> , or other non -<br>motorized recreation |
| <input type="checkbox"/> | camping or temporary residential use | <input type="checkbox"/> | boating, flying, snow machining, or other<br>motorized recreation          |
| <input type="checkbox"/> | commercial or industrial business    | <input type="checkbox"/> | access to waterways  |
| <input type="checkbox"/> | fishing or hunting                   | <input type="checkbox"/> | sightseeing or traveling through Borough                                   |
| <input type="checkbox"/> | guiding or tourism                   |                          |  |
| <input type="checkbox"/> | job or work                          |                          |  |

What are your **other activities or uses**?:

2. Does anything **displease, disturb, or threaten** you about uses and activities on the *shorelands*?

- |                          |  |                          |   |
|--------------------------|--|--------------------------|---|
| <input type="checkbox"/> | Disruption from motorized vehicles, boats<br>and airplanes | <input type="checkbox"/> | Fragmented habitat and wildlife systems                         |
| <input type="checkbox"/> | Rudeness among residents, visitors, and<br>neighbors       | <input type="checkbox"/> | Flood damage from bluff failure and<br>changing stream patterns |
| <input type="checkbox"/> | Infringement of privacy and property<br>rights             | <input type="checkbox"/> | Declining environmental quality                                 |
| <input type="checkbox"/> | Declining fishing and hunting<br>opportunities             | <input type="checkbox"/> | Crowded recreation and tourism<br>destinations                  |
| <input type="checkbox"/> | Interference with private market                           | <input type="checkbox"/> | Limited public access to public lands and<br>waters             |
| <input type="checkbox"/> | Shrinking of job opportunities                             | <input type="checkbox"/> | Loss of heritage and damage to artifacts                        |

**DRAFT**

September 29, 1998

Can you identify other **problems** and **threats** regarding *shorelands*?  
What do you **want to see happen** on the *shorelines*?

- |  |  |
|--|--|
| <input type="checkbox"/> A linked and adequate system of habitat for small and large wildlife                                  | <input type="checkbox"/> Encouragement of commercial and industrial patterns that incorporate the values of <i>shorelands</i>            |
| <input type="checkbox"/> Positive protections of anadromous streams in development projects                                    | <input type="checkbox"/> Identification of access and other needs of resource based industries   |
| <input type="checkbox"/> Encouragement of existing riparian vegetation and protection of natural systems in developing areas   | <input type="checkbox"/> Preservation of quality recreational and tourism opportunities  |
| <input type="checkbox"/> Protection of the native vegetation, soils, and waterways in large natural areas                      | <input type="checkbox"/> Friendliness and cooperation among neighbors, visitors, and residents   |
| <input type="checkbox"/> An overall system to avoid the dangers to life and property from flooding                             | <input type="checkbox"/> Identification and integration of heritage resources in <i>shorelands</i> activities and uses                   |
| <input type="checkbox"/> Identification of development opportunities and incentives that are consistent with <i>shorelands</i> | <input type="checkbox"/> Public procedures that encourage partnerships and a cooperative spirit to protect and develop <i>shorelands</i> |
| <input type="checkbox"/> Integration of <i>shorelands</i> with fire safety   |  |

What else would you **like to happen** in the *shorelands*?

**4. What can be done to better manage the *shorelands*?**

- |  |  |
|--|--|
| <input type="checkbox"/> Maintain existing rules regarding the 75 feet setback                                     | <input type="checkbox"/> Protection of valuable existing uses and activities from more intense development     |
| <input type="checkbox"/> Easier methods for the public to follow   | <input type="checkbox"/> Significant incentives to encourage appropriate development in <i>shorelands</i>      |
| <input type="checkbox"/> Graphic examples of riparian vegetation and improvements                                  | <input type="checkbox"/> Nurturing of partnerships and resource sharing arrangements among organizations       |
| <input type="checkbox"/> Funding for pilot projects that others may follow   | <input type="checkbox"/> Outreach and public information programs to encourage and motivate private businesses |
| <input type="checkbox"/> Mapping of potential development and significant preservation areas                       |  |
| <input type="checkbox"/> Improvements and vegetation in accord with a plan that will protect the <i>shorelands</i> |  |
| <input type="checkbox"/> Discouragement of patterns that result in cumulative impacts                              |  |

What other **methods or tools** could be used to manage the *shorelands*?

**FURTHER COMMENTS:**

If you are interested in providing additional information, specialized knowledge, or insight, or participating in the Advisory Committee or the other *shorelands* activities please indicate your **name, phone number, fax, e-mail, and/or mailing address:**

**PLEASE FOLD AND MAIL  
THIS SELF-ADDRESSED AND STAMPED QUESTIONNAIRE**

DRAFT  
October 28, 1998



## MATANUSKA-SUSITNA BOROUGH

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### ***SHORELANDS MANAGEMENT STUDY SHORELANDS STEERING COMMITTEE (INTERIM)***

## **AGENDA**

(anticipation of public process and study)

### **INTRODUCTIONS**

### **APPROVAL OF AGENDA**

### **HANDY MEETING RULES**

(consensus of people at meeting)

- e One person speaks at a time
- e Briefly Identify yourself, interests, and background
- e Practice good listening skills
- e Do not repeat comments of others
- e Keep comments brief and on the subject
- e Avoid being judgmental of others
- e Share your background and information openly
- e Defer to the meeting coordinator
- e Seek consensus and avoid group voting and decision-making
- e Place objectives of study and borough above special interests

### **PURPOSE OF PROJECT**

Review of staff information and background  
Background, input, and questions from others

### **IDENTIFICATION OF PEOPLE AND INTERESTS TO HELP WITH STUDY**

*(This is the focus and most important activity of the meeting-see attached memo  
The remainder of the agenda is for your information and comment)*

Interests  
Groups  
People

### **PUBLIC PROCESS AND INFORMATION**

**DRAFT**

October 28, 1998

Schedule  
Questionnaires  
Interim Steering Committee  
Public Forum  
Workshops  
Announcements and newsletters

**SHORELANDS MANAGEMENT STUDY**

Background and literature review  
Issues and problems  
Goals and objectives  
Management Policies and Strategies

CODE ORDINANCE

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 23-002**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 AND MSB 17.80 TO ALLOW BUILDINGS TO BE BUILT WITHIN 75 FEET OF A WATERBODY.

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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. Amendment of subsection. MSB 17.55.020 is hereby amended to read as follows:

(A) Except as provided in subsections **(F) and (G)** [(B)] of this section, no [STRUCTURE OR FOOTING] **building greater than 480 square feet** shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE,] [E]**e**aves may project three feet into the required setback area.

[(B) DOCKS, PIERS, MARINAS, AIRCRAFT HANGARS, AND BOATHOUSES MAY BE LOCATED CLOSER THAN 75 FEET AND OVER THE WATER, PROVIDED THEY ARE NOT USED FOR HABITATION AND DO NOT CONTAIN SANITARY OR PETROLEUM FUEL STORAGE FACILITIES. STRUCTURES PERMITTED OVER WATER UNDER THIS SUBSECTION SHALL CONFORM TO ALL APPLICABLE STATE AND

FEDERAL STATUTES AND REGULATIONS.

(1) BOATHOUSES OR AIRCRAFT HANGARS WHICH ARE EXEMPT FROM A MINIMUM SHORELINE SETBACK FOR STRUCTURES SHALL:

(A) BE BUILT OVER, IN, OR IMMEDIATELY ADJACENT TO A WATERBODY AND USED SOLELY FOR STORING BOATS AND BOATING ACCESSORIES;

(B) BE DESIGNED, CONSTRUCTED AND ORIENTED FOR PRIMARY ACCESS BY BOATS OR AIRCRAFT DIRECTLY TO A WATERBODY;

(C) NOT HAVE MORE THAN INCIDENTAL ACCESSORY ACCESS TO A STREET OR DRIVEWAY; AND

(D) NOT BE USABLE AS A GARAGE OR HABITABLE STRUCTURE WITHOUT SIGNIFICANT ALTERATION.

(C) IN THE CITY OF WASILLA, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO NOVEMBER 16, 1982. ELSEWHERE IN THE BOROUGH, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO JANUARY 1, 1987, IF THE PRESENT OWNER OR OWNERS OF THE PROPERTY HAD NO PERSONAL KNOWLEDGE OF ANY VIOLATION OF THE REQUIREMENTS OF THIS SECTION PRIOR TO SUBSTANTIAL COMPLETION OF THE STRUCTURES. THE DIRECTOR OF THE PLANNING DEPARTMENT

SHALL, UPON APPLICATION BY A PROPERTY OWNER, DETERMINE WHETHER A PROPERTY QUALIFIES FOR AN EXCEPTION UNDER THIS SUBSECTION.

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

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

(E) No part of a subsurface sewage disposal system shall be closer than 100 feet from the ordinary high water mark of any body of water. [THE PLANNING COMMISSION SHALL REQUIRE THIS DISTANCE BE INCREASED WHERE NECESSARY TO PROTECT WATERS WITHIN THE BOROUGH.]

(F) Buildings that are in existence or have commenced construction within 75 feet of a waterbody prior to April 1, 2023 are granted pre-existing legal nonconforming status in accordance with MSB 17.80.020 (A) .

(G) New buildings greater than 480 square feet, or proposals to enlarge or alter existing buildings granted pre-existing legal nonconforming status under (F) of this section, may be located within 75 feet of a waterbody provided:

(1) they are designed and constructed in



accordance with plans sealed by a professional structural engineer licensed in the State of Alaska in accordance with Alaska Statute 08.48.

(a) the building shall be designed in a manner that ensures structural integrity, provides suitable soils for a stable foundation, and protects surface and subsurface water quality.

(2) prior to construction, the engineered plans and specifications shall be submitted to the planning department for an engineering review by a public works engineer as part of a mandatory land use permit, in accordance with MSB 17.02.

(3) the development is constructed in accordance with local, state, and federal laws.

Section 3. Amendment of subsection. MSB 17.55.010(E) is hereby amended to read as follows:

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

(1) structures that have a reduced building

**setback due to condemnation under this subsection are granted pre-existing legal nonconforming status in accordance with MSB 17.80.020(A).**

Section 4. Amendment of subsection. MSB 17.80.020(B) is hereby amended as follows:

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

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

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

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

Section 5. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2022.

EDNA DeVRIES, Borough Mayor

ATTEST:

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LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

**CHAPTER 17.55: SETBACKS AND SCREENING EASEMENTS**

Section

[17.55.004 Definitions](#)

[17.55.005 General](#)

[17.55.010 Setbacks](#)

[17.55.015 Shorelands; definition \[Repealed\]](#)

[17.55.020 Setbacks for shorelands](#)

[17.55.040 Violations, enforcement, and penalties](#)

**17.55.004 DEFINITIONS.**

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

- “Aircraft hangar” means a roofed structure which is used to completely or partially enclose and store aircraft and aircraft accessories.
- “Boathouse” means a roofed structure which is used to completely or partially enclose and store boats and boating accessories.
- “Building” means any structure intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature.
- “Building line” means the line of that part of the building nearest the property line.
- “Dedication” means the reservation of land to a public use by the owner manifesting the intention that it shall be accepted and used presently or in the future for such public purpose. A dedication by the owner under the terms of this section is a conveyance of an interest in property which shall be deemed to include the warranties of title listed in A.S. 34.15.030. The dedication of streets, alleys, sidewalks, or public open space shall convey a fee interest in the area dedicated. The dedication of all other public rights-of-way shall be deemed to create an easement in gross to perform the indicated function in the area depicted.
- “Engineer” means a registered professional civil engineer authorized to practice engineering in the state of Alaska.
- “Incidental” means subordinate and minor in significance and bearing a reasonable relationship to the primary

use.

- “Lot” means the least fractional part of subdivided lands having limited fixed boundaries and having an assigned number, or other name through which it may be identified.
- “Lot depth” means the average distance between front and rear lot lines.
- “Lot frontage” means all property abutting the right-of-way of a dedicated street or road easement, measured along the right-of-way between side lot lines of a lot.
- “Lot width” means the average distance between side lot lines.
- “Official streets and highway plan” means a map and attendant document depicting the proposed system of freeway, arterial, and collector streets in the borough, as adopted by the planning commission and by the assembly, and which is on file in the planning department office, together with all amendments thereto subsequently adopted.
- “Ordinary high water mark” means the mark made by the action of water under natural conditions on the shore or bank of a body of water which action has been so common and usual that it has created a difference between the character of the vegetation or soil on one side of the mark and character of the vegetation and soil on the other side of the mark.
- “Parcel” means an unsubdivided plot of land.
- “Right-of-way” means a strip of land reserved, used, or to be used for a street, alley, walkway, airport, or other public or private purpose.
- “Structure” means anything that is constructed or created and located on or above the ground, or attached to something fixed to the ground. For purposes of minimum setbacks and building separation requirements, the following are not considered structures unless specifically addressed by code: signs; fences; retaining walls; parking areas; roads, driveways, or walkways; window awnings; a temporary building when used for 30 days or less; utility boxes and other incidental structures related to utility services; utility poles and lines; guy wires; clotheslines; flagpoles; planters; incidental yard furnishings; water wells; monitoring wells; and/or tubes, patios, decks, or steps less than 18 inches above average grade.
- “Subdivision” means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or lease for more than ten years, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.
- “Surveyor” means a professional land surveyor who is registered in the state of Alaska.

- “Utility box” means electric transformers, switch boxes, telephone pedestals and telephone boxes, cable television boxes, traffic control boxes, and similar devices.
- “Utility services” means the generation, transmission, or distribution of electricity, gas, communications, and municipal water and sewer systems.

(Ord. 21-019, § 2, 2021; Ord. 17-088(SUB), § 2, 2017; Ord. 13-164, §§ 2, 3, 2013; Ord. 93-042, § 2 (part), 1993; Ord. 89-072, § 2 (part), 1989; Ord. 88-221, § 2 (part), 1988)

#### **17.55.005 GENERAL.**

This chapter establishes minimum structural setbacks from lot lines, water courses and water bodies, rights-of-way, and specific screening easements for certain lands within subdivisions in the Matanuska-Susitna Borough except where otherwise specified in special land use district regulations within this title.

(Ord. 03-053, § 2, 2003; Ord. 88-190, § 3 (part), 1988)

#### **17.55.010 SETBACKS.**

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

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

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

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

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

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

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

(F) For purposes of this chapter, commercial or industrial buildings on separate but adjacent parcels, which otherwise meet the setback requirements, may have connecting pedestrian walkways, enclosed or not.

Pedestrian walkways:

- (1) shall not contribute to the building area or the number of stories or height of connected buildings; and
- (2) must comply with the current adopted edition of the International Building Code, except that the outside width of the walkway shall not exceed 30 feet in width, exclusive of eaves.

(G) No furthestmost protruding portion of any structure or building line shall be located nearer than ten feet from railroad rights-of-way, except that utilities and rail dependent structures may extend up to railroad rights-of-way.

(Ord. 11-159, § 2, 2011; Ord. 11-019, § 2, 2011; Ord. 93-042, § 2 (part), 1993; Ord. 88-190, § 3 (part), 1988)

**17.55.015 Shorelands; definition. [Repealed by Ord. 17-088(SUB), § 3, 2017]**

**17.55.020 SETBACKS FOR SHORELANDS.**

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

(B) Docks, piers, marinas, aircraft hangars, and boathouses may be located closer than 75 feet and over the water, provided they are not used for habitation and do not contain sanitary or petroleum fuel storage facilities. Structures permitted over water under this subsection shall conform to all applicable state and federal statutes and regulations.

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

- (a) be built over, in, or immediately adjacent to a waterbody and used solely for storing boats and boating accessories;
- (b) be designed, constructed and oriented for primary access by boats or aircraft directly to a waterbody;
- (c) not have more than incidental accessory access to a street or driveway; and
- (d) not be usable as a garage or habitable structure without significant alteration.

(C) In the city of Wasilla, this section does not apply to structures where construction was completed prior to November 16, 1982. Elsewhere in the borough, this section does not apply to structures where construction was completed prior to January 1, 1987, if the present owner or owners of the property had no personal knowledge of any violation of the requirements of this section prior to substantial completion of the structures. The director of the planning department shall, upon application by a property owner, determine whether a property qualifies for

an exception under this subsection.

(1) An application for a shoreline setback exception shall include a filing fee as established by resolution of the assembly.

(D) In this section, a “structure” is any dwelling or habitable building or garage.

(E) No part of a subsurface sewage disposal system shall be closer than 100 feet from the ordinary high water mark of any body of water. The planning commission shall require this distance be increased where necessary to protect waters within the borough.

(Ord. 17-088(SUB), § 4, 2017: IM 96-019, page 1, presented 3-19-96; Ord. 93-095, § 2, 1993; Ord. 93-042, § 2 (part), 1993; Ord. 90-052, § 3, 1990; Ord. 88-190, § 3 (part), 1988; initiative election of 5-5-87)

#### **17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

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

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

(Ord. 95-088(SUB)(am), § 26 (part), 1995)



## CHAPTER 17.80: NONCONFORMING STRUCTURES

Section

[17.80.010 Intent](#)

[17.80.020 Legal nonconforming structures](#)

[17.80.030 Fees](#)

[17.80.040 Written determination required](#)

[17.80.050 Nonconforming lots of record](#)

[17.80.060 Standards for nonconforming structures](#)

[17.80.070 Application for a determination of legal nonconforming status](#)

[17.80.080 Repairs and maintenance](#)

[17.80.090 Restoration of damaged property](#)

[17.80.100 Termination of nonconformities](#)

[17.80.110 Violations and enforcement](#)

### **17.80.010 INTENT.**

(A) Within the Matanuska-Susitna Borough there may exist lots, permanent structures, and uses of land and structures, which were lawful before the effective date of the applicable regulations but which would be prohibited, regulated or restricted under the terms of current regulations, or a future amendment. Except as otherwise provided by code, it is the intent of this chapter to permit nonconforming permanent structures to remain until they are removed or abandoned but not to encourage their perpetuation. It is not intended that this chapter replace or supersede nonconformity regulations in other chapters within this title. This ordinance is promulgated pursuant to AS 29.40.040(A)(2) "Land Use Regulations" and encourages the minimization of the unfavorable effects of the construction of structures that do not conform to code.

(B) Nothing in this chapter requires a change in the plans or construction of any building actually under construction or development prior to the effective date of adoption of this ordinance as long as the building was allowable under the code in effect at the start of development. Where excavation, demolition or removal of an existing building has begun in preparation of rebuilding, such excavation, demolition or removal shall be considered to be actual construction or development, provided that continuous progress is being made toward completion of the project. Development is defined as any man-made change to improved or unimproved real

estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.020 LEGAL NONCONFORMING STRUCTURES.**

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

- (1) structures built lawfully and made nonconforming by adoption of subsequent ordinances;
- (2) structures built in violation of the ordinance existing at the time of construction, then made legal by adoption of subsequent ordinance, and later made nonconforming by adoption of subsequent ordinances;
- (3) permanent structures which were constructed lawfully after the date of adoption of the Acknowledgement of Existing Regulations, Chapter 17.01, but which were made unlawful after the date of start of construction due to adoption of subsequent regulations.

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

- (1) structures granted a variance in accordance with Chapter 17.65;
- (2) structures built in violation of shoreline setback ordinances existing at the time of construction, and subsequently granted an exemption from shoreline setbacks in accordance with MSB [17.55.020\(C\)](#);
- (3) permanent structures built in violation of ordinances existing at the time of construction, and subsequently granted legal nonconforming status in accordance with MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.030 FEES.**

(A) Applications for determination of legal nonconforming status, made pursuant to MSB [17.80.020\(A\)](#)(1), (2) and (3), and (B)(1) and (2), are not subject to fees set forth in MSB [17.80.070](#).

(B) Applications for determination of legal nonconforming status, made pursuant to MSB [17.80.020\(B\)](#)(3) are subject to fees as set forth in MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.040 WRITTEN DETERMINATION REQUIRED.**

Nonconforming structures, covered under MSB [17.80.020\(B\)](#)(3), shall not have legal nonconforming status for

purposes of this chapter unless a written administrative determination of legal nonconforming status has been issued by the planning director, pursuant to MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.050 NONCONFORMING LOTS OF RECORD.**

Structures and accessory buildings may be erected on nonconforming lots of record as long as they meet all applicable provisions of code. This provision shall apply even though the lot fails to meet the requirements for area, or width, or both, currently applicable.

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.060 STANDARDS FOR NONCONFORMING STRUCTURES.**

(A) Where a permanent structure exists that could not be built under the terms of the current regulations, the structure may continue to exist as long as it remains lawful subject to subsections (1) through (4) of this subsection. However:

(1) a nonconforming structure may not be enlarged or altered in any way unless the alteration or enlargement is otherwise specifically allowed by code. Any nonconforming structure or portion of a nonconforming structure may be altered to decrease its nonconformity.

(2) a nonconforming structure may not be enlarged or altered vertically or horizontally in a way which would increase the height, width, depth, area, or volume of the structure except as specifically allowed by current code for similar new structures in that location. A nonconforming structure which straddles a required minimum setback line may be expanded vertically or horizontally only where the expansion is located outside the minimum setback distance.

(3) the physical location of a nonconforming structure may be changed only to reduce or eliminate the nonconformity.

(4) an existing structure devoted to a use not permitted by code shall not be enlarged, extended, moved, or structurally altered.

(B) Structures found in violation of any of the standards set forth in subsection (A) of this section, are not eligible for a determination of legal nonconforming status.

(C) Structures which are in trespass are not eligible for a legal nonconforming status determination.

(D) *[Repealed by Ord. 17-142, § 3, 2018]*

(E) The planning director may not grant legal nonconforming status, pursuant to MSB [17.80.070](#), unless the

applicant provides evidence that the structure was erected prior to the adoption of the Acknowledgment of Existing Land Use Regulations, MSB 17.01.

(F) The planning director will consider public health, safety, and welfare concerns raised in comments received pursuant to MSB [17.80.070\(C\)](#) when making a determination whether to grant a legal nonconforming determination.

(Ord. 17-142, § 3, 2018; Ord. 01-016, § 2, 2001; Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.070 APPLICATION FOR A DETERMINATION OF LEGAL NONCONFORMING STATUS.**

(A) An application for a determination of legal nonconforming status may be initiated by the property owner or his authorized agent. The application shall be filed with the planning director on a form provided by the planning department. The application shall be accompanied by a nonrefundable application fee, established by the assembly, and made payable to the Matanuska-Susitna Borough. The planning director may not grant legal nonconforming status unless the applicant provides evidence that the structure was erected prior to the adoption of the Acknowledgment of Existing Land Use Regulations chapter except as noted herein.

(B) In addition to the completed application form, the submittal shall contain the following items:

- (1) description and photographs of the structure;
- (2) as-built drawing(s), prepared by a professional surveyor, registered in the state of Alaska, verifying the location(s) or the structure(s);
- (3) any other documentation the planning director may deem necessary to evaluate the application.

(C) When an application is submitted, the borough shall give notice of the application by publication in a newspaper of general circulation in the borough at least 15 calendar days before the earliest date the planning director may render a decision.

(D) Notice of the application shall be mailed to owners of all property within 600 feet of the lot lines of the property containing the nonconforming structure at least 10 calendar days prior to the earliest date upon which the planning director may make a final decision on the application. The notice shall contain the following:

- (1) the earliest date a decision may be rendered;
- (2) brief description of the application;
- (3) a vicinity map of the area surrounding the subject property;
- (4) legal description of the subject property;

- (5) the names of the applicants and owners of the subject property;
- (6) the planning department's telephone number; and
- (7) identify the location where the application and other supporting material will be available for public inspection.

(E) Prior to the date of the decision, the applicant shall pay the cost of all mailings or advertisements required by this section.

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.080 REPAIRS AND MAINTENANCE.**

Except as otherwise addressed by code, nothing in this chapter shall prevent keeping in good repair a nonconforming permanent building or a building in which a nonconforming use is conducted. However, any building that is declared by an authorized official to be unsafe or unlawful by reason of physical condition shall not be restored, repaired or rebuilt in violation of the standards set forth in MSB [17.80.060\(A\)](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

**17.80.090 RESTORATION OF DAMAGED PROPERTY.**

(A) Except as otherwise addressed by borough code, nothing in this ordinance shall prevent restoration and subsequent continued occupancy and use of a permanent building destroyed to up to 50 percent of its replacement value by fire, explosion, or other casualty or act of God.

(B) A dwelling made nonconforming through adoption or amendments to Title 17, Zoning, may be replaced or reconstructed within two years after accidental damage or accidental destruction by fire, explosion, or other casualty or act of God. Reconstruction or replacement not completed within two years of the date of the damage is prohibited except in compliance with current regulations. Replacement or reconstruction may be undertaken in the same three dimensional space that it occupied prior to damage or destruction even though the damage or destruction exceeded 50 percent of its replacement value provided it was a legal structure at the date of construction. Except as otherwise specifically allowed by code, reconstruction and replacement shall not increase the height, depth, area, or volume of the structure beyond that which existed on the date the structure became a pre-existing legal nonconforming structure.

(1) The borough manager may grant a one time extension of the allowed time to complete rebuilding of a pre-existing legal nonconforming structure which is otherwise eligible for reconstruction under this section. To grant the time extension authorized under this section, the borough manager must find from evidence presented that:

- (a) the requirement to rebuild within two years from the date of destruction would result in undue

hardship on the applicant;

(b) the applicant diligently pursued reconstruction during the original two-year period; and

(c) the need for an extension is caused by unforeseen and unavoidable circumstances beyond the control of the applicant.

(2) The extension shall be for a specific amount of time, not to exceed three years from the original two-year deadline.

(3) An application for the three-year extension of time to rebuild a pre-existing legal nonconforming structure shall be submitted in writing to the borough manager and shall provide sufficient detail to describe the proposed structure and its compliance with applicable borough code. The application must also contain the evidence required by MSB [17.80.090\(B\)\(1\)\(a-c\)](#).

(4) The borough manager will review the application and make a decision regarding the request. A public hearing is not required. Appeals of this decision are as prescribed in MSB 15.39.030.

(C) The percentage of loss, under MSB [17.80.090\(A\)](#) and (B) shall be determined by an independent adjustor or appraiser who is Financial Institutions Reform and Recovery Enforcement Act (FIRREA) certified or the appraisal must be accompanied by the appraiser's license number and certification of type of appraisal they are licensed to perform.

(Ord. 01-016, § 3, 2001; Ord. 99-197, § 2, 1999; Ord. 95-011(SUB1), § 3 (part), 1995)

#### **17.80.100 TERMINATION OF NONCONFORMITIES.**

When a legal nonconforming permanent structure is abandoned for a period of one year or more, the building shall not then be used except in compliance with this chapter. For the purposes of this chapter, abandonment means discontinuation or failure to complete construction and begin use, for a continuous period of more than one year. Whether the property owners intended to abandon the structure is not relevant to an abandonment determination. Reconstruction of a damaged nonconforming structure is not prohibited after the one-year period if the reconstruction was prohibited due to lawful orders issued by a court or in the course of an arson or criminal investigation.

(Ord. 95-011(SUB1), § 3 (part), 1995)

#### **17.80.110 VIOLATIONS AND ENFORCEMENT.**

Violations and enforcement of this chapter shall be consistent with the terms and provisions of Chapter 17.56.

(Ord. 95-011(SUB1), § 3 (part), 1995)

**From:** [Woolley, Oran L.\(DEC\)](#)  
**To:** [Alex Strawn](#)  
**Subject:** Unsolicited comments  
**Date:** Friday, March 3, 2023 11:51:24 AM

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**[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]**

Hi Alex,

The idea of approving a structure 25 feet from a lakeshore (or waterbody) is a bad idea. It will make it nearly impossible for many of them to construct a water and sewer system that meets ADEC requirements for a 100 foot setback. The 75 foot setback is marginal in many cases. Changing to even less than that will be problematic.

If you wish to discuss further, feel free to email me. We can make arrangements to have a cup of coffee sometime.

Oran

*Oran Woolley  
Environmental Engineering Associate  
Alaska Department of Environmental Conservation  
Division of Water, Engineering Support & Plan Review  
(907) 376-1852*

22 Feb 2023

Re: MSB Assembly proposal to repeal shoreline setback code

Dear members of the Planning Commission:

I urge you to advise the Planning Commission to not repeal the shoreline setback code. The current setback protects life and property from flooding and erosion. If the setback also requires a vegetated swath between buildings and water, it also has the potential to protect water quality and provide important fish habitat.

### **Initiative behind the proposal**

Home-owners who have built too close to water, whether intentionally against code or not, are out of compliance with MSB code. This means that when they go to sell a home, a bank may decide not to provide a mortgage to a potential buyer. This has driven the Assembly to propose repealing the setback ordinance, so everyone would be in compliance.

### **Protection of life and property**

Rivers and streams are dynamic. The channels of rivers in particular can move between one bank and another over time, and cause erosion on either bank, even when trees have grown up over decades during which the channel has settled against the opposite bank. When people buy property, they don't always know that. And even if they knew to check floodplain maps, not all areas are mapped. Here is a story:

*Around 2019, a couple wanted to retire from Hawaii to Alaska and found property on the Matanuska River. They saw it in winter, loved it, and bought it. But the couple that sold it did not disclose that they were selling because they were worried about erosion. When spring came, the river was raging and eating away at the bank and they had to move their house. There was no other good spot on the property to move it, and they had already spent all their money buying the property.*

Even if the Mat-Su Borough (MSB) had wanted to help them, they could not. They don't have the money. The MSB has purchased properties damaged by flooding or erosion over at least 3 periods since 1995. What can they do with that land? They can't really sell it to someone to build on, and if they make it into a park, it becomes an expense (for the staff to manager) instead of a taxable property.

- The MSB only purchases property if they have FEMA Hazard Mitigation grant money.
- The MSB can **only** apply for that if there has been a **federal disaster** declared. A state disaster declaration is not enough. When the Little Su River tore out roads in Willow and Houston in August 2022, a state disaster was declared but not a federal one; there was no FEMA money to re-build the roads.
- The MSB can only apply to FEMA for funding to purchase properties damaged by flooding, not erosion.



A federal disaster declaration is not always enough to get FEMA funding. The MSB is competing against other areas of Alaska and the US for a limited pool of money. When they are successful in getting it, it can take years to come. After the flooding in 2012, FEMA money did not start to arrive until 2018, and some of it didn't arrive until 2021. Because of federal changes, MSB staff had to change their applications three times to fit within what was allowed for funding.

Although damage may be most dramatic at rivers, such as the huge chunks the Matanuska River took out of my neighbor's property in Chickaloon this year, but also occurs at streams and can occur at some lakes. There are homes in Houston and Sutton that flood every time a creek rises. These problems have happened from the Butte to Houston to Sutton and Chickaloon. Some of these homes were closer than 75 feet to water, either because they were built prior to the setback ordinance or because home-owners were unaware of the ordinance. At some properties, such as my neighbors in Chickaloon, all buildings were at least 75-feet from the water, but were still impacted through a combination of the Matanuska River changing channels and a very high water year.

How much worse will the problem be if people are allowed to build closer to water? There will certainly be many angry homeowners in the future who won't understand why the MSB can't buy them out.

Would the Planning Commission advise the Assembly to let people build within a few feet of a road, repealing the right of way setback? Wouldn't that pose an increased danger to life and property? Then why repeal the shoreline setback, with similar potential consequences?

### **Protection of water quality and fish habitat**

The 75-foot building setback does not in and of itself protect water quality and fish habitat. If a person paves the entire area between a home/garage/shop and a water body, contaminants will flush straight into the water with every rain and snowmelt. A groomed lawn, full of fertilizers, pesticides, and herbicides, is not much better.

Water quality is protected when contaminants soak into the ground before reaching water, becoming trapped and held in soil and plant roots. Fish habitat is improved when there is vegetation along the banks, which helps to cool the water and harbors the insects that fish eat as they move out over the water.

Appropriate distances and width are likely to be site-specific, so it would be difficult to come up with a single value. The Kenai Peninsula Borough requires a 50-foot vegetated buffer. The state requires 100-foot to 150-foot buffer for commercial timber operations. A timber operation will come in and create a large disturbance for a short period of time, and then move on, potentially replanting the area. A housing development may create a similar degree of disturbance, depending on the size, and is permanent.

Lake and land management plans often require more than 75-feet for a setback:

- Fish Creek Management Plan requires 100-foot setback for buildings near waters containing

anadromous and “high-value resident fish”. Within that setback, natural vegetation must be retained; paving and fertilizers are not permitted.

- The Hatcher Pass Management Plan requires a stream vegetation buffer of at least 100-foot next to anadromous waters.
- The Susitna Area Plan requires a 100-foot building setback along most water bodies.
- The Moose Range Management Plan requires a 200-foot buffer on both sides of anadromous fish streams and 100-foot setback from all perennial streams; both need to keep the streambank vegetation, and wider setbacks are required for steep slopes. At lakes, the buffer depends on the size of the lake – a 200-foot buffer for lakes up to 5 acres and up to 300-foot and 400-foot setback for larger lakes.

The Big Lake Management Plan (1998) recommended reducing the required setback to 45-feet, and requiring Best Management Practices, such as vegetated buffers – however, they recognized that vegetated buffers often need to be 50-feet to 100-feet wide to be effective. The plan lists the requirements from several areas around Alaska and the U.S. (<https://matsugov.us/28-documents/plans/14153-big-lake-lmp>, pdf pages 50-52).

*“..a large setback will accomplish little in terms of water quality protection if all vegetation is cleared between the structure and the lake, whereas a smaller setback may be adequate with the implementation of Best Management Practices.....studies have shown that vegetative buffers can be up to 90 percent efficient in removing sediments if they meet the following design criteria of*

- *Continuous vegetation cover*
- *Buffer widths generally greater than 50 to 100 feet*
- *Gentle gradients less than 10 percent”*

### **What is the solution?**

Because rivers and streams are dynamic, the 75-foot setback should be kept for the protection of life and property.

For lakes, unless there is a history of shoreline areas with flooding or erosion, the focus should be primarily on protecting water quality and fish habitat. Buildings could be closer than 75-feet to lake shores if they have a buffer of vegetation, or an engineered “bio-swale” or other feature designed to slow and trap water, particularly stormwater. The questions that follow would be

- What is an appropriate distance between buildings and shorelines?
- What is an appropriate width of the vegetated buffer to protect water quality and fish?
- Will changing the setback impact current lake management plans?

### ***Recommendations***

1. Lake and land management plans should supercede general MSB setback ordinances; that is, if the MSB reduces the setback requirement, it should be considered a “floor”, the most minimum, and management plans may increase the required setback in the local area.

2. The Assembly should propose that vegetated buffers of at least 50 feet be required on all properties bordering water bodies. **Allow people currently out of compliance to come into code compliance by installing a natural vegetation buffer or engineered bioswale.**
3. Best Management Practices should be required for all properties bordering water bodies.
4. The MSB should make the public more aware of setback ordinances, potentially through an annual postcard to all land-owners, or presenting at community councils. There are only four setback requirements, which would easily fit on a postcard and alert all land-owners before they build.
5. To encourage compliance, fine contractors that knowingly build to close and/or in a floodplain, such as the contractor that just built houses in the floodplain of Wasilla Creek.

Thank you for your consideration.

Kendra Zamzow  
PO Box 1250  
Chickaloon, AK 99674  
(907) 354-3886

*Submit Via Email*

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION  
PUBLIC COMMENT FORM**

A copy of this public comment message will be provided to  
THE PLANNING COMMISSION

Public opinion messaging allows you to send a message to all members of the Planning Commission. If you have any questions, please call (907) 861-7851.

- The email button above only works if you are using Adobe Reader or Acrobat. There are several other ways to submit after you fill out this form and save it.
  - Email: attach it to an email to [MSB.Planning.Commission@matsugov.us](mailto:MSB.Planning.Commission@matsugov.us)
  - Hand Deliver or Mail: The form may be printed and delivered to the Planning Commission Clerk's Office, Planning Department, 350 E. Dahlia Avenue, Palmer, AK 99645.

Title (Mr. Mrs. Ms.):	First Name:	Initial:	Last Name:	Suffix Jr. Sr. II.:
Mailing Address (Address, City, State, and Zip):				
Phone:	Group or Affiliation, if any:			Date:
<b>SUBJECT:</b> Resolution No: PC-_____				
I <b>support</b> the Resolution:                      I <b>oppose</b> the resolution:                      I recommend amendment:				

OTHER SUBJECT:

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MESSAGE:
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**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION  
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Title (Mr. Mrs. Ms.):	First Name:	Initial:	Last Name:	Suffix Jr. Sr. II.:
Mailing Address (Address, City, State, and Zip):				
Phone:	Group or Affiliation, if any:			Date:
<b>SUBJECT:</b> Resolution No: PC-_____				
I <b>support</b> the Resolution:                      I <b>oppose</b> the resolution:                      I recommend amendment:				

OTHER SUBJECT:

MESSAGE:

**From:** [Bee Long](#)  
**To:** [MSB Planning Commission](#)  
**Cc:** [Karol Riese](#)  
**Subject:** Res23-03 PC Meeting 3/20  
**Date:** Wednesday, March 8, 2023 4:14:26 PM  
**Attachments:** [PCRes23.03.docx](#)

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[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

Please include these comments in the packet for the PC 3/20 meeting.  
Thank you.  
Becky Long

3/8/2023

Dear Chairman William Kendig and members of the Mat-Su Borough (MSB) Planning Commission:

Planning Commission (PC) Resolution 23-03 should NOT be passed. The PC should NOT approve the proposed MSB Assembly (MSBA) ordinance that would amend code to allow buildings to be built within 75 feet of water bodies. The PC should support the recommendations of the MSB Fish and Wildlife Commission Resolution FWC 23-01 making recommendations on the proposed water body setback on ordinance 23-002.

I believe FWC 23-01 recommendations achieve a balance between the needs of humans and our valuable fish and wildlife resources and water quality. FWC 23-01 opposes the MSBA ordinance. It recommends that it should fail and to keep the current setback for all water bodies.

One of the main motivations for the Assembly ordinance is the back log of building violations. The FWC resolution's solution to solve past and future violations is as follows. The MSB planning department can draw up shore land and nonpoint pollution mitigation measures that the owners could incorporate in order to assure there is an adequate riparian buffer. In addition, a variance could be issued for new development if proper shore land and nonpoint pollution mitigation measures are undertaken. These provide a reasonable pathway of options to deal with the very real situation.

The current code setback really is just bare bones. It only prevents a building within 75 feet. Further riparian buffer protections are needed to really protect habitat and water quality. These protections could include retention of natural vegetation or bio-swales. The state of Alaska recognizes the significant importance of riparian setback buffers in their forestry regulations to protect fish and wildlife habitat and water quality. Let us follow in their example

Extensive scientific research has been done with much documentation. Riparian buffers along waterways provide important physical, biological, and ecological functions along with positive economic benefits.

Healthy Mat Su lakes and salmon streams are a positive influence on real estate values. Mat Su lakes and streams are worth more than \$2.5

billion in commercial assets. This is 2011 data according to the Mat Su Borough's own Private Property Analyses-the Positive Influence of Lakes, Streams, and Open Spaces on Property Values. (See [https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fMatsu2050.org&c=E,1,BiLbfymgO\\_K6ylGBSztFw9LIPOPOOGEEIo5-wDJTOcuNdva5jXhZFzgHk8\\_LZB2-SWfAZHV\\_8dNlgIeAggppxR6E8tMytQC9I\\_XyWkMa5\\_-BKq-6P-c.&typo=1](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fMatsu2050.org&c=E,1,BiLbfymgO_K6ylGBSztFw9LIPOPOOGEEIo5-wDJTOcuNdva5jXhZFzgHk8_LZB2-SWfAZHV_8dNlgIeAggppxR6E8tMytQC9I_XyWkMa5_-BKq-6P-c.&typo=1))

The Assembly through passage of Resolutions 21-124 and 21-125 has made fisheries protection an important funding priority. Fisheries protection is 1 of 7 FY23 state funding priorities and 1 of 11 FY23 federal priorities. The combined FY 23 asks by the Assembly for fisheries protection is \$6.5 million. Restoration of fish habitat and passage are the goals in order to prevent the declining salmon populations. The borough has already spent \$20 million towards those goals in replacing culverts that ensure fish passage. So why jeopardize all this work and funding by eliminating riparian buffers? It is senseless and extreme.

We know from Assembly Resolution 21-125, that the borough has a HUGE problem now with residences being built too close to waterways. The estimate is of 100 homes worth \$20 million are in high hazard zones for flooding and erosion. Flood mitigation and acquisitions are going to have to be done. So why would we want to create more problems that will cost us money by allowing new buildings to be built right up to the shoreline with no setbacks or riparian buffers?

The current building setback in code is very weak. It is too minimal. An Assembly Ordinance to amend code should not eliminate the building setback. It should be to strengthen the code to include riparian buffers along with building setback.

Becky Long

**MATANUSKA-SUSITNA BOROUGH**

**FISH & WILDLIFE COMMISSION RESOLUTION SERIAL NO. FWC 23-01**

**A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH FISH AND WILDLIFE COMMISSION MAKING RECOMMENDATIONS ON THE PROPOSED WATERBODY SETBACK ORDINANCE 23-002.**

---

WHEREAS, the Matanuska-Susitna Borough has a vested interest in utilizing science-based standards and forward-looking policies to help ensure a balance between the critical fish and wildlife resources of the region with other needs of the population; and

WHEREAS, the importance of riparian setbacks is recognized by the State of Alaska for timber harvest to protect fish habitat and water quality at ponds, lakes, and streams with high value fish (AS 41.17.115a, AS 41.17.950, AAC 95.185a); and

WHEREAS, this is accomplished by requiring a no-cut zone within 100 feet of the shoreline of lakes and ponds or 150 feet of the shoreline of streams with high-value fish (AS 41.17.116b, AS 41.17.950); and

WHEREAS, the Matanuska Susitna Borough is charged by the State of Alaska with Land Use Planning and Implementation; and

WHEREAS, Title 15 of the Borough Code contains a multitude of plans containing statements, goals and objectives about the protection of water quality and shoreline habitat; and

WHEREAS, Title 17 of the Borough Code contains only two sections with minimal regulations concerning waterbody setbacks; and

WHEREAS, the current Matanuska-Susitna Borough code that requires a 75' waterbody setback has been in place since 1973, was reduced to a



45' setback in 1986 but then reinstated back to a 75' in 1987 by voter initiative; and

WHEREAS, the Borough has also conducted a multitude of studies and adopted or facilitated other documents and partnerships concerning waterbody setbacks, protection of water quality and shoreline habitat, which this ordinance is inconsistent with, including:

1. Voluntary Best Management Practices for Development Around Waterbodies
2. Economic Benefits of Sport Fishing in the Mat-Su
3. Shoreland Setbacks Analysis and Recommendation, 1999
4. "It Takes Fish to Make Fish" Board of Fisheries Booklet
5. Mat-Su Basin Salmon Habitat Partnership goals, plans and projects
6. Various other studies, publications and partnerships facilitated by the borough; and

WHEREAS, proposed Assembly Ordinance 23-002 Setback Ordinance Change is inconsistent with the 2005 overall Mat-Su Borough Comprehensive Plan and other planning documents the borough has adopted or facilitated; and

WHEREAS, proposed Assembly Ordinance 23-002 and the associated IM 23-002 do not contain justification for its adoption; and

WHEREAS, the Matanuska-Susitna Borough has spent over \$20 million on aquatic restoration projects in the borough, replacing more than 100

culverts that have restored over 67 stream miles and 6,224 lake acres of anadromous fish habitat; and

WHEREAS, healthy shoreline habitat not only supports our fish and wildlife, but ensures clean water for our communities, key economic opportunities for Alaskans and an effective way of preventing and mitigating floods; and

WHEREAS, economic studies in our region in 2007 and 2017 show the significant positive economic impact sport fishing has on the economy of the MSB, including \$56 million in direct spending benefits to the MSB in 2017 alone, with additional economic benefits from healthy wildlife populations, both of which require adequate habitat locally; and

WHEREAS, an intent of waterbody setbacks is to protect life and property that support a high quality of life while helping maintain clean water and quality fish and wildlife habitat; and

WHEREAS, the Matanuska-Susitna Borough is home to roughly 15% of the state's population and covers over 25,000 square miles, and continues to be the fastest growing region of Alaska with abundant aquatic resources encompassing two major river systems, all six of the Alaska-designated recreation rivers, and contains a multitude of lakes, rivers, and streams supporting fish and wildlife; and

WHEREAS, the Matanuska-Susitna Borough projected growth will increase by approximately 38% by 2050; and

WHEREAS, the Matanuska-Susitna Borough Planning Department estimates that approximately 700 lake shore structures are currently in violation; and

WHEREAS, the Borough Assembly established the Matanuska-Susitna Borough Fish and Wildlife Commission to *"advise and make recommendations to the assembly, borough manager, and/or any state or federal agencies, departments, commissions, or boards possessing jurisdiction in the area of fish, wildlife, and habitat on the interests of the borough in the conservation and allocation of fish, wildlife, and habitat"* and to *"advise the assembly and the borough manager on any other... areas concerning fish, wildlife, habitat, administration, application, enforcement, or appointment... the borough should take on fish, wildlife, or habitat issues"*.

NOW, THEREFORE, BE IT RESOLVED, that the MSB Fish and Wildlife Commission hereby opposes the adoption of Ordinance 23-002; and

BE IT FURTHER RESOLVED that the commission recommends the Assembly fail the ordinance in its current format; and

BE IT FURTHER RESOLVED that the commission recommends the Assembly direct staff to prepare an ordinance that will:

1. Keep the current required 75-foot waterbody setback for all water bodies;
2. Recognize that the borough wishes to provide a reasonable option for resolution of previous and potential future waterbody setback violations;

3. Recognize that the waterbody setback by itself does little to accomplish reasonable protection of surface and sub-surface water quality, waterbodies, shoreland habitat, and critical fish and wildlife resources;
4. Recognize the importance of choosing development options that minimize impacts to critical fish and wildlife resources while appropriately managing the impacts from potential nonpoint source water pollution using best management practices whenever possible like bio-swales or buffers of natural vegetation that help intercept polluted runoff;
5. For existing structures with a waterbody setback violation, provide a path to compliance through adoption of shoreland and non-point source pollution mitigation measures;
6. For new development, allow a variance to waterbody setbacks if proper shoreland and non-point source pollution mitigation is required;
7. Re-institute the mandatory land use permit as a means to improve code compliance and inform and require all future development to be consistent with setbacks and other code requirements, particularly around waterbodies;
8. Incorporate public education strategies and appropriate enforcement options for infractions.

ADOPTED by the Matanuska-Susitna Borough Fish and Wildlife  
Commission this 2nd day of February, 2023.

  
\_\_\_\_\_  
Mike Wood, Chair

ATTEST:

  
\_\_\_\_\_  
Ted Eischeid, MSB Staff

By: A. Strawn  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION RESOLUTION NO. 23-03**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION  
RECOMMENDING APPROVAL OF AN ORDINANCE AMENDING MSB 17.55 AND 17.80  
TO ALLOW STRUCTURES TO BE BUILT WITHIN 75 FEET OF A WATERBODY.

WHEREAS, a 75-foot waterbody setback was originally adopted in 1973 by assembly ordinance; and

WHEREAS, the setback was briefly lowered to 45 feet in 1986 and again increased to 75 feet by voter initiative in 1987; and

WHEREAS, since 1987 hundreds of homes have been constructed in violation of the 75-foot waterbody setback ordinance; and

WHEREAS, most of the construction went undetected due to the lack of any permitting requirement for development within the borough; and

WHEREAS, once violations are discovered, there are no easy or inexpensive remedies to the violation; and

WHEREAS, this ordinance allows structures to be built within 75 feet of a waterbody as long as they are built and designed in accordance with plans developed by an engineer, provide a soil analysis, and ensure protection of surface and subsurface water quality; and

WHEREAS, requiring a 75 foot setback for habitable structures without the requirement for a riparian buffer does not adequately protect water quality.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval of Assembly Ordinance 23-002.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this -- day of --, 2023.

---

WILLIAM KENDIG, CHAIR

ATTEST

---

KAROL RIESE, Planning Clerk

(SEAL)

YES:

NO:

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**INTRODUCTION FOR PUBLIC HEARING  
LEGISLATIVE**

**Resolution No. 23-07**

**A resolution of the Matanuska-Susitna  
Borough Planning Commission  
recommending approval of an ordinance  
amending MSB 15.24.031 - Initiation and  
Amending Lake Management Plans.**

(Page 73-90)

**INTRODUCTION FOR PUBLIC HEARING**



**MATANUSKA-SUSITNA BOROUGH INFORMATION MEMORANDUM**

**IM No. 23-019**

**SUBJECT:** AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 15.24.031, INITIATING AND AMENDING LAKE MANAGEMENT PLANS.

**AGENDA OF:**

**ASSEMBLY ACTION:**

--

**MANAGER RECOMMENDATION:** Refer to Planning Commission for 90 days.

**APPROVED BY MICHAEL BROWN, BOROUGH MANAGER:** \_\_\_\_\_

Route To:	Department/Individual	Initials	Remarks
	Planning Director		
	Borough Attorney		
	Borough Clerk		

**ATTACHMENT (S) :** Fiscal Note: YES \_\_\_ NO X  
 Planning Commission Resolution No. 23-\_\_\_ ( pp)  
 Ordinance Serial NO. 99-103 (3 pp)  
 Ordinance Serial No. 23-008 (9 pp)

**SUMMARY STATEMENT:**

**Lake Management Planning History**

The Matanuska-Susitna Borough (MSB) adopted the first Lake Management Plan (LMP) in 1995. Since then, there have been forty-two LMPs adopted by the Borough Assembly. While each lake that has an adopted LMP is different, the reasoning behind initiating an LMP is quite simple: as populations grow, there is an increase in conflicting uses of the land and water being developed. When this happens to property owners around lakes, residents of the borough have an option of initiating an LMP to resolve conflict among current neighbors while setting a standard for incoming residents. The LMP process is a grassroots planning option, meaning that LMPs must be initiated by a lake community. Once initiated, the residents work together to develop the regulations they think are appropriate for the lake. The Borough's Planning Department staff act as researchers, writers, and neutral meeting facilitators throughout the process. Once the plan is drafted, staff presents

it to the Planning Commission for approval and then the Assembly for adoption.

Lake Management Plans provide guidance for how the surface of the lake is used and makes recommendations concerning public access and education of lake users to meet the goals of the plan. Certain aspects of the plan can be implemented as enforceable regulations through MSB 17.59. In 1999, the Borough Assembly adopted Ordinance NO. 99-103 which established guidelines for appropriate regulations based on the lake size and depth. Residents also have the power to develop their own regulations, as long as the regulations are within borough powers to enforce, to be included in a Lake Management Plan.

Lake Management Plans also provide community goals that normally focus efforts around increasing safety measures, protecting personal property rights and property values, conserving wildlife habitat, and upholding the values and characteristics of each distinct lakeside neighborhood.

### **Code Change Overview**

There have been several attempts within the last 5 years to update the Lake Management Plan process. Most recently, the MSB Assembly voted to adopt the Beverly Lake, Lake Management Plan on December 20, 2022, after a reconsideration of the initial vote on December 8, 2022. Many residents of Beverly Lake showed up at the initial public hearing and the following meeting to speak under audience participation. During this time, the Assembly had the opportunity to learn about the planning process from staff and residents. Planning staff used the opportunity of going through the LMP process with Beverly Lake residents to take note of all the ways that the current code benefits residents, as well as looking at ways to improve the current process for future efficiencies.

Throughout the Beverly Lake process, it became clear that there was a lack of guidance for finalizing an LMP. The changes presented in Ordinance No. 23-009 are intended to give residents and staff a step-by-step process to follow that ensures the public has multiple opportunities to both learn and vote on moving the plan forward. The Assembly asked that staff bring forward changes to the LMP code that included language regarding which properties should be able to vote, as well as the percentage needed in the final ballot to bring the plan to the Assembly for adoption.

### **RECOMMENDATION OF ADMINISTRATION:**

Staff respectfully recommends the Assembly adopt Ordinance Serial No. 23-008 updating the Lake Management Plan code.

CODE ORDINANCE

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 23-008**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING  
MSB 15.24.031 INITIATING AND AMENDING LAKE MANAGEMENT PLANS.

---

WHEREAS, the intent and rationale for this ordinance is found  
in the accompanying Informational Memorandum No. 23-019.

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. Amendment of section. MSB 15.24.031 is hereby  
amended to read as follows:

[A TEMPORARY MORATORIUM ON THE INITIATION OF NEW  
LAKE MANAGEMENT PLANS AND THE AMENDMENT OF ADOPTED LAKE  
MANAGEMENT PLANS IS HEREBY IMPLEMENTED. THIS MORATORIUM  
WILL BE IN EFFECT ONE YEAR FROM THE DATE OF ADOPTION OF  
THE ORDINANCE CODIFIED IN THIS SECTION, UNLESS OTHERWISE  
DEEMED NECESSARY BY THE ASSEMBLY. THE TEMPORARY  
MORATORIUM WILL BE IN EFFECT UNTIL JUNE 16, 2016. THIS  
MORATORIUM DOES NOT AFFECT THE EXISTING LAKE MANAGEMENT  
PLANS IN MSB 15.24.030 (C), AND THE EXISTING REGULATIONS  
IN MSB 17.59, LAKE MANAGEMENT PLAN IMPLEMENTATION.]

(A) The following process shall be followed to

initiate a lake management plan.

(1) A petition shall be submitted to the planning department requesting a lake management plan for a specific lake or lakes. [THE PETITION MUST INCLUDE THE SIGNATURES OF PROPERTY OWNERS (AS LISTED BY BOROUGH TAX ASSESSMENT RECORDS) OF AT LEAST 50 PERCENT OF ALL PARCELS WITHIN 600 FEET UPLAND OF THE RESPECTIVE LAKE SHORELINE OR SIGNATURES OF PROPERTY OWNERS (AS LISTED BY BOROUGH TAX ASSESSMENT RECORDS) OF 50 PARCELS WITHIN 600 FEET UPLAND OF THE RESPECTIVE LAKE SHORELINE, WHICHEVER IS LESS.] Borough, State, and Federally owned parcels, not held in trust, will not be counted toward the petition threshold.

**(2) The Planning Department shall certify a petition to initiate a Lake Management Plan only if the petition contains the following:**

**(a) signatures of at least 50% of all shoreline property owners (as listed by borough tax assessment records) dated within 90 calendar days preceding submission of the petition to the Planning Department.**

(b) the mailing address and legal description of each property, or the property's borough tax identification number, for each petitioner.

(c) the printed name and phone number or email address of each petitioner.

[2] (3) Within 60 calendar days of receipt of a certified petition, the planning department shall mail numbered notices to all shoreline property owners (as listed by borough tax assessment records) [WITHIN 600 FEET UPLAND OF THE LAKE SHORELINE] requesting the property owner to indicate whether or not they are in favor of initiating a lake management plan. One notice per parcel will be mailed using certified mail. A return envelope addressed to the planning department, and a deadline of not less than 60 calendar days for responding in writing shall be specified in the notice. The notice shall state that a lake management plan will be initiated if [A MAJORITY] more than 50% of [THE] all shoreline property owners responding to the planning department prior to the deadline are in favor of developing a lake management plan.

[3] (4) The written responses returned to the planning department prior to the deadline will be

tabulated. A lake management plan will be initiated if [THE MAJORITY] more than 50% of [THE] all shoreline property owners responding are in favor of developing a lake management plan. Borough, State, and Federally owned parcel not held in trust, will not be counted toward the tabulation.

[4] (5) The planning department shall notify all shoreline property owners (as listed by borough tax assessment records) [WITHIN 600 FEET UPLAND OF THE LAKE SHORELINE] whether or not a lake management plan will be initiated.

[5] (6) When a lake management plan is initiated, the planning department shall provide a notice to the appropriate community council[,], and assembly member, post a notice at the public access points to the respective lake as identified through current use, [AND] post a notice in a newspaper of general circulation distributed within the borough, and develop a public-facing project website to be updated regularly throughout the planning process.

[6] (7) [ALL] The Planning Department shall facilitate at least three lake management plan meetings that shall be open to the public and advertised in a newspaper of general circulation distributed within the



borough.

(8) Planning staff shall draft a Lake Management Plan based on community input from public meetings, written comments, and the Assembly-adopted guidelines for lake usage based on lake size and depth.

(9) Residents shall have 30 days to review the draft plan and its proposed regulations.

(10) The Planning Department will have 30 days after the community review period to make the final edits to the plan.

(11) The Planning Department shall mail numbered ballots to all shoreline property owners (as listed by borough tax assessment records) to indicate whether or not they are in favor of moving the lake management plan forward to the Planning Commission and Assembly. One ballot per parcel will be mailed using certified mail. The ballot shall include one pre-stamped return envelope addressed to the planning department. The ballot shall specify a deadline of not less than 60 calendar days for responding in writing to the planning department. The notice shall state that a lake management plan will be brought to the Planning Commission and Assembly if more than 60% of all

responding shoreline property owners are in favor of the lake management plan.

(12) If more than 60% of all ballots received by the planning department by the ballot deadline are in favor of the lake management plan, the planning department will present the plan and its corresponding ordinance to the Planning Commission and Assembly for public hearing.

(B) The following process shall be followed to amend an adopted lake management plan:

(1) Lake management plan amendments shall be in compliance with MSB 15.24.030.

(2) A lake management plan amendment process shall follow the steps of initiating a lake management plan in accordance with MSB 15.24.031(A).

[(2) A PETITION SHALL BE SUBMITTED TO THE PLANNING DEPARTMENT REQUESTING AN AMENDMENT TO AN ADOPTED LAKE MANAGEMENT PLAN FOR A SPECIFIC LAKE OR LAKES. THE PETITION MUST INCLUDE A GENERAL DESCRIPTION OF THE PROPOSED AMENDMENT AND INCLUDE THE SIGNATURES OF PROPERTY OWNERS (AS LISTED BY BOROUGH TAX ASSESSMENT RECORDS) OF AT LEAST 50 PERCENT OF ALL PARCELS WITHIN

600 FEET UPLAND OF THE RESPECTIVE LAKE SHORELINE, OR SIGNATURES OF PROPERTY OWNERS OF 50 PARCELS WITHIN 600 FEET UPLAND OF THE RESPECTIVE LAKE SHORELINE, WHICHEVER IS LESS. BOROUGH, STATE, AND FEDERALLY OWNED PARCELS, NOT HELD IN TRUST, WILL NOT BE COUNTED TOWARD THE PETITION THRESHOLD.]

[(3) WITHIN 60 CALENDAR DAYS OF RECEIPT OF A PETITION TO AMEND AN ADOPTED LAKE MANAGEMENT PLAN, THE PLANNING DEPARTMENT SHALL MAIL NUMBERED NOTICES TO ALL PROPERTY OWNERS (AS LISTED BY BOROUGH TAX ASSESSMENT RECORDS) WITHIN 600 FEET UPLAND OF THE LAKE NOTIFYING THEM OF THE REQUEST TO AMEND THE LAKE MANAGEMENT PLAN. ONE NOTICE PER PARCEL WILL BE MAILED. THE NOTICE SHALL INCLUDE THE PROPOSED AMENDMENT AND REQUEST THE PROPERTY OWNER TO INDICATE WHETHER OR NOT THEY ARE IN FAVOR OF INITIATING A PROCESS TO CONSIDER THE AMENDMENT. A RETURN ENVELOPE ADDRESSED TO THE PLANNING DEPARTMENT, AND A DEADLINE OF NOT LESS THAN 60 CALENDAR DAYS FOR RESPONDING IN WRITING, SHALL BE SPECIFIED IN THE NOTICE. THE NOTICE SHALL STATE THAT THE PROCESS WILL BE INITIATED IF A MAJORITY OF THE PROPERTY OWNERS RESPONDING TO THE PLANNING DEPARTMENT PRIOR TO THE DEADLINE ARE IN FAVOR OF CONSIDERING THE AMENDMENT.]

[(4) THE WRITTEN RESPONSES RETURNED TO THE

PLANNING DEPARTMENT PRIOR TO THE DEADLINE WILL BE TABULATED. THE PROCESS WILL BE INITIATED IF THE MAJORITY OF THE PROPERTY OWNERS RESPONDING ARE IN FAVOR OF INITIATING THE PROCESS. BOROUGH, STATE, AND FEDERALLY OWNED PARCEL NOT HELD IN TRUST, WILL NOT BE COUNTED TOWARD THE TABULATION.]

[(5) THE PLANNING DEPARTMENT SHALL NOTIFY ALL PROPERTY OWNERS (AS LISTED BY BOROUGH TAX ASSESSMENT RECORDS) WITHIN 600 FEET UPLAND OF THE LAKE SHORELINE WHETHER OR NOT THE AMENDMENT PROCESS WILL BE INITIATED.]

[(6) WHEN AN AMENDMENT IS INITIATED, THE PLANNING DEPARTMENT SHALL PROVIDE A NOTICE TO THE APPROPRIATE COMMUNITY COUNCIL, POST A NOTICE AT THE PUBLIC ACCESS POINTS TO THE RESPECTIVE LAKE AS IDENTIFIED THROUGH CURRENT USE, AND POST A NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION DISTRIBUTED WITHIN THE BOROUGH.]

[(7) ALL LAKE MANAGEMENT PLAN MEETINGS SHALL BE OPEN TO THE PUBLIC AND ADVERTISED IN A NEWSPAPER OF GENERAL CIRCULATION DISTRIBUTED WITHIN THE BOROUGH.]

Section 3. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2023.

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

**15.24.031 INITIATING AND AMENDING LAKE MANAGEMENT PLANS.**

A temporary moratorium on the initiation of new lake management plans and the amendment of adopted lake management plans is hereby implemented. This moratorium will be in effect one year from the date of adoption of the ordinance codified in this section, unless otherwise deemed necessary by the assembly. The temporary moratorium will be in effect until June 16, 2016. This moratorium does not affect the existing lake management plans in MSB 15.24.030(C), and the existing regulations in MSB 17.59, Lake Management Plan Implementation.

(A) The following process shall be followed to initiate a lake management plan.

(1) A petition shall be submitted to the planning department requesting a lake management plan for a specific lake or lakes. The petition must include the signatures of property owners (as listed by borough tax assessment records) of at least 50 percent of all parcels within 600 feet upland of the respective lake shoreline or signatures of property owners (as listed by borough tax assessment records) of 50 parcels within 600 feet upland of the respective lake shoreline, whichever is less. Borough, State, and Federally owned parcels, not held in trust, will not be counted toward the petition threshold.

(2) Within 60 calendar days of receipt of a petition, the planning department shall mail numbered notices to all property owners (as listed by borough tax assessment records) within 600 feet upland of the lake shoreline requesting the property owner to indicate whether or not they are in favor of initiating a lake management plan. One notice per parcel will be mailed. A return envelope addressed to the planning department, and a deadline of not less than 60 calendar days for responding in writing shall be specified in the notice. The notice shall state that a lake management plan will be initiated if a majority of the property owners responding to the planning department prior to the deadline are in favor of developing a lake management plan.

(3) The written responses returned to the planning department prior to the deadline will be tabulated. A lake management plan will be initiated if the majority of the property owners responding are in favor of developing a lake management plan. Borough, State, and Federally owned parcel not held in trust, will not be counted toward the tabulation.

(4) The planning department shall notify all property owners (as listed by borough tax assessment records) within 600 feet upland of the lake shoreline whether or not a lake management plan will be initiated.

(5) When a lake management plan is initiated, the planning department shall provide a notice to the appropriate community council, post a notice at the public access points to the respective lake as identified through current use, and post a notice in a newspaper of general circulation distributed within the borough.

(6) All lake management plan meetings shall be open to the public and advertised in a newspaper of general circulation distributed within the borough.

- (B) The following process shall be followed to amend an adopted lake management plan:
- (1) Lake management plan amendments shall be in compliance with MSB 15.24.030.
  - (2) A petition shall be submitted to the planning department requesting an amendment to an adopted lake management plan for a specific lake or lakes. The petition must include a general description of the proposed amendment and include the signatures of property owners (as listed by borough tax assessment records) of at least 50 percent of all parcels within 600 feet upland of the respective lake shoreline, or signatures of property owners of 50 parcels within 600 feet upland of the respective lake shoreline, whichever is less. Borough, State, and Federally owned parcels, not held in trust, will not be counted toward the petition threshold.
  - (3) Within 60 calendar days of receipt of a petition to amend an adopted lake management plan, the planning department shall mail numbered notices to all property owners (as listed by borough tax assessment records) within 600 feet upland of the lake notifying them of the request to amend the lake management plan. One notice per parcel will be mailed. The notice shall include the proposed amendment and request the property owner to indicate whether or not they are in favor of initiating a process to consider the amendment. A return envelope addressed to the planning department, and a deadline of not less than 60 calendar days for responding in writing, shall be specified in the notice. The notice shall state that the process will be initiated if a majority of the property owners responding to the planning department prior to the deadline are in favor of considering the amendment.
  - (4) The written responses returned to the planning department prior to the deadline will be tabulated. The process will be initiated if the majority of the property owners responding are in favor of initiating the process. Borough, State, and Federally owned parcels, not held in trust, will not be counted toward the tabulation.
  - (5) The planning department shall notify all property owners (as listed by borough tax assessment records) within 600 feet upland of the lake shoreline whether or not the amendment process will be initiated.
  - (6) When an amendment to a lake management plan is initiated, the planning department shall provide a notice to the appropriate community council, post a notice at the public access points to the respective lake as identified through current use, and post a notice in a newspaper of general circulation distributed within the borough.
  - (7) All lake management plan meetings shall be open to the public and advertised in a newspaper of general circulation distributed within the borough.

(Ord. 15-063, § 2, 2015; Ord. 03-044(AM), § 2, 2003; Ord. 99-102(AM), § 2, 1999)

By: K. Anderson  
Introduced: March 6, 2023  
Public Hearing: March 20, 2023  
Action:

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION RESOLUTION NO. 23-07**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTION OF ORDINANCE NO. 23-008 AMENDING MSB 15.24.031, INITIATING AND AMENDING LAKE MANAGEMENT PLANS.

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WHEREAS, the Matanuska-Susitna Borough adopted the first Lake Management Plan (LMP) in 1995; and

WHEREAS, there have been forty-two LMPs adopted since then; and

WHEREAS, LMPs are just one tool the Assembly can use to help Borough residents manage current conflicts that arises from population growth and development, and set standards for future residents; and

WHEREAS, the LMP process is a grassroots planning process, meaning that LMPs must be initiated by a lake community. Once initiated, the residents work together to develop the regulations they think are appropriate for the lake. The Borough's Planning Department staff act as researchers, writers, and neutral meeting facilitators throughout the process; and



WHEREAS, LMPs provide lakeside communities with common goals that focus on increasing safety, protecting personal property, conserving wildlife habitat, and upholding the values and characteristics of each distinct lakeside neighborhood; and

WHEREAS, there have been several attempts to update the LMP process; and

WHEREAS, the Beverly Lake, LMP process highlighted several necessary changes to the LMP code to make it a fairer, more efficient process; and

WHEREAS, the code changes provide a clear path from the petition and initiation steps to implementation; and

WHEREAS, the proposed code changes add a final vote to the process and require a 60% voter approval for a plan to move forward to the Assembly for adoption; and

WHEREAS, the proposed code changes also modify the buffer for voting and notification to only shoreline owners.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby

ADOPTED by the Matanuska-Susitna Borough Planning Commission  
this -- day of --, 2023.

\_\_\_\_\_  
, Chair

ATTEST

\_\_\_\_\_  
KAROL RIESE, Planning Clerk

(SEAL)

YES:

NO:

DRAFT



## 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)

#### MEMORANDUM

DATE: March 8, 2023

TO: Planning Commissioners

FROM: Alex Strawn, Planning and Land Use Director 

SUBJECT: Tentative Future PC Items

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#### Upcoming PC Actions

##### Quasi-Judicial

- Talkeetna Connection – Marijuana Retail Facility; 24N04W29D002 (Staff: Peggy Horton)
- Dime Bag – Marijuana Retail Facility; 6298B01L002 (Staff: Peggy Horton)
- Green Go, LLC – Marijuana Cultivation Facility; 17N01W11A020 (Staff: Rick Benedict)
- The Aardvark – Alcoholic Beverage Dispensary; 1454000L001 (Staff: Peggy Horton)
- Durham School Services – Core Area CUP; 7954000L002 & 8913000L009A (Staff: Peggy Horton)
- Smoke Out Point – Marijuana Retail Facility; 2209B02L001A (Staff: Peggy Horton)
- Harmon Schrock – Earth Materials Extraction; 18N01W15B010 (Staff: Peggy Horton)
- Jewels Acres – Earth Materials Extraction; 6469B02L006 (Staff: Peggy Horton)
- Debach Auto Salvage – Junk Yard; 17N02W22A009 & A010 (Staff: Peggy Horton)
- Fairview Inn – Alcoholic Beverage Dispensary; 7000B12L0020-1 (Staff: Peggy Horton)
- Luiten on Big Lake – Variance; 6285000T001A (Staff: Peggy Horton)

**Legislative**

- Historic Preservation Plan (HPP) (Staff: Gerrit Vebeek)
- Municipal Separate Storm Sewer System (MS4) (Staff: Kim Sollien)
- Bike and Pedestrian Plan (Staff: Kelsey Anderson)
- MSB Borough-Wide Comprehensive Plan (Staff: Kelsey Anderson)
- Glacier View Comprehensive Plan Update (Staff: Leda Borys)
- Coordinated Human Services Transportation Plan (Staff: Kim Sollien)
- Metropolitan Planning Organization (MPO) Formation (Staff: Kim Sollien)
- Corridor Studies (Staff: Kim Sollien)
- Long-Range Transportation Plan ~~Scoring Criteria and Project List~~ Update (Staff: Kim Sollien)
- Public Transit Plan (Staff: Kim Sollien and Maija DiSalvo)
- Facilities Plan (Staff: Gerrit Verbeek)