

**MATANUSKA-SUSITNA BOROUGH**  
**Waterbody Setback Advisory Board**

350 E Dahlia Ave., Palmer, Alaska 99645

**CHAIRPERSON**

Bill Kendig

**VICE CHAIR**

C.J. Koan

**MSB STAFF**

Alex Strawn

**Clerk**

Lacie Olivieri



**BOARD MEMBERS**

Carl Brent

Jeanette Perdue

Tim Alley

Bill Klebesadel

Bill Haller

Matthew LaCroix

Kendra Zamzow

**Regular Meeting**

August 27, 2024

Meeting Packet - Table of Contents

**Pg. = Item:**

- 1 = Agenda
- 3 = Draft Ordinance from 8/13/24
- 27 = Matt Lacroix Edits
- 56 = Bill Haller Edits
- 78 = Kendra Zamzow Edits
- 101 = Resolution 24-01
- 107 = MSB Code Chapter 17.02
- 112 = MSB Code Chapter 17.55

**Physical Location of Meeting:** Employee Breakroom, DSJ Bldg, 350 E. Dahlia Ave., Palmer

**Remote Participation:** See attached agenda on p. 1

**Planning and Land Use Department - Planning Division**

<http://www.matsugov.us> • [planning@matsugov.us](mailto:planning@matsugov.us)



## 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)

## WATERBODY SETBACK ADVISORY BOARD AGENDA

Edna DeVries, Mayor

Michael Brown, Borough Manager

CJ Koan, (Vice-Chair) Planning Commission  
Kendra Zamzow, MSB Fish and Wildlife  
Matthew LaCroix, Mat-Su Salmon Habitat Partnership  
Tim Alley, Design & Construct Stormwater Abatement Background  
Bill Klebesadel, Design & Construct Stormwater Abatement Background  
William Haller, Home Builder, Lending, Real Estate Background  
Carl Brent, At-Large  
Bill Kendig (Chair), At-Large  
Jeanette Perdue, At-Large

PLANNING & LAND USE DEPARTMENT  
Alex Strawn, Planning & Land Use Director  
Vacant, Planning Services Manager  
Jason Ortiz, Development Services Manager  
Fred Wagner, Platting Officer

Location:

*Employee Breakroom of the  
Dorothy Swanda Jones Building  
350 E. Dahlia Avenue, Palmer*

Support Staff: Alex Strawn, Planning & Land Use Director

**REGULAR MEETING**

**5:00 P.M.**

**August 27, 2024**

### 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 Alex Strawn at [Alex.strawn@matsugov.us](mailto:Alex.strawn@matsugov.us) and Lacie Olivieri at [Lacie.olivieri@matsugov.us](mailto:Lacie.olivieri@matsugov.us). Written comments are due at noon on Friday prior to the meeting.

### REMOTE PARTICIPATION VIA MICROSOFT TEAMS:

Meeting ID: 272 065 395 549

Passcode: PVc65q

Or

Dial in by phone: 907-290-7880

Phone conference ID: 803 375 106#

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

II. APPROVAL OF AGENDA



III. PLEDGE OF ALLEGIANCE

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

V. ITEMS OF BUSINESS

A. **Draft Ordinance** - AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 TO ALLOW STRUCTURES TO BE CONSTRUCTED WITHIN 75 FEET OF A WATERBODY, SO LONG AS CERTAIN ENGINEERING STANDARDS TO PROTECT WATER QUALITY ARE APPLIED.

B. **Draft Resolution** - A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH WATERBODY SETBACK ADVISORY BOARD RECOMMENDING CHANGES TO MSB 17.55 – SETBACK AND SCREENING EASEMENTS, MSB 17.02 – MANDATORY LAND USE PERMIT, AND MSB 17.65 - VARIANCES.

VI. BOARD MEMBER COMMENTS

VII. ADJOURNMENT



Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH**  
**ORDINANCE SERIAL NO. Choose an item. \_\_\_\_\_**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 - SETBACK AND SCREENING EASEMENTS AND MSB 17.02 MANDATORY LAND USE PERMIT.

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BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 24-XX.

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

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

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]

Section

- 17.55.004 DEFINITIONS
- 17.55.005 [GENERAL] **PURPOSE AND INTENT**
- 17.55.010 SETBACKS **FROM RIGHT OF WAY AND LOT LINES**
- 17.55.015 SHORELANDS; DEFINITION [REPEALED]
- 17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES**
- 17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES**
- 17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY**
- 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.

- "All stormwater runoff" means the calculated volume of runoff that would be generated from the parcel by a maximum precipitation event, including rain-on-snow events, based on the site development plan.

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

- "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.

• “Cleared area” means an area where existing vegetative cover and surficial soil layers, including organic matter or duff, is removed or altered by ground-disturbing activities including mechanized land clearing, grading, contouring, and fill placement.

• “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.

- "Kennel" means any premises or facility used for breeding, buying, selling, keeping, or boarding five or more dogs over the age of six months, whether for profit or not.

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

- "Livestock" is defined as including, but not limited to, domestic animals such as horses, cattle, sheep, goats, pigs, chickens, ducks, and other animals normally considered farm animals, whether kept for profit or not. This definition also includes sled dogs housed at a licensed mushing facility.

-  "Lot" means the least fractional part of subdivided lands having limited fixed boundaries

and having an assigned number, or other name through which it may be identified.

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

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

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

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

- "Parcel" means an unsubdivided plot of land.

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

- **"Qualified professional" means a professional**

civil engineer or other professional registered with the state of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.

- "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.

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

- "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.

**17.55.005 [GENERAL] PURPOSE AND INTENT.**

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

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

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

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

(1) These sections establish requirements related to the development and management of lands adjacent to waterbodies.

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

**runoff and subsurface leaching.**

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

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

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

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

(B) Except where specifically provided otherwise 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.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

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

(B) Kennels or livestock waste facilities shall not be located closer than 100 feet from the ordinary high water mark of any water body. Drainage from kennels, and livestock waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body.

(1) This setback shall not apply to private ponds.

(C) All petroleum fuels, oils, and lubricants, located or stored closer than 75 feet from the ordinary high water mark of any water body shall include the following measures to minimize the risk of spills:

(1) Gravity-fed or other fuel delivery systems with the potential for a full-volume leak shall have secondary containment equal to 110 percent of the storage volume.

(2) Pump-activated fuel-delivery systems where the potential spill volume is limited shall have



drip collection.



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

(D) Unless specifically authorized under other sections of MSB code, the application of fertilizers and herbicides is prohibited within 25 feet of a waterbody.

**17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES.**

(A) Except as provided in subsection (B) of this section, and 17.55.030, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE, E] Eaves may project three feet into the required setback area.

(B) Docks, piers, marinas, aircraft hangars, open air structures such as gazebos or pavilions, 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) A permit in accordance with MSB 17.02 is required prior to construction or placement of any building within 75 feet of any waterbody.**

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

(a) be built over, in, or immediately adjacent to 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.]

**(C) Variances.**

**(1) No variances from the waterbody setback will be granted for structures within 45 feet of a waterbody.**

**(2) Applications for a waterbody setback variance must demonstrate that they comply with MSB 17.55.030 and MSB 17.55.016.**

**17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY**

(A) All structures that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered, are legal nonconforming pursuant to MSB 17.80.020(A)(1).

(B) Non-habitable structures that were constructed between September 16, 1988 and the effective date of this section are legal nonconforming pursuant to MSB 17.80.020(A)(1).

(C) Structures that were completed between July 3, 1973, and January 1, 1987, and have not subsequently been enlarged or altered, that are located between 45 and 75 feet from the ordinary high water mark of a water body are legal nonconforming status pursuant to MSB 17.80.020(A)(2).

(D) Structures that were constructed between 45 and 75 feet of the ordinary high water mark of a lake between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.

17.55.030 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF A WATERBODY

(A) A permit in accordance with MSB 17.02 is required prior to:

(1) Any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placement of fill.

(2) construction or placement of any building within 75 feet of any waterbody.

(B) The director may issue a land use permit for development within the 75-foot waterbody setback only upon finding that the development meets the following standards:

(1) Impervious surfaces will not exceed 20% of the area within the 75-foot setback;

(2) A riparian buffer is maintained in accordance with 17.55.030(C); and

(3) Design demonstrates compliance with the provisions of MSB 17.55.016.

(C) Riparian buffer. Natural vegetation along waterbodies controls erosion and bank stability, provides fish and wildlife habitat, moderates temperature, enhances scenic beauty, and is the preferred method for reducing pollution from runoff.

(1) Within 25 feet of the shoreline, 50% of the area shall be retained as an undisturbed riparian buffer except for pruning for vegetation health and the removal of dead, diseased, or fallen trees. Removal of tree root masses within the riparian buffer is prohibited.

(D) For structures seeking nonconforming status in accordance with MSB 17.80.020(B)(4), the additional following apply:

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

(a) Runoff pollution mitigation measures include any combination of bio-swales, rain gardens, riparian buffers, flow barriers, filter strips, or other features adequate to treat and retain all stormwater or snowmelt runoff associated with a development. The use of native vegetative buffers is the preferred runoff pollution mitigation measure. Where practicable, the land use permit shall require the establishment and retention of native vegetation.

(b) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit

(2) applications shall include information sufficient to demonstrate the following:

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

pollutants to stormwater runoff;

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

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

(d) site-specific analyses indicating that the required vegetated buffer and proposed runoff pollution mitigation measures will effectively treat and retain all stormwater runoff from the parcel.

(3) engineered plans and specifications shall be submitted for an engineering review;

(4) the development shall be designed and constructed in accordance with MSB 17.55.016 and local, state, and federal laws;

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

**17.55.035 WATER BODY HABITAT PROTECTION TAX CREDIT**

**(A) Consistent with AS 29.45.046, the borough may grant a credit to offset a portion of property taxes due on land upon which an improvement has been constructed that aids in**

**(1) protecting a river from degradation of fish habitat due to public or private use; or**

**(2) restoring riparian fish habitat along or in a river that has been damaged by land use practices.**

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

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

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

Section 3. Amendment of Section. MSB 17.80.020 is hereby amended as follows:

**17.80.020 LEGAL NONCONFORMING STRUCTURES**

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

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





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

(b) Non-habitable structures that were constructed between September 16, 1988 and the effective date of this section are legal nonconforming.

(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.

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

(B) The following structures require an administrative determination in order to be granted

legal nonconforming status;

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

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

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

**(4) Structures that were constructed between 45 and 75 feet of the ordinary high water mark of a lake between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.**

Section 4. Amendment of Paragraph. MSB 17.02.020(A) (6) is hereby amended as follows:

(6) construction or placement of any building, structure, or any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placement of fill within 75 feet of any water body[;].

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

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

- (i) north arrow;
- (ii) boundaries of parcel;
- (iii) size, location, and setback dimensions of proposed structures;
- (iv) names and location of adjacent roadways;
- (v) location of rights-of-way and public easements within and adjacent to the parcel;
- (vi) location and name of adjacent water bodies;
- (vii) location of subsurface sewage disposal systems; [AND]
- (viii) intended use of proposed

structures[.]

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

(x) any areas of proposed ground  
disturbance.

Section 6. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2024.

\_\_\_\_\_  
EDNA DeVRIES, Borough Mayor

ATTEST:

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

(SEAL)



CODE ORDINANCE

DRAFT 7/15/2024

Matt LaCroix Edits

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH**  
**ORDINANCE SERIAL NO.** Choose an item. \_\_\_\_

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 - ~~SETBACK AND SCREENING EASEMENTS AND MSB 17.02 - MANDATORY LAND USE PERMIT TO ALLOW STRUCTURES TO BE CONSTRUCTED WITHIN 75 FEET OF A WATERBODY, SO LONG AS CERTAIN ENGINEERING STANDARDS TO PROTECT WATER QUALITY ARE APPLIED.~~

BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 24-XX.

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

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

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]

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- 17.55.020 SETBACKS FOR [SHORELANDS] **STRUCTURES**
- 17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY**
- 17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES

17.55.050 VARIANCES

**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.
- "All stormwater runoff associated with a development" means the calculated volume of runoff that would be generated from the parcel by a maximum precipitation event, including rain-on-snow events, based on the site development plan.
- "Animal waste facilities" means any area or structure used to store, compost, or dispose of animal manure, animal byproducts, an animal carcass, or fish waste. The term does not include a dumpster or other closed container provided by a waste service provider.
- "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.

- **"Cleared area" means an area where existing vegetative cover and surficial soil layers, including organic matter or duff, is removed or altered by ground-disturbing activities including mechanized land clearing, grading, contouring, and fill placement.**

- "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.

- "Dock" means a pile-supported or floating, open structure without walls or roof that is designed and used for access to and from the water rather than for storage, habitation, or other purposes. Unless otherwise specified, the term includes access ramps, gangways, ladders and steps.

- "Impervious surface" means those surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates. The term also includes areas of compacted and frozen soils from which precipitation runs off.

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

- "Kennels, stables, and animal yards" means any premises used for breeding, buying, selling,

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

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

• "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.

- "Minimal disturbance" means to retain the principal character and function of the riparian buffer through the maintenance of native vegetation, soil, and land contour characteristics. Limited clearing of vegetation is allowed.

- "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.

- "Parking area/lot" means any public or private area, under or outside a building, designed and

used for parking motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets.

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

• "Qualified professional" means a professional civil engineer or other professional registered with the state of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.

• "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.

• "Riparian buffer" and "vegetated buffer" both mean an area of undisturbed native vegetation, except that dead, diseased, or dying trees may be removed.

• "Runoff pollution mitigation measure" means any combination of bioswales, rain gardens, riparian buffers, filter strips, or other features adequate to treat and retain all stormwater

runoff associated with a development.

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

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

• "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.

- "Treat and retain" means to manage stormwater on the parcel through any combination of detention, retention, infiltration, and evapotranspiration to prevent a discharge of stormwater runoff to a water body.

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

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

- "Water-dependent accessory structure" means a structure necessary to support access to or use of the water (e.g., a shed used to store boating accessories) or waterfront (e.g., a gazebo). Water-dependant accessory structures shall not exceed 400 square feet in size.

**17.55.005 [GENERAL] PURPOSE AND INTENT.**

(A) This chapter establishes minimum structural setbacks from lot lines, [WATER COURSES AND] water bodies, and rights-of-way. [, AND SPECIFIC SCREENING EASEMENTS FOR CERTAIN LANDS WITHIN SUBDIVISIONS] It also establishes standards for riparian buffers for lands adjacent to water bodies, and requirements related to the development and management of lands

within the waterbody setback. The standards contained herein apply to all lands in the Matanuska-Susitna Borough except where otherwise specified in special land use district regulations within this title.

(B) The purpose of this chapter is to:

(1) Provide for light and air, fire protection, traffic safety, preservation of privacy by spacing buildings apart, and to uphold neighborhood aesthetics through uniform building placement. Setbacks also aid in effective stormwater management, provides necessary space for utility lines, and promotes ease of access for maintenance; and

(2) Protect the ecologic functioning of surface waters within the borough by avoiding and minimizing the discharge of pollutants to water bodies via surface runoff and subsurface leaching. The requirements are intended to protect human health, aquatic and riparian habitat, the local economy and property values, recreation, and quality of life. In the case of setbacks from flowing waters, an additional purpose is to minimize risk to structures from lateral channel migration and flooding.

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



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

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

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

(B) Except where specifically provided otherwise 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.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

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

(B) Kennels, stables, animal yards and animal waste facilities shall not be located closer than 1[5]100 feet from the ordinary high water mark of any water body. Drainage from kennels, stables, animal yards and animal waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body.

Commented [AS2]: Cannot find where these are defined?

(1) This setback shall not apply to private ponds.

(C) All liquid hazardous substances, including petroleum fuels, oils, and lubricants, located or stored closer than 75 feet from the ordinary high water mark of any water body shall include the following measures to minimize the risk of spills:

(1) Secondary containment equal to 110 percent of the storage volume shall be provided for gravity-fed or other systems with the potential for a full-volume leak. All piping and valves shall be within secondary containment.

(2) Drip collection shall be provided for pump-activated systems where the potential spill volume is limited.

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

(E) Vehicle parking areas shall not be located closer than 75 feet from the ordinary high water mark of any water body.

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

(1) Removal of native vegetation from more than 50 percent of the surface area.

(2) Alteration of original land contours via grading and filling, including the discharge of fill to wetlands, of more than 50 percent of the surface area.

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

wastes.

(4) Stockpiling and storing snow.

(5) The application of fertilizers or herbicides.

**17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES.**

(A) Except as provided in subsection (B) of this section, and 17.55.030, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE, E] eaves may project three feet into the required setback area.

(B) Docks, piers, marinas, aircraft hangars, open air structures such as gazebos or pavilions, and boathouses and water-dependant accessory structures 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. meet all applicable regulatory standards and receive prior authorization via land use permit in accordance with MSB 17.02.

Commented [AS3]: define  
Commented [AS4R3]: Define and consider adding to list

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

([1]2) In addition to the land use permit requirements identified in MSB 17.02.035, docks, piers, marinas, aircraft hangars, boathouses and water-dependant accessory structures must meet the following standards.~~Boathouses or aircraft hangars which are exempt from a minimum shoreline setback for structures shall:~~

(a) The structure shall not be used for habitation or be usable as a garage or habitable structure without significant alteration. ~~be built over, in, or immediately adjacent to a waterbody and used solely for storing boats and boating accessories;~~

(b) The structure shall not contain sanitary or petroleum fuel storage facilities. ~~be designed, constructed and oriented for primary access by boats or aircraft directly to a waterbody;~~

(c) Over-water structures shall not contain

creosote or pentachlorophenol as wood preservatives.  
~~not have more than incidental accessory access to a  
street or driveway; and~~

(d) Aircraft hangars and boathouses shall be  
designed, constructed, and oriented for primary access  
by aircraft or boats directly to a waterbody and shall  
not have more than incidental access to a street or  
driveway. ~~not be usable as a garage or habitable  
structure without significant alteration.~~

(e) Water-dependant accessory structures  
shall not exceed 400 square feet in size.

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

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

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

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

**17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY**

**(A) All structures that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered, are legal nonconforming pursuant to MSB 17.80.020 (A) (1) .**

**(B) Structures other than habitable buildings and garages (e.g., commercial and industrial buildings) ~~Non-habitable structures and structures that were~~ constructed between September 16, 1988 and the effective date of this section are legal nonconforming pursuant to MSB 17.80.020 (A) (1) .**

Commented [A55]: Need to add provision for non-garages



(C) Structures that were completed between July 3, 1973, and January 1, 1987, and have not subsequently been enlarged or altered, that are located between 45 and 75 feet from the ordinary high water mark of a water body are legal nonconforming status pursuant to MSB 17.80.020(A)(2).

(D) Habitable buildings and garages Structures that were constructed between 45 and 75 feet of the ordinary high water mark of a lake, pond, or ponded or emergent wetland between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.

**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.

(C) Compliance with setbacks for structures adjacent to rivers, streams, and other flowing waters shall be based upon the location of the structure when

it was constructed. Subsequent movement of a stream channel that reduces the setback distance does not create a nonconforming situation.

17.55.050 VARIANCES.

(A) In the event a person wishes to vary from any of the standards of this chapter, a variance application may be filed based on the procedures established in MSB 17.65. The following standards apply to an application for variance from the waterbody setback requirement in MSB 17.55.020.

(1) the required site plan shall demonstrate that the development standards identified in MSB 17.02.035(A) will be met.

(2) the variance application shall include the parcel-specific information identified in 17.02.035(B) demonstrating that the proposed development will include measures to effectively treat and retain all stormwater runoff from the parcel.

(3) in no case shall a variance authorize the location of a structure closer than 45 feet from the ordinary high water mark of a water body.

(4) in no case shall a variance authorize

the location of a structure in an area of known erosion hazard adjacent to a river, stream, or other flowing waters.

Section 3. Adoption of Paragraph. MSB 17.80.020(B)(4) is hereby adopted as follows:

~~(D) Structures that were constructed between 45 and 75 feet of the ordinary high water mark of a lake between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.~~

Section 4. Adoption of Paragraph. MSB 17.02.020(A) (76) is hereby amended as follows:

(76) construction or placement of any building or structure, or any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placing fill within 75 feet of the ordinary high water mark of any watercourse or water body[;].

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

(a) site plans are not required to be

certified but shall clearly identify the following:

- (i) north arrow;
- (ii) boundaries of parcel;
- (iii) size, location, and setback dimensions of proposed structures;
- (iv) names and location of adjacent roadways;
- (v) location of rights-of-way and public easements within and adjacent to the parcel;
- (vi) location and name of adjacent water bodies;
- (vii) location of subsurface sewage disposal systems; [AND]
- (viii) intended use of proposed structures[.]

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

**(x) any areas of proposed ground disturbance.**

Section 5. Adoption of Section. MSB 17.02.035 is hereby adopted as follows:

**17.02.035 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF**

A WATERBODY

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

(1) the site plan demonstrates compliance with the provisions of MSB 17.55.016;

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

(3) ~~50% of the area native vegetation within 25 feet of the ordinary high water mark shoreline of a waterbody will~~shall be retained as a riparian buffer over at least 50% of the waterfront;

(a) the riparian buffer area shall be left undisturbed except for the following:

(i) pruning for vegetation health

(ii) removal of dead, diseased, or fallen trees, and

(iii) minimal vegetation pruning in order to open up viewsheds.

(b) removal of tree root masses are prohibited within the riparian buffer area.

(2) ~~impervious surfaces within 75 feet of a waterbody may not exceed 20%;~~

~~(3) unless specifically authorized under other sections of MSB code, the following activities are prohibited within 25 feet of a waterbody:~~

~~(a) storage or discharge of solid or liquid waste, including debris, animal, and yard wastes;~~

~~(b) stockpiling and storage of snow; and~~

~~(c) the application of fertilizers or herbicides.~~

**(B) For existing structures seeking nonconforming status in accordance with MSB 17.55.025(D) 80.020(B)(4), the following additional following requirements apply:**

~~(1) runoff pollution mitigation measures shall be designed and installed under the supervision of a qualified professional. Runoff pollution mitigation measures include any combination of bio-swales, rain gardens, riparian buffers, flow barriers, filter strips, or other features adequate to treat and retain all stormwater or snowmelt runoff associated with a development.~~

**(12) In addition to the site plan requirements identified in MSB 17.02.030, applications for shall include the following information sufficient**

Commented [A56]: So you can't place lawn clippings?

Commented [A57]: Check reference

to demonstrate the following:

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

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

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

(d) site-specific analyses conducted by a qualified professional indicating that the required vegetated buffer and proposed runoff pollution mitigation measures will effectively treat and retain all stormwater runoff from the parcel.

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

**Commented [A58]:** General comment: be sure to be specific about which standards apply generally and which standards apply only to LUP

and retain all stormwater runoff from the parcel.

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

(43) The use of native vegetative buffers is the preferred runoff pollution mitigation measure;

~~(4) Where practicable, the land use permit shall require the establishment and retention of native vegetation;~~

~~(5) infiltrative methods require a minimum 2 feet from the bottom of any basin or swale to the seasonal high groundwater levelwater table;~~

~~(6) design shall demonstrate compliance with the provisions of MSB 17.55.016;~~

~~(7) engineered plans and specifications shall be submitted for an engineering review;~~

~~(8) the development shall be designed and constructed in accordance with local, state, and federal laws;~~

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

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(6) a revised stormwater runoff analysis will be required if future proposed development could reasonably result in increased stormwater runoff; and  
(7) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit while as long as the structure permitted under this subsection remains within 75 feet of a lake, pond, or ponded or emergent wetland.

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

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2024.

\_\_\_\_\_  
EDNA DeVRIES, Borough Mayor

ATTEST:

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

(SEAL)



CODE ORDINANCE

DRAFT 7/15/2024

Bill Haller Edits

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH**  
**ORDINANCE SERIAL NO.** Choose an item. \_\_\_\_

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 TO ALLOW STRUCTURES TO BE CONSTRUCTED WITHIN 75 FEET OF A WATERBODY, SO LONG AS CERTAIN ENGINEERING STANDARDS TO PROTECT WATER QUALITY ARE APPLIED.

BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 24-XX.

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

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

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]

Section

- 17.55.004 DEFINITIONS
- 17.55.005 [GENERAL] **PURPOSE AND INTENT**
- 17.55.010 SETBACKS **FROM RIGHT OF WAY AND LOT LINES**
- 17.55.015 SHORELANDS; DEFINITION [REPEALED]
- 17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES**
- 17.55.020 SETBACKS FOR SHORELANDS
- 17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY**
- 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.
- **"All stormwater runoff associated with a development" means the calculated volume of runoff that would be generated from the parcel by a maximum precipitation event, including rain-on-snow events, based on the site development plan.**
- "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.
- **"Cleared area" means an area where existing vegetative cover and surficial soil layers, including organic matter or duff, is removed or**

altered by ground-disturbing activities including mechanized land clearing, grading, contouring, and fill placement.

• "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.

• "Impervious surface" means those surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates. The

term also includes areas of compacted and frozen soils from which precipitation runs off.

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

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

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

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

- "Lot frontage" means all property abutting the right-of-way of a dedicated street or road

easement, measured along the right-of-way between side lot lines of a lot.

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

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

- "Parcel" means an unsubdivided plot of land.

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

- **"Qualified professional" means a professional civil engineer or other professional registered with the state of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.**

- "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.

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

• "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.

**17.55.005 [GENERAL] PURPOSE AND INTENT.**

**(A)** This chapter establishes minimum structural setbacks from lot lines, [WATER COURSES AND] water bodies, **and** rights-of-way [, AND SPECIFIC SCREENING

EASEMENTS FOR CERTAIN LANDS WITHIN SUBDIVISIONS] in the Matanuska-Susitna Borough except where otherwise specified in special land use district regulations within this title.

(B) The purpose of this chapter is to:

(1) Provide for light and air, fire protection, traffic safety, preservation of privacy by spacing buildings apart, and to uphold neighborhood aesthetics through uniform building placement. Setbacks also aid in effective stormwater management, provides necessary space for utility lines, and promotes ease of access for maintenance; and

(2) Protect the ecologic functioning of surface waters within the borough by avoiding and minimizing the discharge of pollutants to water bodies via surface runoff and subsurface leaching. The requirements are intended to protect human health, aquatic and riparian habitat, the local economy and property values, recreation, and quality of life. In the case of setbacks from flowing waters, an additional purpose is to minimize risk to structures from lateral channel migration and flooding.

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

(A) No structure or building line shall be placed within 25 feet from the right-of-way line of any public right-of-way, except no furthest 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 otherwise by ordinance, no furthest 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.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

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

(B) Kennels, stables, animal yards and animal waste facilities shall not be located closer than 150 feet from the ordinary high water mark of any water body. Drainage from kennels, stables, animal yards and animal waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body.

Commented [AS2]: Cannot find where these are defined?

(1) This setback shall not apply to private ponds.

(C) All liquid hazardous substances, including petroleum fuels, oils, and lubricants, located or stored closer than 75 feet from the ordinary high water mark of any water body shall include the following measures to minimize the risk of spills:

(1) Secondary containment equal to 110 percent of the storage volume shall be provided for gravity-fed or other systems with the potential for a full-volume leak.

(2) Drip collection shall be provided for pump-activated systems where the potential spill volume

is limited.

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

17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES.

(A) Except as provided in subsection (B) of this section, and 17.55.030, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE, E]aves may project three feet into the required setback area.

(B) Docks, piers, marinas, aircraft hangars, open air structures such as gazebos or pavilions, 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.

Commented [AS3]: define  
Commented [AS4R3]: Define and consider adding to list

(1) A permit in accordance with MSB 17.02 is

**required prior to construction or placement of any building within 75 feet of any waterbody.**

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

(a) be built over, in, or immediately adjacent to a waterbody and used solely for storing boats and boating accessories;

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

(c) not have more than incidental accessory access to a street or driveway; and

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

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

STRUCTURES. THE DIRECTOR OF THE PLANNING DEPARTMENT SHALL, UPON APPLICATION BY A PROPERTY OWNER, DETERMINE WHETHER A PROPERTY QUALIFIES FOR AN EXCEPTION UNDER THIS SUBSECTION.

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

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

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

**17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY**

**(A) All structures that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered, are legal nonconforming pursuant to MSB 17.80.020(A) (1).**

**(B) Non-habitable structures and structures that were constructed between September 16, 1988 and the effective date of this section are legal nonconforming**

Commented [A55]: Need to add provision for non-garages



pursuant to MSB 17.80.020 (A) (1) .

(C) Structures that were completed between July 3, 1973, and January 1, 1987, and have not subsequently been enlarged or altered, that are located between 45 and 75 feet from the ordinary high water mark of a water body are legal nonconforming status pursuant to MSB 17.80.020 (A) (2) .

(D) Structures that were constructed between 45 and 75 feet of the ordinary high water mark of a lake between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.

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

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

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

Section 3. Adoption of Paragraph. MSB 17.80.020 (B) (4) is hereby adopted as follows:

~~(D) Structures that were constructed between 45~~

~~and 75 feet of the ordinary high water mark of a lake between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.~~

Section 4. Adoption of Paragraph. MSB 17.02.020(A) (76) is hereby amended as follows:

(76) construction or placement of any building, structure, or any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placing fill within 75 feet of any watercourse or water body[;].

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

- (a) site plans are not required to be certified but shall clearly identify the following:
- (i) north arrow;
  - (ii) boundaries of parcel;
  - (iii) size, location, and setback dimensions of proposed structures;
  - (iv) names and location of adjacent roadways;
  - (v) location of rights-of-way and public

easements within and adjacent to the parcel;

(vi) location and name of adjacent water bodies;

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

(viii) intended use of proposed structures[.]

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

(x) any areas of proposed ground disturbance.

Section 5. Adoption of Section. MSB 17.02.035 is hereby adopted as follows:

17.02.035 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF A WATERBODY

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

(1) 50% of the area within 25 feet of the shoreline of a waterbody shall be retained as a riparian buffer;

(a) the riparian buffer area shall be

left undisturbed except for the following:

(i) pruning for vegetation health

(ii) removal of dead, diseased, or fallen trees, and

(iii) minimal vegetation pruning in order to open up viewsheds.

(b) removal of tree root masses are prohibited within the riparian buffer area.

(2) impervious surfaces within 75 feet of a waterbody may not exceed 20%;

(3) unless specifically authorized under other sections of MSB code, the following activities are prohibited within 25 feet of a waterbody:

(a) storage or discharge of solid or liquid waste, including debris, animal, and yard wastes;

(b) stockpiling and storage of snow; and

(c) the application of fertilizers or herbicides.

(B) For structures seeking nonconforming status in accordance with MSB 17.80.020(B)(4), the additional following apply:

(1) runoff pollution mitigation measures shall be designed and installed under the supervision of a

Commented [WH6]: 17.02.035 remove item 1

Commented [WH7R6]: 17.02.035 Remove item 1

Commented [AS8]: So you can't place lawn clippings?

Commented [AS9]: Check reference

qualified professional. Runoff pollution mitigation measures include any combination of bio-swales, rain gardens, riparian buffers, flow barriers, filter strips, or other features adequate to treat and retain all stormwater or snowmelt runoff associated with a development.

(2) applications shall include information sufficient to demonstrate the following:

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

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

(c) plans and specifications for infiltrative methods shall identify soil type and depth to the seasonal high ~~groundwater level~~water table; and

(d) site-specific analyses indicating that the required vegetated buffer and proposed runoff pollution mitigation measures will effectively treat and

**Commented [AS10]:** General comment: be sure to be specific about which standards apply generally and which standards apply only to LUP

retain all stormwater runoff from the parcel.

(3) The use of native vegetative buffers is the preferred runoff pollution mitigation measure;

(4) Where practicable, the land use permit shall require the establishment and retention of native vegetation;

(5) infiltrative methods require a minimum 2 feet from the bottom of any basin or swale to the seasonal high ~~groundwater level~~water table;

(6) design shall demonstrate compliance with the provisions of MSB 17.55.016;

(7) engineered plans and specifications shall be submitted for an engineering review;

(8) the development shall be designed and constructed in accordance with local, state, and federal laws;

(9) upon completion of the project, an asbuilt survey shall be submitted showing the location of all pertinent structures and features associated with the development; and

(10) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit as long as the

Commented [AS11]: This may change

**structure permitted under this subsection remains within  
75 feet of a lake.**

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

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2024.

\_\_\_\_\_  
EDNA DeVRIES, Borough Mayor

ATTEST:

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

(SEAL)





CODE ORDINANCE

DRAFT 7/15/2024

Kendra Zamzow edits

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH**  
**ORDINANCE SERIAL NO.** Choose an item. \_\_\_\_

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 TO ALLOW STRUCTURES TO BE CONSTRUCTED WITHIN 75 FEET OF A WATERBODY, SO LONG AS CERTAIN ENGINEERING STANDARDS TO PROTECT WATER QUALITY ARE APPLIED.

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BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 24-XX.

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

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

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]  
Section

- 17.55.004 DEFINITIONS
- 17.55.005 [GENERAL] PURPOSE AND INTENT
- 17.55.010 SETBACKS FROM RIGHT OF WAY AND LOT LINES
- 17.55.015 SHORELANDS; DEFINITION [REPEALED]
- 17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES**
- 17.55.020 WATERBODY SETBACKS FOR STRUCTURES **17.55.025**  
**EXISTING STRUCTURES WITHIN 75 FEET OF A**  
**WATERBODY**
- 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.

- "All stormwater runoff associated with a development" means the calculated volume of runoff that would be generated from the parcel by a maximum precipitation event, including rain-on-snow events, based on the site development plan.


- "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.

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

• "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.

 **"Impervious surface" means those surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates. The term also includes areas of compacted and frozen soils from which precipitation runs off.**

• "Incidental" means subordinate and minor in significance and bearing a reasonable relationship

to the primary use.

- "Kennel" means any premises or facility used for breeding, buying, selling, keeping, or boarding five or more dogs over the age of six months, whether for profit or not.
- "Lake" means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes artificial waterbodies created by excavation, as well as artificial blocking or restriction of the flow of a river, stream, or tidal area (e.g. by a dam).
- "Livestock" is defined as including, but not limited to, domestic animals such as horses, cattle, sheep, goats, pigs, chickens, ducks, and other animals normally considered farm animals, whether kept for profit or not. This definition also includes sled dogs housed at a licensed mushing facility.
- "Lot" means the least fractional part of subdivided lands having limited fixed boundaries

and having an assigned number, or other name through which it may be identified.

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

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

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

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

- "Parcel" means an unsubdivided plot of land.

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

- **"Qualified professional" means a professional**

civil engineer or other professional registered with the state of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.

- "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.

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

- "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.

**17.55.005 [GENERAL] PURPOSE AND INTENT.**

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

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

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

**(B) The primary purpose of 17.55.015 to 17.55.040 is to protect human health, aquatic and riparian habitat, the ecological function of waterbodies, the local economy and property values, recreation, viewshed, and quality of life.**

**(1) These sections establish requirements related to the development and management of lands adjacent to waterbodies.**

**(2) Standards will reduce and minimize the discharge of pollutants to waterbodies via surface**



**runoff and subsurface leaching.**

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

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

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

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

(B) Except where specifically provided otherwise 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 furthest protruding portion of any structure or building line shall be located nearer than ten feet from railroad rights-of-way, except that utilities and rail dependent structures may extend up to

railroad rights-of-way.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

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

(B) Kennels or livestock waste facilities shall not be located closer than 100 feet from the ordinary high water mark of any water body. Drainage from kennels and livestock waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body.

(1) This setback shall not apply to private ponds.

(C) All petroleum fuels, oils, and lubricants located or stored closer than 75 feet from the ordinary high water mark of any water body shall include the following measures to minimize the risk of spills:

(1) Gravity-fed or other fuel delivery systems with the potential for a full-volume leak shall have secondary containment equal to 110 percent of the storage volume .

(2) Pump-activated fuel-delivery systems where the potential spill volume is limited shall have

drip collection. (3) The owners of pre-existing fixed storage facilities for petroleum fuels and other liquid hazardous substances (e.g., home heating oil tanks) shall be allowed three years from the effective date of this section to fully comply with the requirements.

(D) Unless specifically authorized under other sections of MSB code, the application of fertilizers and herbicides is prohibited within 25 feet of a waterbody

**17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES.**

(A) Except as provided in subsection (B) of this section, and 17.55.030, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE, E] Eaves may project three feet into the required setback area.

(B) Docks, piers, marinas, aircraft hangars, open air structures such as gazebos or pavilions, 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.]

**(C) VARIANCES.**

**(1) No variances from the waterbody setback will be granted for structures within 45 feet of a waterbody.**

**(2) Applications for a waterbody setback variance must show that they comply with MSB 17.55.030 and MSB 17.55.016.**

**17.55.030 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF A**

**WATERBODY**

**(A) A permit in accordance with MSB 17.02 is required prior to:**

**(1) Any ground-disturbing activity, including mechanized land clearing, grading, contouring, or placement**

of fill

(2) construction or placement of any building within 75 feet of any waterbody.

(B) The director may issue a land use permit for development within the 75-foot waterbody setback only upon finding that the development meets the following standards:

(1) Impervious surfaces will not exceed 20% of the area within the 75-foot setback

(2) A riparian buffer is maintained in accordance with 17.55.030 (C)

(3) Design shall demonstrate compliance with the provisions of MSB 17.55.016

(C) Riparian buffer. Natural vegetation along waterbodies controls erosion and bank stability, provides fish and wildlife habitat, moderates temperature, enhances scenic beauty, and is the preferred method for reducing pollution from runoff.

(1) Within 25 feet of the shoreline, 50% of the area shall be retained as an undisturbed riparian buffer except for pruning for vegetation health and the removal of dead, diseased, or fallen trees. Removal of tree root masses within the riparian buffer is prohibited.

(D) For structures seeking nonconforming status in accordance with MSB 17.80.020(B)(4), the additional following apply:

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

(a) Runoff pollution mitigation measures include any combination of bio-swales, rain gardens, riparian buffers, flow barriers, filter strips, or other features adequate to treat and retain all stormwater or snowmelt runoff associated with a development. The use of native vegetative buffers is the preferred runoff pollution mitigation measure. Where practicable, the land use permit shall require the establishment and retention of native vegetation.

(b) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit

(2) applications shall include information sufficient to demonstrate the following:

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



pollutants to stormwater runoff;

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

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

(d) site-specific analyses indicating that the required vegetated buffer and proposed runoff pollution mitigation measures will effectively treat and retain all stormwater runoff from the parcel.

(3) engineered plans and specifications shall be submitted for an engineering review;

(4) the development shall be designed and constructed in accordance with MSB 17.55.016 and local, state, and federal laws;

(5) upon completion of the project, an asbuilt survey shall be submitted showing the location of all pertinent structures and features associated with the development

**17.55.035 WATER BODY HABITAT PROTECTION TAX CREDIT**

**(A) Consistent with AS 29.45.046, the borough may grant a credit to offset a portion of property taxes due on land upon which an improvement has been constructed that aids in**

**(1) protecting a river from degradation of fish habitat due to public or private use; or**

**(2) restoring riparian fish habitat along or in a river that has been damaged by land use practices.**

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

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

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

Section 3. Adoption of Paragraph. MSB 17.80.020 is hereby adopted as follows:


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

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

(a) **all structures that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered are**

legal nonconforming .

(b) Non-habitable structures that were constructed between September 16, 1988 and the effective date of this section are legal nonconforming.

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

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

(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) ; ]



(2) Structures that were constructed between 45 and 75 feet of the ordinary high water mark of a lake between January 1, 1987, and the effective date of this section may be granted legal nonconforming status upon issuance of a mandatory land use permit in accordance with MSB 17.02.

Section 4. Adoption of Paragraph. MSB 17.02.020(A)(6) is hereby amended as follows:



(6) construction or placement of any building, structure, or any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placing fill within 75 feet of any water body[;].

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

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

- (i) north arrow;
- (ii) boundaries of parcel;
- (iii) size, location, and setback dimensions of proposed structures;
- (iv) names and location of adjacent



roadways;

(v) location of rights-of-way and public easements within and adjacent to the parcel;

(vi) location and name of adjacent water bodies;

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

(viii) intended use of proposed structures[.]

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

(x) any areas of proposed ground disturbance.

Section 6. Amendment of Paragraph. MSB 17.65.020 (A) is amended to remove (A) (2).

[(2) THE STRICT APPLICATION OF THE PROVISIONS OF THIS TITLE WOULD DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES UNDER THE TERMS OF THIS TITLE.]

Section 7. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2024.



\_\_\_\_\_  
EDNA DeVRIES, Borough Mayor

ATTEST:

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LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)





Action:

**MATANUSKA-SUSITNA BOROUGH  
WATERBODY SETBACK ADVISORY BOARD  
RESOLUTION SERIAL NO. 24-01**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH WATERBODY SETBACK ADVISORY BOARD RECOMMENDING CHANGES TO MSB 17.55 - SETBACK AND SCREENING EASEMENTS, MSB 17.02 - MANDATORY LAND USE PERMIT, AND MSB 17.65 - VARIANCES.

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WHEREAS, the Matanuska-Susitna Borough Assembly established the Waterbody Setback Advisory Board through IM No. 23-175 and Ordinance No. 23-175 on 8/15/2023 to review and recommend any changes to the Borough code relating to waterbody setbacks and related issues. These related issues should include variances/non-conformities, how to deal with structures built in violation of the 1973 and 1987 ordinances, possible remedies for structures in violation, and any other issues the Board believes are pertinent. To the extent possible, the Advisory Board is required to identify possible solutions, identify ways to enforce and implement those solutions and identify resources needed to implement and enforce those solutions; and

WHEREAS, the preservation and protection of our natural water bodies are recognized as essential for the sustainability of ecological balance, ensuring public safety, enhancing the beauty of our community, the conservation of viewsheds, enriching the quality of life, safeguarding community characteristics, and



upholding property values. These water bodies serve as critical habitats for diverse flora and fauna, contribute to local biodiversity, support recreational activities, and play a crucial role in the broader ecosystem services that benefit both residents and wildlife alike; and

WHEREAS, the activities conducted adjacent to waterbodies, such as construction, grading, clearing, filling, or contouring, are known to have a profound impact on water quality, the preservation of natural habitats, and the overall health and sustainability of aquatic ecosystems. These activities can lead to sedimentation, alteration of hydrological patterns, habitat fragmentation, and the introduction of pollutants, all of which threaten the ecological balance and biodiversity crucial to the well-being of these environments; and

WHEREAS, there has been a recognition of the necessity for increased regulation and oversight to prevent adverse effects on waterbodies resulting from unregulated or improperly managed land-use activities.

NOW, THEREFORE, BE IT RESOLVED, that the Waterbody Setback Advisory Board hereby makes the following recommendations to the Assembly:

1. Path to Compliance for Homeowners: The Assembly is advised to establish a path to compliance for existing homes built within

the 75-foot setback area of lakes in violation of MSB 17.55. This compliance pathway should require the design and construction of mitigation measures to be developed and overseen by a qualified professional registered in the State of Alaska, and should maintain a minimum setback of 45 feet.

2. Setback Maintenance and Expansion: The Waterbody Setback Advisory Board recommends retaining the current 75-foot setback requirement for buildings adjacent to flowing water, extending this requirement to all future developments along any waterbody, and should be expanded to include commercial and industrial projects.

3. Land Use Permit Requirement: It is recommended that MSB 17.02 be amended to mandate a land use permit for any grading, clearing, filling, contouring, or construction activities within 75 feet of waterbodies. This measure seeks to ensure thorough review and management of all such activities to minimize adverse impacts on waterbody ecosystems.

4. Shoreline standards: Adopt standards for clearing and grading within 75 feet of waterbodies to include provisions for managing runoff associated with the development, and maintaining or establishing a vegetative buffer along the shoreline.

5. Animal Waste Management: Adopt a setback requirement of 150 feet from the ordinary high-water mark of waterbodies for

outdoor kennels, stables, animal yards, and animal waste facilities to enhance environmental protection.

6. Prevention of Liquid Petroleum Fuel Contamination: Adopt measures to mitigate the risk of liquid fuel contamination near waterbodies by requiring secondary containment systems or pumped top-outlet fuel tanks for all fuel installations within 75 feet of waterbodies, including both existing and new installations.

7. Enhanced Enforcement: Recognizing the importance of enforcing setback regulations effectively, it is recommended that additional staff be hired to patrol waterbodies during the summer months. Their presence will deter violations, ensure adherence to established laws, and offer an immediate response to any observed infractions.

8. Elimination of Variances: It is recommended that MSB 17.65 be amended to eliminate the ability to obtain a variance from waterbody setbacks.

9. New habitat protection tax incentive: The Assembly is encouraged to consider the establishment of a habitat protection tax incentive, similar to the program in the Kenai Peninsula Borough, and advocate for state legislation that extends coverage to all types of waterbodies, not limited to rivers.

BE IT FURTHER RESOLVED, the Waterbody Setback Advisory Board

has attached a draft ordinance reflecting its recommendations for the Assembly to consider.

ADOPTED by the Matanuska-Susitna Borough Waterbody Setback Advisory Board this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Bill Kendig, Board Chair

ATTEST:

\_\_\_\_\_  
Lacie Olivieri, Board Clerk



## CHAPTER 17.02: MANDATORY LAND USE PERMIT

### Section

#### **17.02.010 Intent and applicability**

#### **17.02.020 Land use permit**

#### **17.02.030 Procedure**

#### **17.02.040 Action on applications**

#### **17.02.010 INTENT AND APPLICABILITY.**

(A) It is the intent of this chapter to improve the level of compliance with existing borough code by establishing a mandatory land use review process and directly providing regulatory information to persons proposing development within the borough outside of the cities of Houston, Palmer, and Wasilla.

(B) This chapter is applicable within all areas of the Matanuska-Susitna Borough outside of the cities of Houston, Palmer, and Wasilla and the Port District, as established in MSB [18.02.020](#), Boundaries.

(C) There are federal, state, and local requirements governing land use. It is the responsibility of the individual land owners to obtain a determination whether such requirements apply to the development of their land. Any land within the boundaries of the Matanuska-Susitna Borough is subject to land use and development regulations. It is not the intent of this chapter to replace or supersede regulations of other chapters within this title. Additional information and permits, such as flood damage prevention, mobile home park ordinance, conditional uses, and regulation of alcoholic beverages may be required in accordance with the borough code. This title will be amended and updated as necessary when new MSB Title [17](#) regulations are adopted.

(D) A land use permit is not required where commencement of construction or placement, as defined in MSB [17.125](#), occurred before the effective date of the ordinance codified in this chapter.

(Ord. 10-108, § 2, 2010; Ord. 07-121, § 2, 2007; Ord. 06-192(AM), § 3 (part), 2007)

#### **17.02.020 LAND USE PERMIT.**

(A) The land owner or authorized agent shall obtain a land use permit from the Matanuska-Susitna Borough Planning Department prior to the commencement of:

(1) *[Repealed by Ord. 11-073, § 2, 2011]*

(2) *[Repealed by Ord. 11-073, § 2, 2011]*

(3) *[Repealed by Ord. 11-073, § 2, 2011]*

(4) *[Repealed by Ord. 11-073, § 2, 2011]*

(5) *[Repealed by Ord. 13-025, § 2, 2013]*

(6) construction or placement of any building within 75 feet of any watercourse or water body;

(B) A landowner or authorized agent may voluntarily request a land use permit for any structure or use not required to obtain a permit under this chapter.

(C) A permit is not required under this chapter when the proposed use is subject to another permit within this title.

(Ord. 22-104, § 2, 2022; Ord. 13-025, § 2, 2013; Ord. 11-073, § 2, 2011; Ord. 06-192(AM), § 3 (part), 2007)

#### **17.02.030 PROCEDURE.**

(A) A complete land use permit application shall be submitted to the planning and land use director on a form provided by the planning and land use department.

(B) A complete land use permit application will contain the following attachments:

(1) *[Repealed by Ord. 22-104, § 3, 2022], 2011]*

(2) site plan;

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

(i) north arrow;

(ii) boundaries of parcel;

(iii) size, location, and setback dimensions of proposed structures;

(iv) names and location of adjacent roadways;

(v) location of rights-of-way and public easements within and adjacent to the parcel;

- (vi) location and name of adjacent water bodies;
- (vii) location of subsurface sewage disposal systems; and
- (viii) intended use of proposed structures.

(3) *[Repealed by Ord. 11-073, § 3 (part), 2011]*

(4) *[Repealed by Ord. 11-073, § 3 (part), 2011]*

(C) *[Repealed by Ord. 11-073, § 3 (part), 2011]*

(D) *[Repealed by Ord. 11-073, § 3 (part), 2011]*

(E) An application fee as established by the assembly, payable to the Matanuska-Susitna Borough, shall be submitted with the application. If more than one land use permit fee is required under this chapter, the applicant shall pay only one fee, whichever is the highest.

(F) A copy of the application shall be retained in the planning and land use department files.

(Ord. 22-104, § 3, 2022; Ord. 11-073, § 3 (part), 2011; Ord. 06-192(AM), § 3 (part), 2007)

#### **17.02.040 ACTION ON APPLICATIONS.**

(A) The planning and land use director or designated staff shall determine whether an application for a land use permit is complete. For incomplete applications, a written explanation of application deficiencies shall be provided within seven working days of the date the application is received in the planning and land use department.

(B) *[Repealed by Ord. 22-104, § 4, 2022], 2011]*

(C) In reviewing a land use permit application, the planning and land use director shall make specific findings explaining how the proposal does or does not conform to the requirements of this title. The planning and land use director also may provide options as to how the proposal may conform to these requirements.

(D) The planning and land use director shall render a decision within ten working days from the date the application is determined complete.

- (1) Permits under this chapter shall be reviewed and approved based on compliance with borough code, including but not limited to the following:



- (a) setbacks;
- (b) special land use districts;
- (c) flood hazard areas;
- (d) driveway permits;
- (e) conditional uses; and
- (f) multifamily development permits.

(E) If a decision is not rendered within the allotted review time, the applicant shall be entitled to a complete refund of fees.

(F) *[Repealed by Ord. 22-104, § 4, 2022], 2011]*

(G) *[Repealed by Ord. 22-104, § 4, 2022], 2011]*

(H) *[Repealed by Ord. 22-104, § 4, 2022], 2011]*

(I) Appeals from a decision granting or denying a land use permit under this chapter shall be filed and conducted in accordance with MSB [15.39](#).

(Ord. 22-104, § 4, 2022; Ord. 11-073, § 3 (part), 2011; Ord. 06-192(AM), § 3 (part), 2007)

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# 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.
- “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. 22-063, § 3, 2022; 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 furthest 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)

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Waterbody Setback Advisory Board

8.27.24

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