

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

October 2, 2024

Meeting Packet - Table of Contents

Pg. = Item:

- 1 = Agenda
- 3 = September 4 Minutes
- 6 = September 17 Minutes
- 9 = Attorney Memorandum
- 10 = Draft Ordinance
- 40 = Matt LaCroix's suggested changes
- 60 = Resolution

Physical Location of Meeting: Lower Level Conference Room, 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



MATANUSKA-SUSITNA BOROUGH

Planning and Land Use Department

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7822 • 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
Maija DiSalvo, Planning Services Manager
Jason Ortiz, Development Services Manager
Fred Wagner, Platting Officer

Location:

*Lower Level Conference Room 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.

October 2, 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 and Lacie Olivieri at Lacie.olivieri@matsugov.us. Written comments are due at noon on Friday prior to the meeting.

REMOTE PARTICIPATION VIA MICROSOFT TEAMS:

Meeting ID: 266 423 103 324

Passcode: Rbu3t8

Or

Dial in by phone: 907-290-7880

Phone conference ID: 253 351 842#

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

- IV. APPROVAL OF MINUTES: Regular Meeting: September 4, September 17
- V. AUDIENCE PARTICIPATION (*three minutes per person for items not scheduled for public hearing*)
- VI. ITEMS OF BUSINESS
- A. Attorney Memorandum
 - B. Draft Ordinance - AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 – SETBACK AND SCREENING EASEMENTS AND MSB 17.02 MANDATORY LAND USE PERMIT.
 - C. 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.
 - D. Meeting Schedule
- VII. BOARD MEMBER COMMENTS
- VIII. ADJOURNMENT



MATANUSKA-SUSITNA BOROUGH WATERBODY SETBACK ADVISORY BOARD MINUTES

REGULAR MEETING

6:00 P.M.

September 4, 2024

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

The Regular meeting for the Waterbody Setback Advisory Board was held on Wednesday, September 4, 2024, at 350 E. Dahlia Avenue, Palmer, Alaska. Chair Bill Kendig called the meeting to order at 6:06 p.m.

Members present; 6 - Bill Kendig, C.J. Koan, Tim Alley, Matthew LaCroix, Kendra Zamzow, Bill Klebesadel @ 6:23

Members absent/excused; 3 - Jeanette Perdue, Bill Haller, Carl Brent

Quorum established.

II. APPROVAL OF AGENDA

Kendra moved to approve the agenda. The motion was seconded by Tim Alley.

Main motion passes with no objection.

III. PLEDGE OF ALLEGIANCE

IV. AUDIENCE PARTICIPATION

Jean Holt – Spoke to Extension and borough employees

Rod Hansen, North Lakes CC – Glad we got the extension. Asking staff to present at Community council meetings.

Patti Fisher – Bullet points on major changes.

V. ITEMS OF BUSINESS

- Draft Ordinance –
C.J. moved to approve Section (C) 1-4 from pages 17 and 18 of the supplemental packet. The motion was seconded by Bill Klebesadel.

Discussion ensued.

CJ tabled her motion.

Kendra moved to deny all variances between 0-45 feet.
The motion was seconded by Tim Alley.

Cj called the question.

Bill Kendig objected.

Call to question failed with Kendra in support.

Discussion ensued.

Cj moved an amendment to say that a new structure
can not get a variance from 0-45 feet after the date of adoption.

The motion was seconded by Bill Klebesadel.

Amendment passed with Kendra opposed.

Main motion passes as amended with no objection.

VI. BOARD MEMBER COMMENTS

Kenra Zamzow – Would like to set a date on when this body will finish.

Matt Lacroix – Curious about meeting schedule.

CJ Koan – No comment

Bill Kendig – Next meeting will be Sept. 17 @ 5pm-8pm

Tim Alley – No comment.

Bill Klebesadel – Is there a better way of handling people out of compliance.

VII. ADJOURNMENT

Cj Koan moved to adjourn. The motion was seconded by Kendra Zamzow.

The meeting was adjourned at 8:00 p.m.

Bill Kendig, Chair

ATTEST:

Lacie Olivieri, Clerk

Date Approved: _____

DRAFT



MATANUSKA-SUSITNA BOROUGH WATERBODY SETBACK ADVISORY BOARD MINUTES

REGULAR MEETING

5:00 P.M.

September 17, 2024

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

The Regular meeting for the Waterbody Setback Advisory Board was held on Tuesday, September 17, 2024, at 350 E. Dahlia Avenue, Palmer, Alaska. Vice-Chair CJ Koan called the meeting to order at 5:01 p.m.

Members present; #6 - Matthew LaCroix, Bill Haller, Carl Brent, Tim Alley, CJ Koan, Bill Klebesadel @ 5:03

Members absent/excused; #3 - Kendra Zamzow, Bill Kendig, Jeanette Perdue

Quorum established.

II. APPROVAL OF AGENDA

Agenda is approved without objection.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES: Regular Meeting: August 13, August 27, September 4

Bill Haller moved to table the minutes from September 4. The motion was seconded by Bill Klebesadel.

The minutes from the regular meetings held on August 13 and August 27 were approved without any objections.

V. AUDIENCE PARTICIPATION

Jean Holt and Chenery Fife.
Audience participation closed without objection.

VI. ITEMS OF BUSINESS

Draft Ordinance – A DRAFT ORDINANCE TO BE PRESENTED TO THE 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

Alex Strawn presented a staff report.

Discussion ensued

Matt LaCroix moved to add language for a waterbody setback variance in section 17.65.040. The motion was seconded by Bill Haller.

Discussion ensued.

Matt LaCroix amended the variance language. The motion was seconded by Bill Haller.

Discussion ensued.

Motion passed without objection.

Matt LaCroix moved to delete the language from 17.55.025 and adopt the language as written by Kendra Zamzow in 17.80.020 (A) and (B). The motion was seconded by Bill Klebesadel.

Matt LaCroix moved an amendment to the language delete “Non-habitable” and add “Structures other than habitable buildings and garages to include commercial and industrial buildings” The motion was seconded by Bill Klebesadel.

Amendment passes without objection.

Break at 6:05 back at 6:15

Matt LaCroix moved an amendment to change “structures” to “habitable buildings and structures” as well as adding “pond or emerging wetland” after lake. The amendment was seconded by Bill Haller.

Amendment passed without objection

Motion passed as amended without objection.

Bill Haller moved to come up with better wording for 17.55.030 (A)1. The motion was seconded by Bill Klebesadel.

Motion passed without objection.

Bill Haller moved to remove the riparian buffers on the permit process for an existing home that is in conforming status. The motion was seconded by Bill Klebesadel.

Discussion ensued.

Matt LaCroix objects

Motion fails with Carl Brent and Bill Haller in favor and Tim Alley, Matthew LaCroix, Bill Klebesadel, and CJ Koan opposed.

Matt LaCroix moved to change the language in 17.55.016 (C) to delete “the following measures” and add “Secondary containment at least 110 percent of storage volume” and also add “All piping and valves shall include secondary containment” Delete number 1 in its entirety. Change number 2 to number 1. Change to read “Pump activated fuel delivery systems where the potential spill volume is limited May have drip collection instead of secondary containment. And number 3 to number 2. The motion was seconded by Bill Haller.

Tim Alley moved a secondary amendment to Change “Equal to” to “At least” The secondary amendment was seconded by Bill Haller

- A. 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.

VII. BOARD MEMBER COMMENTS

Scheduled next meeting.

Bill Klebesadel – If the Assembly doesn’t like our ordinance they have the option to amend it.

Tim Alley – Good work tonight. We are slowly getting there.

Matt Lacroix – Thank you, CJ, for keeping us on track. This is a challenging process.

Bill Haller – We are getting there.

Carl Brent – Glad to be getting stuff done.

CJ Koan – Appreciate Matts Amendments. Appreciate everything everybody has done.

VIII. ADJOURNMENT

moved to adjourn. The motion was seconded by.

The meeting was adjourned at 7:55 p.m

Bill Kendig, Chair

ATTEST:

Lacie Olivieri, Clerk

Date Approved: _____



MATANUSKA-SUSITNA BOROUGH

Borough Attorney's Office

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MEMORANDUM

DATE: September 20, 2024

TO: Waterbody Setback Advisory Board

THROUGH: Nicholas Spiropoulos, Borough Attorney *NS*

FROM: Erin Ashmore, Assistant Borough Attorney *EA*

SUBJECT: Regulatory Authority Below the Ordinary High Water Mark

QUESTION PRESENTED

We understand there were questions at the September 17, 2024, meeting relating to the intersection of the regulatory authority of the State and the Matanuska-Susitna Borough ("Borough") as it relates to the ordinary high water mark. This memorandum is provided as background information without extensive analysis.

LEGAL ANALYSIS

It is well-settled that the State holds title to the beds of navigable waters. *See, e.g., Ill. C. R. Co. v. Illinois*, 146 U.S. 387 (1892); *State v. Alaska Riverways, Inc.*, 232 P.3d 1203 (Alaska 2010). Such title is held subject to the public trust doctrine, which generally provides that the land below the ordinary high water mark is held in trust by the State for the benefit of the public. *Id.*; AS 38.05.126. The use of the land below the ordinary high water mark is subject to State regulation. *See, e.g., Alaska Const. Art. VIII § 14; AS 38.05.126; McCavit v. Lacher*, 447 P.3d 726 (Alaska 2019); *Alaska Riverways, Inc.*, 232 P.3d 1203; *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973). Indeed, the State has chosen to regulate in this area. 11 AAC 96.020. The State has not expressly delegated its regulatory authority to the Borough. The Borough is a second-class Borough and only has the powers conferred by law. AS 29.35.210. The Borough is therefore preempted by the State from regulating below the ordinary high water mark.

CODE ORDINANCE

DRAFT 9/17/2024

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.

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.

- **"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.

• "Impervious area/surface" means the area of the subject site covered by impenetrable materials. This surface has been compacted or covered with a layer of material so that it is highly resistant to

Commented [AS1]: Definition of impervious surface already in MSB 17.125

infiltration by water.

- "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).

- "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.

Commented [AS2]: Addition of definition per Kendra Zamzow.

Commented [AS3]: Motion to add definition of Kennel approved

- "Lot depth" means the average distance between front and rear lot lines.
- "Lot frontage" means all property abutting the right-of-way of a dedicated street or road easement, measured along the right-of-way between side lot lines of a lot.
- "Lot width" means the average distance between side lot lines.
- "Ordinary high water mark" means the mark made by the action of water under natural conditions on the shore or bank of a body of water which action has been so common and usual that it has created a difference between the character of the vegetation or soil on one side of the mark and character of the vegetation and soil on the other side of the mark.
- "Parcel" means an unsubdivided plot of land.
- **"Private pond" means a natural or constructed waterbody less than five acres in size that lacks a surface connection to other waterbodies and is located entirely on property with a single owner.**
- **"Qualified professional" means a professional civil engineer or other professional registered**

Commented [AS4]: Motion to approve definition of parking area/lot withdrawn

Commented [AS5]: Motion to add approved

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.

- "Runoff pollution mitigation measure" means any combination of bioswales, rain gardens, riparian buffers, filter strips, or other features designed and intended to treat and/or retain 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, overfilling 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.

Commented [AS6]: Motion to delete failed

• "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.

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

- "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

Commented [AS7]: Motion to add definition of "Treat and Retain" as defined by Matt L. 9 of 59 with secondary amendment to add "or to adjacent parcel." Secondary amendment was approved. Next secondary amendment "motion to amend to add "or other treatment methods" and to replace "prevent" with "mitigate". Main motion as amended is approved.

Commented [AS8]: Motion to add definition of Water-dependent accessory structure as defined by Matt L. on 9 of 59. Secondary amendment to remove "Water-dependant accessory structures shall not exceed 400 square feet in size." secondary amendment is approved. Main motion carries as amended.

Commented [AS9]: Motion to approve definitions for riparian buffer, runoff pollution mitigation measure, and secondary containment as proposed by Matt L. approved

Commented [AS10R9]: Motion to remove "except that dead, diseased, or dying trees may be removed approved.

accessories) or waterfront (e.g., a gazebo).

17.55.005 [GENERAL] PURPOSE AND INTENT.

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

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

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

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

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

Commented [AS11]: Delete (B) per Kendra Zamzow

Commented [AS12]: Wording cleanup per Kendra Zamzow

Commented [AS13]: Motion to make changes as displayed. Secondary motion: Add language proposed by Matt L. on 10 of 59 regarding riparian buffers. Secondary motion failed. Main Motion

Commented [AS14]: Paragraph streamlined per Kendra Zamzow

Commented [AS15]: Paragraph added per Kendra Zamzow

Commented [AS16]: Motin to add 1 and 2 as amended int his document passed without objection

Commented [AS17]: Motion to approve this amendment approved.

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 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

Commented [AS18]: Subsection modified per Kendra Zamzow

Commented [AS19]: Paragraph added per Kendra Zamzow

Commented [AS20]: Motion to approve change approved.

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.

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

(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:

Commented [AS21]: Cannot find where these are defined?

Commented [AS22]: Modified per Kendra Zamzow. Recommend discussing and defining waste facility.

Commented [AS23]: Motion to accept changes to A and B as written. Secondary motion: remove language about Planning Commission (second sentence in A). Secondary motion is approved. Next secondary amendment: change wording to be consistent with definition to be "kennels, stables, animal yards, and animal waste facilities shall not be located..." Language will be replaced in beginning and end of definition. Secondary amendment is approved. Main motion is approved.

Commented [AS24]: Modified per Kendra Zamzow

(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. All piping and valves shall be within secondary containment.

Commented [AS25]: Paragraph modified per Kendra Zamzow

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

Commented [AS26]: Change per Kendra Zamzow

(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 five years from the effective date of this section to fully comply with the secondary containment requirement.

Commented [AS27]: Motion to amend change language in (C) to delete "the following measures" and add "secondary containment at least 110 percent of storage volume" and also add additional sentence that says "all piping and valves shall include secondary containment"; paragraph 1 will be deleted in its entirety. Number 2 would be changed to number one. The text would be revised to read "Pum-activated fuel-delivery systems where the potential spill volume is limited MAY have drip collection instead of secondary containment. Number 3 would become number 2. Motion passes

(D) The application of fertilizers and herbicides is prohibited within 25 feet of a waterbody.

Commented [AS28]: Changed from subsection to paragraph per Kendra Zamzow

17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES.

Commented [AS29]: Motion to adopt changes to C 1-3. Secondary motion to change three years to five years in paragraph 3. The primary amendment passed. Next primary amendment: do not strike "liquid hazardous substances, including" primary amendment passed. New primary amendment: add (1) will include sentence "All piping and valves shall be within secondary containment." as indicated by Matt L. p. 14 of 59. Primary amendment passed. Main motion as amended passed.

(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.

Commented [AS30]: New subsection per Kendra Zamzow

Commented [AS31]: Motion to approve (D). Primary amendment: remove "unless specifically authorized under other sections of MSB code," primary amendment is passed. Main motion Passed.

(B) Docks, piers, marinas, aircraft hangars, boathouses and water-dependent 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.

(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) 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

Commented [AS32]: Motion to adopt changes suggested by Matt L. on 16 of 59. Motion is approved.

Commented [AS33]: Motion to approve changes suggested by Matt L. page 16 of 59. Main motion passed.

Commented [AS34]: Motion to approve change by on 16 of 59. Motion postponed to next meeting so Alex can discuss borough powers with attorney and report back at next meeting.

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,

Commented [AS35]: New variance section added per Kendra Zamzow. Recommend moving to MSB 17.65

Commented [AS36R35]: Motion to adopt Matt L. language from 17 of 29 C 1-4 postponed.

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.

Commented [AS37]: Recommended deletion by Kendra Zamzow

Commented [AS38R37]: Motion to delete passed

Commented [AS39]: Homework: have Alex come up with a definition that excludes hand tools, and removal of trees, but does not allow heavy equipment to disturb root masses, veg mat, etc.

Commented [AS40]: Entire section moved from MSB 17.02 to 17.55 per Kendra Zamzow

Commented [AS41]: Modified to only include mechanized clearing

(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

Commented [AS42]: Recommend delete per Bill Haller

Commented [AS43R42]: Motion to have riparian buffer only apply to nonconforming properties. Motion fails

Commented [AS44]: Recommend delete per Bill Haller

Commented [AS45]: Check reference

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

Commented [A546]: General comment: be sure to be specific about which standards apply generally and which standards apply only to LUP

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

Commented [AS47]: Moved per Kendra Zamzow.

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.

Commented [A548]: Added per Kendra Zamzow

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

Commented [AS49]: Motion to amend make it clear it applies to “structures other than habitable buildings and garages to include commercial and industrial buildings.” This language would replace the term non-habitable structures. Passed without objection.

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.]

Commented [AS50]: Motion to approve followed by motion to amend

Commented [AS51R50]: Motion to approve passed

Commented [AS52]: Amendment that replaces "structures" with "habitable buildings and garages" and replace lake with "lake, pond, or emergent wetland." Motion passed

~~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 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 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 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 MSE 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;~~

Commented [AS53]: Paragraph 1 removed per the suggestion of Bill Haller

~~(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 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~~

Commented [A554]: General comment: be sure to be specific about which standards apply generally and which standards apply only to LUP

~~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; 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) 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 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~~

Commented [AS55]: This may change

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

Section ~~36~~. 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 9/20/2024

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.

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.

Commented [ML1]: Text moved to MSB 17.80.020.

(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.

- "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.

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

- "Hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may

Commented [ML2]: This definition is consistent with the state definition and is not currently in MSB code.

Commented [ML3]: This is the definition in state statute and is not currently defined in MSB code.

be found; or (B) a substance defined as a hazardous substance under 42 U.S.C.9601 – 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less.

• "Impervious area/surface" means the area of the subject site covered by impenetrable materials. This surface has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

17.55.005 PURPOSE AND INTENT. [No proposed edits]

17.55.010 SETBACKS FROM RIGHTS-OF-WAY AND LOT LINES. [No proposed edits]

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

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

(B) Kennels, stables, animal yards and animal

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

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

(C) Paved vehicle parking areas for commercial and industrial facilities shall not be located closer than 75 feet from the ordinary high water mark of any water body.

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

(1) Pump-activated fuel-delivery systems where the potential spill volume is limited may have drip collection instead of secondary containment.

Commented [ML4]: Paved parking areas are a significant pollution source, including of materials that are toxic to aquatic life, such as copper and 6 ppd-quinone. As (A) and (B), this is a separation distance.

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

~~(D) The application of fertilizers and herbicides is prohibited within 25 feet of a waterbody.~~

~~(E) The following activities are prohibited within 25 feet of the ordinary high water mark of any water body [specified as important to the spawning, rearing, or migration of anadromous fish pursuant to AS 16.05.871(a) and to lakes stocked by the Alaska Department of Fish & Game]:~~

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

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

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

Commented [ML5]: Like everything else in 17.55.016, these restrictions would apply to all property owners and not just those seeking a land use permit. I am open to applying these restrictions only to anadromous water bodies and stocked lakes via the bracketed text.

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 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, boathouses **and water-dependant accessory structures** may be located closer than 75 feet and over the water, provided they **meet all applicable regulatory standards and receive prior authorization via land use permit in accordance with MSB 17.02.**

(1) A permit in accordance with MSB 17.02 is required prior to construction or placement of any

building or structure, or the use of heavy equipment that disturbs the ground surface 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.

Commented [ML6]: The proposed reference to heavy equipment is intended to provide clarification. More specific text is proposed for MSB 17.02.020.

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

Commented [ML7]: The existing standards are reframed below in numbers (a), (b), and (d). They now apply to water-dependent accessory structures in addition to boathouses and hangars. Numbers (c) and (e) are new standards.

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

Commented [ML8]: The new secondary containment requirement for hazardous substances in 17.55.016 makes this restriction unnecessary.

(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.

~~17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY~~ [Moved to 17.80.020; this section can be deleted.]

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

Commented [ML9]: This seems like a helpful clarification. I think it makes more sense here than in MSB 17.80.020 as it deals with enforcement.

create a nonconforming situation.

Section 4. Adoption of Paragraph. MSB 17.02.020(A) ~~(76)~~ and (7)

are 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 ~~waterecourse~~ or water
body[;].

Commented [ML10]: For clarity, keep MSB 17.02.020(A)(6) specific to buildings and structures.

(7) the use of heavy equipment such as backhoes
or bulldozers that disturbs the surficial soil layers,
uproots woody vegetation, or alters preexisting land
contours within 75 feet of the ordinary high water
mark of any water body. Examples of such uses include
mechanized land clearing, grading, contouring, or
placing fill.

Commented [ML11]: Add MSB 17.02.020(A)(7) that is specific to the use of heavy equipment. This more readily allows the addition of (A)(7)(a) for even greater clarity.

(a) Activities that involve only the cutting
or removal of vegetation above the ground (e.g., use
of a hydro-axe, mowing, rotary cutting, and
chainsawing) without disturbing the soil or root
system do not require a land use permit.

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 ~~65~~. 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;

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

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

(3) 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 shall be retained as a riparian buffer over~~

Commented [ML12]: Much of this section deals with process rather than development standards. I think the first two words of the section title can be deleted without creating problems. Because this section is specific to issuance of a land use permit, I think it makes more sense to have this in 17.02 than in 17.55 as Kendra recommends.

Commented [ML13]: As proposed here, there are 3 standards for issuance of a land use permit. Compliance with the requirements of 17.55.016 (including the riparian buffer requirement), compliance with the standards for structures in 17.55.020 (if applicable), and a determination that the proposed action would not exceed the impervious surface limit (which is here rather than 17.55.016 because it is best assessed when reviewing a new proposed use).

Commented [ML14]: These provisions were revised and moved to 17.55.016 so that they apply to all property owners, not just those seeking land use permits. The activities prohibited within 25 feet of a water body don't require a land use permit, so they don't fit here.

~~at least 50% of the waterfront;~~

~~(a) the riparian buffer area shall be left undisturbed except that dead, diseased, or fallen trees may be removed, and pruning for vegetation health is allowed 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 17.80.020(B) (4), those seeking a variance from the waterbody setback in accordance with MSB 17.65, or a land use permit application in accordance with MSB 17.02.035(A) (1) (a), 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 shall include the following 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~~

Commented [ML15]: 17.02.035(B)(1)(a) through (d) relate to the application materials. 17.02.035(2)(a) through (e) are the performance standards for the runoff management. 17.02.035(3), (4), (5) and (6) are stand-alone conditions.

proposed runoff pollution mitigation measures, including for necessary maintenance, with sufficient detail to support an engineering review;

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

(d) site-specific analyses conducted by a qualified professional 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 meet the following criteria:

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

(b) Provide (a minimum of) 12 ~~to 24~~ hours of detention for the post-development runoff in excess of pre-development runoff volumes for the 1-year, 24-hour storm.

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

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

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

(3) runoff pollution mitigation measures shall be designed and installed under the 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;~~

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

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

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

Section 7. Amendment of Section. MSB 17.65.040 is hereby amended as follows:

17.65.040 VARIANCE; CONDITIONS OF APPROVAL.

(A) The planning commission, in granting a variance, may prescribe any conditions and safeguards that it deems to be necessary or desirable to:

- (1) assure conformity with this title and any applicable comprehensive plans;
- (2) protect adjacent properties;
- (3) protect the public health, safety and welfare.

(B) The following standards apply to an application for variance from the waterbody setback requirement in MSB 17.55.020.

- (1) the site plan required by MSB 17.65.050(C)(4) shall demonstrate that the development standards identified in MSB 17.02.035(A) will be met.
- (2) the variance application shall demonstrate compliance with the requirements identified in 17.02.035(B) regarding stormwater runoff.
- (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 8. Amendment of Section. MSB 17.80.020 is hereby amended as follows:

17.80.020 LEGAL NONCONFORMING STRUCTURES

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

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

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

(b) Structures within 75 feet of a water body other

Commented [ML16]: This text was unnecessary when (1)(a) and (b) were in 17.55.025 (where the title was Existing Structures Within 75 Feet of a Waterbody), but it is a necessary clarification here.

than habitable buildings and garages (e.g., commercial, and industrial buildings) 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) Habitable buildings and garages that were completed between July 3, 1973, and January 1, 1987, and have not subsequently been enlarged or altered, that are located between 45 and 75 feet from the ordinary high water mark of a water body are legal nonconforming.

Commented [ML17]: This text should be at 2(a) but I think Kendra had it at 3(a) and that is how we adopted it on 9/17/24/

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

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

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

~~(2) structures built in violation of shoreline setback~~

~~ordinances existing at the time of construction, and subsequently granted an exemption from shoreline setbacks in accordance with MSB 17.55.020(C);~~

Commented [ML18]: This text should be deleted because 17.55.020(C) was deleted. 17.80.020(A)(2)(a) now provides that habitable buildings and garages completed prior to 1987 are nonconforming without the administrative determination.

(~~2~~) 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](#).

(~~3~~) Habitable buildings and garages 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.

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)

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.

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