

## **An Overview of the draft changes to MSB Code proposed by the Waterbody Setback Advisory Board**

### **Proposed Changes are available for review**

Since being created by the Matanuska-Susitna Borough (MSB) Assembly in August of 2023, the Waterbody Setback Advisory Board (WSAB) has been considering potential changes to MSB 17.55, the code requiring structures to be set back from waterbodies, and related MSB code. The WSAB is required to provide the Assembly with any suggested changes by March 18, 2025.

On November 13, 2024, the WSAB posted their recommendations in the form of draft code language addressing four different MSB code sections, and a draft resolution. The draft code changes and resolution are part of a single review document available at:

<https://matsugov.us/boards/waterbody-setback-advisory-board>. The combined document is available for public review and comment until January 21, 2025.

The WSAB will consider public comments on the draft document when it finalizes its recommendations to the Assembly. Please consider providing comments on the draft resolution and draft code language to ensure that the WSAB recommendations reflect public opinion.

### **Recommendations in the draft resolution**

The draft resolution contains nine recommendations.

1. A path to compliance should be provided for existing lakefront homes between 45 and 75 from shore.
2. The 75-foot setback for homes should be retained and the same setback applied to commercial and industrial buildings.
3. A land use permit should be required for clearing and grading activities that use heavy equipment within the 75-foot setback.
4. There should be standards for development activities within the 75-foot setback, including for managing stormwater runoff.
5. Setbacks should be required for kennels, stables, animal yards, and animal waste facilities to protect water quality.
6. Require secondary containment for hazardous liquids within the 75-foot setback.
7. Increase efforts to enforce the setback standards.
8. Not issue variances for structures within 45 feet of waterbodies.
9. Consider establishing a tax credit program, as allowed by state law, for riparian habitat restoration and protection.

The recommendation topics are addressed in the draft code changes, except that there is no proposed code language to implement the increased enforcement or habitat protection tax credit program. New ordinances would be required to implement those recommendations.

### **How to interpret the proposed changes to ordinances**

This document provides an overview of the draft proposed changes to MSB code language to support your review. The review document contains the existing code text with proposed additions and deletions. Additions to the code text are indicated by **bold, underlined** text. Deletions are indicated by [bracketed] text. As an example, proposed changes to the section titles of MSB 17.55 are shown below.

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]	
Section	
17.55.004	DEFINITIONS
17.55.005	[GENERAL] <b><u>PURPOSE AND INTENT</u></b>
17.55.010	SETBACKS <b><u>FROM RIGHTS OF WAY AND LOT LINES</u></b>
17.55.015	SHORELANDS; DEFINITION [REPEALED]
<b><u>17.55.016</u></b>	<b><u>WATERBODY SETBACKS FOR POLLUTION SOURCES</u></b>
17.55.020	<b><u>WATERBODY</u></b> SETBACKS FOR <b><u>STRUCTURES</u></b>
17.55.040	VIOLATIONS, ENFORCEMENT, AND PENALTIES

If you want to see the existing code without the markup for comparison, MSB code can be found at: <https://www.codepublishing.com/AK/MatanuskaSusitnaBorough/>.

### Proposed changes to the text of MSB 17.55

The following changes are proposed for sections of MSB 17.55. The code section numbers and titles are in **bold** for emphasis.

**Section 17.55.004 Definitions:** Multiple definitions would be added to provide clarity.

**Section 17.55.005:** The title would be changed from **General** to **Purpose and Intent**, with language identifying the purpose and intent added.

**Section 17.55.010:** The title would be changed from **Setbacks** to **Setbacks from Rights-of-Way and Lot Lines**. No changes to the code text of this section are proposed. This simply separates setback sections that address waterbody setbacks from other types of setbacks.

**Section 17.55.016 Waterbody Setbacks for Pollution Sources:** This is an entirely new section containing recommendations that would apply to all waterfront parcels to reduce pollution. This section includes the existing 100-foot setback for subsurface sewage disposal systems and adds new pollution source restrictions.

- A 100-foot setback would apply to kennels, stables, animal yards and animal waste facilities.
- Secondary containment would be required for liquid hazardous substances located or stored within 75 feet of a waterbody.
- Paved parking areas located within 75 feet of a waterbody would be required to meet the new stormwater management standards identified in MSB 17.02.035(b) in the Land use permit code.

**Section 17.55.016** would also prohibit the following activities within 25 feet of a waterbody:

- removing native vegetation from more than 50 percent of the surface area;
- altering the original land contours of more than 50 percent of the surface area;
- paved parking areas for commercial or industrial facilities;
- storing or discharging solid or liquid waste;
- stockpiling snow imported from an offsite location; and
- applying fertilizers or herbicides.

**Section 17.55.020:** The title of this existing code would be changed to **Waterbody Setbacks for Structures**. This section imposes the 75-foot setback and identifies those structures that are exempt from it (i.e., docks, piers, marinas, aircraft hangars, boathouses, and water-dependent accessory structures). Limited text changes are proposed for this section, but 17.55.020(C) would be moved and 17.55.020(D), which limits application of the 75-foot setback to dwellings, habitable buildings and garages would be deleted. This will serve to apply the setback to all structures (e.g., commercial) that are not otherwise specifically exempt (e.g., docks, marinas, boathouses).

**Section 17.55.040 Violations, Enforcement, and Penalties:** A new subsection would be added codifying that movement of a waterbody that results in a setback encroachment does not result in a violation. This would most often apply where a river or stream moves closer to a structure, but it would also apply where damming of a lake increases its surface area.

### **Proposed changes to the text of other MSB code sections**

The following changes are proposed for other sections of MSB code. As above, the code section numbers and titles are in **bold** for emphasis.

**Section 17.02.020 Land Use Permit:** This section would be amended to require a permit for the use of heavy equipment within 75 feet of a waterbody if it would disturb the surficial soil layers, uproot woody vegetation, or alter preexisting land contours.

**Section 17.02.035 Standards for Existing or New Development within 75 Feet of a Waterbody:** This is new code with two subsections.

**Subsection (A)** identifies the three standards for issuing a Land Use Permit, which are required for placing structures or ground-disturbing activities within the 75-foot setback.

1. compliance with the requirements of 17.55.016 (Waterbody Setbacks for Pollution Sources);
2. compliance with 17.55.020 (Waterbody Setbacks for Structures); and
3. not exceeding 20 percent impervious area.

**Subsection (B)** identifies the requirements for those who must conduct a stormwater analysis as part of their Land Use Permit process. The stormwater analysis would be required for:

1. existing habitable buildings and garages between 45 and 75 feet from a waterbody that are seeking legal nonconforming status;
2. those seeking a variance from the waterbody setback; and
3. those who need a Land Use Permit but can't comply with the riparian vegetation and impervious surface standards.

Subsection (B)(1) identifies the information required in an application that includes the stormwater analysis. Subsection (B)(2) identifies the stormwater performance standards, which are a subset of those in the Borough's subdivision design manual.

**Section 17.65.040 Variance; Conditions of Approval:** This section would be amended to include two new standards.

1. those seeking a variance from the waterbody setback would need to meet the Land Use Permit standards, including the stormwater analysis.
2. no variance would be granted for a structure closer than 45 feet from a waterbody. This standard is consistent with that for existing nonconforming structures seeking legal nonconforming status.

**Section 17.80.020 Legal Nonconforming Structures:** This section would be amended to clarify that certain existing structures closer than 75 from a waterbody are legal nonconforming.

1. existing structures constructed prior to adoption of the setback requirement in July 1973;
2. existing habitable buildings and garages completed prior to January 1987 (which are eligible for the existing exemption); and
3. existing structures to which the setback does not currently apply (e.g., commercial, and industrial buildings).

**Section 17.125.010 Definitions:** This section contains the definitions of terms found throughout Title 17. Definitions for several new terms would be added to this section.



Photos of Bruce Lake by Matthew LaCroix

<b>(October 2024) Sections as approved by WSAB</b>	<b>Section staff revisions (Feb 12 2025)</b>
Section 1 – Classification	Section 1 – Classification
Section 2 – <b>Amendment</b> of Chapter <b>17.55</b> Setbacks	Section 2 – <b>Amendment</b> of Chapter <b>17.55</b> Setbacks (section titles)
	Section 3 – <b>Amendment</b> of subsection <b>17.55.004</b> (A) Definitions
	Section 4 – <b>Amendment</b> of <b>17.55.005</b> Purpose and Intent
	Section 5 - <b>Amendment</b> of <b>17.55.010</b> Setbacks from Rights of Way and Lot Lines
	Section 6 – <b>Adoption</b> of Section <b>17.55.016</b> Waterbody setbacks for Pollution Sources
	Section 7 – <b>Amendment</b> of Section <b>17.55.020</b> Water body setbacks for Structures
	Section 8 – <b>Amendment</b> of Subsection <b>17.02.010</b> (A)
Section 3 – <b>Amendment</b> of Paragraph <b>17.02.020</b> (A) (6)	Section 9 – <b>Amendment</b> of Section <b>17.02.020</b> Land Use Permit for activities within 75 feet of a water body
Section 4 – <b>Amendment</b> of Paragraph <b>17.02.020</b> (A) (7)	
Section 5 – <b>Amendment</b> of Subparagraph <b>17.030.030</b> (B) (2) (a)	Section 10 – <b>Amendment</b> of Subparagraph <b>17.030.030</b> (B) (2) (a)
Section 6 – <b>Adoption</b> of Subsection <b>17.02.035</b> Standards for development within 75 feet of a waterbody	Section 11 – <b>Adoption</b> of Section <b>17.02.035</b> Required Standards
	Section 12 – <b>Adoption</b> of Section <b>17.02.050</b> Additional required standards for specific circumstances
Section 7 <b>Adoption</b> of Subsection <b>17.65.020</b> (B) – for variances from the waterbody setback requirement in 17.55.020 (A) the Planning Commission must find each of the following requirements has been met	Section 13 - <b>Adoption</b> of Subsection <b>17.65.020</b> (B) For variances from the water body setback requirement in 17.55.020 (A) the following additional standards apply
Section 8 <b>Amendment</b> of Section <b>17.80.020</b> Legal Nonconforming Structures	Section 14 - <b>Amendment</b> of Section <b>17.80.020</b> Legal Nonconforming Structures
Section 9 – <b>Amendment</b> of Section <b>17.125.010</b> Definitions	Section 15 – <b>Amendment</b> of Section <b>17.125.010</b> Definitions
Section 10 – Effective Date	Section 16 – Effective Date