



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
Jason Ortiz, Planning & Land Use Deputy Director
Wade Long, Development Services Manager
Fred Wagner, Platting Officer

Location:

*Lower Level Conference Room of the
DSJ Building*

350 E. Dahlia Ave., Palmer

Support Staff: Alex Strawn, Planning & Land Use Director

REGULAR MEETING

5:00 P.M.

March 5, 2025

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: 238 371 884 983

Passcode: 36ZU2uH6

Or

Dial in by phone: 907-290-7880

Phone conference ID: 527 595 020#

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

- IV. APPROVAL OF MINUTES: Regular Meeting: February 26, 2025
- V. AUDIENCE PARTICIPATION (*three minutes per person for items not scheduled for public hearing*)
- VI. STAFF/AGENCY REPORTS
- A. Staff Report – Alex Strawn
- VII. ITEMS OF BUSINESS
- A. Draft Ordinance - AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.02 MANDATORY LAND USE PERMIT, MSB 17.55 – SETBACK AND SCREENING EASEMENTS, MSB 17.65 VARIANCES, MSB 17.80 NONCONFORMING STRUCTURES AND MSB 17.125 DEFINITIONS.
- 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.
- VIII. AUDIENCE PARTICIPATION (*three minutes per person for items not scheduled for public hearing*)
- IX. BOARD MEMBER COMMENTS
- X. ADJOURNMENT



MATANUSKA-SUSITNA BOROUGH WATERBODY SETBACK ADVISORY BOARD MINUTES

REGULAR MEETING

5:00 P.M.

February 26, 2025

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

The Waterbody Setback Advisory Board's regular meeting was held on Wednesday, February 26, 2025, at 350 E. Dahlia Avenue, Palmer, Alaska. Chair CJ Koan called the meeting to order at 5:00 p.m.

Members present; #7 – Tim Alley, Matthew LaCroix, Kendra Zamzow, C.J. Koan, Bill Klebesadel, Bill Kendig out @ 5:55

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

II. APPROVAL OF AGENDA

Bill Kendig moved to approve the agenda. The motion was seconded by Matt LaCroix. Kendra Zamzow moved an amendment to switch items A and B. The amendment passed without objection. Kendra moved a secondary amendment to add MSB 43.20.340 as discussion item under B (Draft Ordinance)
The agenda is approved as amended without objection.

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Kendra Zamzow.

IV. APPROVAL OF MINUTES: Regular Meeting: February 19, 2025

Bill Kendig moved to approve the minutes. The motion was seconded by Matt LaCroix. The February 19, 2025 minutes were approved without objection.

V. AUDIENCE PARTICIPATION

Rod Hansen, North Lakes Community Council
Patti Fisher, Meadow Lakes Community Council

Bill Klebesadel moved to change the Agenda to add another audience participation at the end of the meeting. The motion was seconded by Tim Alley.
The motion passed without objection.

VI. STAFF REPORT

Alex Strawn, Planning and Land Use Director gave his staff report.

VII. ITEMS OF BUSINESS

- 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.**

Kendra Zamzow moved to discuss points 1 and 2 of the Resolution. The motion was seconded by Matt LaCroix. Discussion ensued.

The motion passed without objection.

Bill Kendig moved to follow the attorney's advice. The motion was seconded by Tim Alley. Discussion ensued.

The motion failed with Matt LaCroix and Kendra opposed and CJ Koan, Tim Alley, and Bill Klebesadel in favor.

Matt LaCroix moved to strike number 1 in the resolution. The motion was seconded by Kendra Zamzow. Discussion ensued.

The motion failed with Kendra Zamzow in favor and CJ Koan, Matt LaCroix, Tim Alley, and Bill Klebesadel opposed.

Tim Alley moved to add language to meet the borough attorney's recommendation. To allow new construction between 45-75 feet with stormwater mitigation. The motion was seconded by Bill Klebesadel. Discussion ensued.

Kendra Zamzow and Matt LaCroix objected.

The motion failed with Tim Alley, Bill Klebesadel, and CJ Koan in favor and Matt LaCroix and Kendra Zamzow opposed.

Kendra moved to add “including Salmon and other fish.” In Whereas number 2. The motion was seconded by Matt LaCroix.

The motion passed without objection.

Kendra moved to add “the quality of life and community for residence” after “all of which threaten” in Whereas number 3. The motion was seconded by Tim Alley.

Discussion ensued.

The motion passed without objection.

Break at 6:25 back at 6:30

- B. **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**

Matt LaCroix moved to delete the definition for impervious surface. The motion was seconded by Kendra Zamzow.

The motion passed without objection.

Kendra Zamzow moved to add C to Section 6 (17.55.016 Setbacks for pollution Sources) to say, “Paved parking areas shall not be located closer than 25 feet from

the ordinary high water mark of any water body.” The motion was seconded by Tim Alley. Alex suggested making number C(1) specific to industrial and commercial. The motion passed without objection.

Discussion ensued.

Kendra moved to add an F to Section 7 (17.55.020 Waterbody Setbacks for Structures.) that states “buildings may be located closer than 75 feet to non-anadromous streams less than two feet in width provided they meet all state, federal, and borough regulatory standards and receive a land use permit.” The motion was seconded by Tim Alley. Matt LaCroix Objects. Tim Alley moved to postpone the discussion until the next meeting. The motion was seconded by Bill Klebesadel.

Discussion ensued.

The motion passed without objection.

VIII. AUDIENCE PARTICIPATION

Jean Holt

Rod Hanson, North Lakes Community Council

Patti Fisher, Meadow Lakes Community Council

Sarah Hanvey

IX. BOARD MEMBER COMMENTS

Matt Lacroix – I’d like to express my gratitude to the attendees. Weekly meetings are tough. We are all reeling a little bit in response to what we heard from the attorneys. Please think of these issues between now and next week and craft some suggestions and edits. I appreciate the discussion.

Bill Klebesadel – As someone who works seven days a week it is discouraging to see the lack of participation. This meeting alone was one of the most important as far as resolving the concerns with the Attorney's recommendation. We need everyone participating.

Tim Alley – Regarding the audience comment about ice huts we have no authority to do anything since they are over water.

Kendra Zamzow – Thank you to CJ for a great meeting and for keeping us going. Thanks to Alex for everything he has done. Please read the suggestions and bring some of your own. We would like to see more people participate. I would like to know that this board is fairly confident that a majority wants to go a certain direction. 2 people controlling it is not the best way forward. I want people to be able to come into compliance.

Alex Strawn – I would like to suggest that you might want to make the next 2 meetings 3 hours long.

CJ Koan— Please refrain from suggesting anything new and streamline what we have. Let's work on getting to the end as quickly and efficiently as we can.

X. ADJOURNMENT

The meeting was adjourned at 7:04 p.m.

Bill Kendig, Chair

ATTEST:

Lacie Olivieri, Clerk

Date: _____

DRAFT

CODE ORDINANCE

DRAFT
2/21/2025

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 17.02 MANDATORY LAND USE PERMIT, MSB 17.55 - SETBACK AND SCREENING EASEMENTS, MSB 17.65 VARIANCES, MSB 17.80 NONCONFORMING STRUCTURES AND MSB 17.125 DEFINITIONS.

BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 25-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. The title and table of contents within 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 RIGHTS-OF-WAY AND LOT LINES
17.55.015 SHORELANDS; DEFINITION [REPEALED]
17.55.016 WATER BODY SETBACKS FOR POLLUTION SOURCES
17.55.020 WATER BODY SETBACKS FOR [SHORELANDS] STRUCTURES
17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES

Section 3. Amendment of Subsection. MSB 17.55.004(A) is hereby amended as follows:

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.

• "Animal waste facility" 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.

• "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 a 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 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).

• "Impervious 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.

• "Ordinary high water mark" means the mark made by the action of water under natural conditions on the shore

Commented [AS1]: Added to 17.55.016(D)

Commented [AS2]: This is subjective

or bank of a water body [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.

- "Private pond" means a natural or constructed water body less than five acres in size that lacks a surface connection to other waterbodies and is located entirely on property with the same ownership.

- "Pump activated fuel delivery systems" means those fuel tanks, such as for home heating oil or aviation fuel, where the tank outlet is located above the fluid level of a full tank.

- "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 qualify as secondary containment only where the flow piping includes leak detection coupled to an automatic shutoff valve at the tank outlet.

- "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).

Section 4. Amendment of Section. MSB 17.55.005 is hereby amended as follows:

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 water bodies, 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 adjoining waterbodies.

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

Section 5. Amendment of Section. MSB 17.55.010 is hereby amended as follows:

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 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] adjoining 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.

Section 6. Adoption of Section. MSB 17.55.016 is hereby adopted as follows:

17.55.016 WATER BODY 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 water body.

(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. This requirement does not apply to private ponds.

(C) Paved vehicle parking areas for commercial or industrial facilities shall not be located closer than 25 feet from the ordinary high water mark of any water body.

(1) paved vehicle parking areas within 75 feet

of a water body shall demonstrate that the development standards identified in MSB 17.02.035(B) regarding stormwater runoff are met.

(D) Except as provided in subparagraph (1), 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 of at least 110 percent of the storage volume to minimize the risk of spills. All piping and valves carrying liquid hazardous substances shall have secondary containment.

(1) Pump-activated fuel-delivery systems with leak detection and auto shutoff may have a drip collection system instead of secondary containment.

(2) Refined oil fuels such as gasoline, diesel fuel, small engine fuels, etc., with an aggregate total volume of 10 gallons or less do not require secondary containment.

(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.

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

(1) Removing riparian buffer from more than 50 percent of the surface area except as provided in MSB 17.02.035(A) (1) (a) .

(a) Dead, diseased, or fallen trees may be removed from the riparian buffer area, and pruning for vegetation health is allowed.

(2) Ground disturbing activities of more than 50 percent of the surface area.

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

Commented [AS3]: Not clear what other types of waste. Not necessarily hazardous

(4) Stockpiling snow imported from an offsite location.

(5) The application of fertilizers or herbicides.

Section 7. Amendment of Section. MSB 17.55.020 is hereby amended as follows:

17.55.020 WATER BODY SETBACKS FOR [SHORELANDS] STRUCTURES.

(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 water

body [BODY OF WATER]. [EXCEPT AS PROVIDED OTHERWISE, E]aves may project three feet into the required setback area.

(1) Compliance with setbacks for structures adjoining waterbodies shall be based upon the location of the structure in relation to the ordinary high water mark at the time it was constructed. Subsequent movement of the ordinary high water mark that reduces the setback distance does not create a violation under this chapter.

(B) Docks, piers, marinas, aircraft hangars, boathouses **and water-dependent accessory structures** may be located closer than 75 feet of a water body and over the water body, 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 state, federal, and borough regulatory standards and receive a land use permit prior to construction in accordance with MSB 17.02.**

(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] adjoining a water_body 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 water_body;

(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.

Commented [AS4]: Changed to text in order to protect the legislative history

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

(1) AN APPLICATION FOR A SHORELINE SETBACK

EXCEPTION SHALL INCLUDE A FILING FEE AS ESTABLISHED BY RESOLUTION OF THE ASSEMBLY.

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

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

(F) A permit in accordance with MSB 17.02 is required prior to construction or placement of any structure, or any ground-disturbing activity within 75 feet of the ordinary high water mark of any water body.

~~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 8. Amendment of Subsection. MSB 17.02.010(A) is hereby amended as follows:

(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 **for**

activities within 75 feet of a water body and directly providing regulatory information to persons proposing [DEVELOPMENT] certain activities within the borough outside of the cities of Houston, Palmer, and Wasilla.

Commented [A55]: Adopted

Section 9. Amendment of Section. MSB 17.02.020 is hereby amended as follows:

17.02.020 LAND USE PERMIT FOR ACTIVITIES WITHIN 75 FEET OF A WATER BODY.

(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:

(6) construction or placement of any [BUILDING] structure within 75 feet of the ordinary high water mark of any [WATERCOURSE OR] water body; or

(7) ground disturbing activities within 75 feet of the ordinary high water mark of any 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.

Section 10. Amendment of Subsection. 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] adjoining roadways;
 - (v) location of rights-of-way and public easements within and [ADJACENT TO] adjoining the parcel;
 - (vi) location and name of [ADJACENT] adjoining water bodies;
 - (vii) location of subsurface sewage disposal systems; [AND]
 - (viii) intended use of proposed structures; [.]
 - (ix) existing cleared areas, structures, and impervious surfaces; and
 - (x) any areas of proposed ground disturbing activities.

Section 11. Adoption of Section. MSB 17.02.035 REQUIRED STANDARDS is adopted as follows:

17.02.035 REQUIRED STANDARDS

(A) The director may issue a land use permit

pursuant to MSB 17.02.020 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 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 shall comply with MSB 17.55.020 (B) (2), as applicable; and

(3) the total area of impervious surfaces within 75 feet of a water body shall not exceed 20% of the area within 75 feet of the water body, except that impervious surfaces may exceed 20% if the requirements of MSB 17.02.050 (B) are met.

Section 12. Adoption of Section. MSB 17.02.050 ADDITIONAL REQUIRED STANDARDS FOR SPECIFIC CIRCUMSTANCES is adopted as follows:

17.02.050 ADDITIONAL REQUIRED STANDARDS FOR SPECIFIC CIRCUMSTANCES

(A) In addition to the site plan requirements identified in MSB 17.02.030, 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) or 17.02.035 (A) (3) (a), the following additional requirements apply~~ must submit the following additional information to obtain a land use permit:

~~(1) site plan requirements identified in MSB 17.02.030, and~~

~~(2) The application shall include the following information:~~

~~(a1) 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;~~

~~(b2) plans and specifications for proposed runoff pollution mitigation measures, including for necessary maintenance, with sufficient detail to support an engineering review;~~

~~(e3) 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~~

(d4) site-specific analyses conducted by a qualified professional identifying the proposed runoff pollution mitigation measures.

(2B) a-A land use permit may only be issued upon a finding that the applicant's proposed runoff pollution mitigation ~~measures will be designed and installed under the oversight of a qualified professional and will meet~~ the following criteria:

(e1) Treat the initial 0.25 inch of post-development runoff for each storm event;

(e2) Provide (a minimum of) 12 hours of detention for the post-development runoff in excess of pre-development runoff volumes for the 1-year, 24-hour storm;

(e3) 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;

(e4) 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; and

(e5) 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 oversight of a qualified professional.~~

(4C) 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.

(5D) a-a revised stormwater runoff analysis will be required if future development could reasonably result in increased stormwater runoff.

(6E) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their ~~land use permit under this chapter~~ while the structure permitted under this subsection remains within 75 feet of a lake, pond, or ponded or emergent wetland.

Section ~~713~~. Adoption of Subsection. MSB 17.65.020 (B) is hereby adopted as follows:

(B) For variances from the water body setback requirement in MSB 17.55.020 (A) the ~~Planning Commission~~ following additional standards apply ~~must find each of the following requirements has been met:~~

(1) ~~the site plan required by MSB~~

Commented [AS6]: This term requires some discussion. The board should consider narrowing this to reflect jurisdictional wetlands as determined by the USACE

~~17.65.050(C)(4) demonstrates that the development standards identified in MSB 17.02.035(A) will be met standards identified in MSB 17.02.050-; and~~

~~(2) the variance application demonstrates compliance with the requirements identified in 17.02.035(B) regarding stormwater runoff.~~

~~(3) The Planning Commission shall not authorize a variance may not be granted if the location of the structure is:~~

~~(a) closer than 45 feet from the ordinary high water mark of a water body.~~

~~(b) in an area of known erosion hazard adjacent to a river, stream, or other flowing waters.~~

Section ~~§14~~. 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 structures.

(b) Non-habitable structures within 75 feet of a water body that were constructed between September 16, 1988 and the effective date of this section, ~~and have not subsequently been enlarged or altered~~are legal nonconforming structures.

(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~~ May 12, 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 structures.

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

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

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

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

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

(4) Habitable buildings and garages that were constructed between 45 and 75 feet of the ordinary high water mark of a lake, pond, 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 17.02.020(B).

Section 15. Amendment of Section. MSB 17.125.010 is hereby amended as follows:

- **"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.

- "Ground disturbing activity" means an activity that includes the use of heavy equipment, such as a backhoe or bulldozer, that disturbs the soil layers, uproots woody vegetation, or alters preexisting land contours. Examples of such uses include mechanized land clearing, grading, contouring, or placing of fill. Ground disturbing activity does not include the cutting or removal of vegetation above the ground (i.e. use of hydro-axe, mowing, rotary cutting, and chain sawing) without disturbing the soil or root systems.

- "Kennel, stable, and animal yards" means any premises used for breeding, buying, selling, 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).

• "Qualified professional" means a professional [HYDROLOGIST, GEOLOGIST, OR REGISTERED ENGINEER THAT HAS SPECIFIC EDUCATION AND EXPERIENCE WITH GROUNDWATER HYDROLOGY] 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 title.

• "Riparian buffer" means ~~native an area of undisturbed native vegetation~~ adjoining a water body that helps to protect the water body from the impact of activities conducted on adjoining land.

• "Runoff pollution mitigation measure" means any ~~combination of bioswales, rain gardens, riparian buffers, filter strips, or other~~ features designed and intended to treat and retain stormwater runoff associated with a development, such as bioswales, rain gardens, riparian buffers, filter strips.

• "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.

• "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 adjoining parcel.

Section 916. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2025.

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

Revised - October 29, 2024

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, MSB 17.80 NONCONFORMING STRUCTURES, 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 a vegetative buffer along the shoreline.

5. **Animal Waste Management:** Adopt a setback requirement of 100 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 or drip collection 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. Limitation of Variances: It is recommended that MSB 17.65 be amended to eliminate the ability to obtain a variance within 45 feet of a waterbody.

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

DRAFT