



## MATANUSKA-SUSITNA BOROUGH

### Planning and Land Use Department

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7822 • [www.matsugov.us](http://www.matsugov.us)

## WATERBODY SETBACK ADVISORY BOARD AGENDA

Edna DeVries, Mayor

Michael Brown, Borough Manager

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

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

Location:

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

Support Staff:  
Alex Strawn, Planning & Land Use Director  
Lacie Olivieri, Clerk

**REGULAR MEETING**

**5:00 P.M.**

**June 25, 2024**

### Ways to participate in the meeting:

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

**IN WRITING:** You can submit written comments to Alex Strawn at [alex.strawn@matsugov.us](mailto:alex.strawn@matsugov.us) and Lacie Olivieri at [Lacie.olivieri@matsugov.us](mailto:Lacie.olivieri@matsugov.us). Written comments are due at noon on Friday prior to the meeting.

### TELEPHONIC TESTIMONY:

- Dial 1-855-290-3803; you will hear “joining conference” when you are admitted to the meeting.
- You will be automatically muted and able to listen to the meeting.
- When the Chair announces audience participation or a public hearing you would like to speak to, press \*3; you will hear, “Your hand has been raised.” (There may be a delay, please be patient with the system.)
- When it is your turn to testify, you will hear, “Your line has been unmuted.”  
State your name for the record, spell your last name and provide your testimony.

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

II. APPROVAL OF AGENDA

III. PLEDGE OF ALLEGIENCE

IV. APPROVAL OF MINUTES: Regular Meeting: June 11, 2024

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

VI. ITEMS OF BUSINESS

A. Draft Ordinance - Vote on ordinance framework

VII. BOARD MEMBER COMMENTS

VIII. ADJOURNMENT



## MATANUSKA-SUSITNA BOROUGH WATERBODY SETBACK ADVISORY BOARD MINUTES

**REGULAR MEETING**

**5:00 P.M.**

**June 11, 2024**

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

The Regular meeting for the Waterbody Setback Advisory Board was held on Tuesday, June 11, 2024, at 350 E. Dahlia Avenue, Palmer, Alaska. Vice Chair CJ Koan called the meeting to order at 6:00 p.m.

Members present; 8 - Cj Koan, Kendra Zamzow, Matthew LaCroix, Bill Haller, Tim Alley, Carl Brent, Jeanette Perdue, Bill Klebesadel arrived at 6:25

Members absent/excused; 1 - Bill Kendig

Quorum established.

**II. APPROVAL OF AGENDA**

The agenda was unanimously approved without objection.

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF MINUTES: Regular Meeting: May 22, 2024**

The minutes from the regular meeting held on May 22, 2024, were approved without any objections.

**V. AUDIENCE PARTICIPATION**

Patti Fisher, representing the Meadow Lakes Community Council, attended to observe the proceedings and to relay information back to the Community Council, given the pertinent interest in local waterbody matters.

**VI. ITEMS OF BUSINESS**

A. Residential Mortgage – The party was absent.

B. Draft Ordinance – Significant questions were raised, leading to a vote to delineate the framework of the ordinance the Advisory Board intends to propose to the assembly.

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C. Meeting Schedule – No objection to schedule changes

VII. BOARD MEMBER COMMENTS

The board members expressed satisfaction with the progress made toward establishing a clear direction. Kendra Zamzow specifically requested that MSB staff provide more information on the topics to be discussed in future meetings, in advance to ensure preparedness.

VIII. ADJOURNMENT

The meeting was adjourned at 7:54 p.m.

DRAFT

## Waterbody Setback Framework questions

1. Should the Borough allow a process for new habitable structures to be allowed to go within 75 feet of a waterbody?

Brent: No  
Zamzow: No  
Haller: No  
Alley: Yes  
Perdue: No  
Koan: No  
LaCroix: Yes  
Klebesadel: Yes

2. Should the Borough allow a process for existing (1987-present) habitable structures to be allowed to go within 75 feet of a lake?

Brent: Yes  
Zamzow: No  
Haller: Yes  
Alley: Yes  
Perdue: No  
Koan: Yes  
LaCroix: Yes  
Klebesadel: Yes

3. Should the 75 foot waterbody setback apply to more than habitable structures?

Brent: Yes  
Zamzow: Yes  
Haller: Yes  
Alley: Yes  
Perdue: Yes  
Koan: Yes  
LaCroix: Yes  
Klebesadel: Yes

4. There should be a permit process for grading, fill, clearing (need to define) or construction of structures within 75 feet.

Unanimous

4A. Plan needs to be submitted if disturbing more than X% of setback area. The plan needs to consider percent impervious surface, percent or distance of existing and new vegetation, stormwater control, runoff pollution mitigation

5. Should the Borough advise the assembly to adopt a habitat protection tax incentive similar to Kenai Peninsula Borough and lobby the state to modify to include waterbodies, not just anadromous streams

Brent:  
Zamzow:  
Haller:  
Alley:  
Perdue:  
Koan:  
LaCroix:  
Klebesadel

6. Should the borough require retention of some vegetation along the water's edge for **new** development?

Brent:  
Zamzow:  
Haller:  
Alley:  
Perdue:  
Koan:  
LaCroix:  
Klebesadel:

7. Should kennels, stables, animal yards, and animal waste facilities be prohibited closer than 150 feet from the ordinary high-water mark of any water body?

Brent:  
Zamzow:  
Haller:  
Alley:  
Perdue:  
Koan:  
LaCroix:  
Klebesadel:

8. Should the ordinance include measures to mitigate the potential for petroleum contamination, such as secondary containment systems or pump-fed top-outlet fuel tanks for homes/businesses that are currently out of compliance?

Brent:  
Zamzow:  
Haller:  
Alley:  
Perdue:  
Koan:  
LaCroix:  
Klebesadel

9. Should Strahler's second-order and higher streams be subject to a 150-foot setback from the ordinary high-water mark?

Brent:

Zamzow:

Haller:

Alley:

Perdue:

Koan:

LaCroix:

Klebesadel

10. Purpose and needs statement:

CODE ORDINANCE

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 24-XX**

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

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BE IT ENACTED:

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

Section 2. Amendment of Subsection. MSB 17.55.004(A) is hereby amended by adding the following definition:

• "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 lakes or ponds created by excavation, as well as artificial blocking or restriction of the flow of a river, stream, or tidal area.

• "Qualified professional" means a professional civil engineer or other professional registered with the state



of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.

Section 3. Amendment of Section. MSB 17.55.020 is hereby amended to read as follows:

17.55.020 SETBACKS [FOR SHORELANDS] FROM WATER

BODIES

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

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

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

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

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

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

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

(C) [IN THE CITY OF WASILLA, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO NOVEMBER 16, 1982. ELSEWHERE IN THE BOROUGH,] [T]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] commercial building, [OR] habitable building,

or garage.

(1) open air structures such as gazebos or pavilions are not considered structures under this section.

(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) Structures are allowed to be located within 75 feet of the ordinary high water mark of a lake, but no less than 45 feet, if runoff pollution mitigation measures are designed and installed under the supervision of a qualified professional.

(1) 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. Natural riparian buffers are preferred over man-made measures such as bioswales or rain gardens.

(a) Mitigation measures shall include measures to mitigate the potential for petroleum contamination, such as installation of secondary

containment systems equal to 110 percent of the storage volume or pump-fed top-outlet fuel tanks.

(2) Engineered plans and specifications shall be submitted for an engineering review as part of a mandatory land use permit, in accordance with MSB 17.02.

(3) The development shall be designed and constructed in accordance with local, state, and federal laws.

(4) The 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 4. 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)



## 17.55 Suggested Revisions

The black text is the existing ordinance. Alex’s proposed amendments to the current ordinance are shown in the blue text. The red text is Matt LaCroix’s suggested revisions to the existing text and Alex’s proposed amendments. [Bracketed] red text indicates potential text changes. Proposed deletions occur in ~~strikethrough~~. Explanatory notes occur in [bracketed green text.]

[The intent of these suggested revisions is threefold.

1. To identify remedies for existing structures built in violation of the 1973 and 1987 setback requirements. See the proposed section 17.55.030.
2. To identify an easy-to-implement process to avoid future structures being built in violation of the setback requirements. See the proposed section 17.55.025.
3. To improve protections for surface water quality, fish and wildlife habitat, recreation, and property values. See the proposed sections 17.55.016, 17.55.035, and 17.55.036.]

### 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 SETBACKS FOR ~~SHORELANDS~~ WATER BODIES

17.55.025 SETBACK CERTIFICATION REQUIRED

17.55.030 EXISTING STRUCTURES WITHIN 75 FEET OF A WATER BODY

17.55.035 RIPARIAN BUFFER REQUIRED

17.55.036 RIVER HABITAT PROTECTION TAX CREDIT

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.

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

- “Boathouse” means a roofed structure which is used to completely or partially enclose and store boats and boating accessories.

- “Building” means any structure intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature.

- “Building line” means the line of that part of the building nearest the property line.
- “Dedication” means the reservation of land to a public use by the owner manifesting the intention that it shall be accepted and used presently or in the future for such public purpose. A dedication by the owner under the terms of this section is a conveyance of an interest in property which shall be deemed to include the warranties of title listed in A.S. [34.15.030](#). The dedication of streets, alleys, sidewalks, or public open space shall convey a fee interest in the area dedicated. The dedication of all other public rights-of-way shall be deemed to create an easement in gross to perform the indicated function in the area depicted.
- “Engineer” means a registered professional civil engineer authorized to practice engineering in the state of Alaska.
- “Incidental” means subordinate and minor in significance and bearing a reasonable relationship to the primary use.

“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 part of a surface river or stream. The term also includes artificial lakes or ponds created by excavation, as well as artificial blocking or restriction of the flow of a river, stream, or tidal area (e.g., by a dam).

- “Lot” means the least fractional part of subdivided lands having limited fixed boundaries and having an assigned number, or other name through which it may be identified.
- “Lot depth” means the average distance between front and rear lot lines.
- “Lot frontage” means all property abutting the right-of-way of a dedicated street or road easement, measured along the right-of-way between side lot lines of a lot.
- “Lot width” means the average distance between side lot lines.

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

- “Official streets and highway plan” means a map and attendant document depicting the proposed system of freeway, arterial, and collector streets in the borough, as adopted by the planning commission and by the assembly, and which is on file in the planning department office, together with all amendments thereto subsequently adopted.
- “Ordinary high water mark” means the mark made by the action of water under natural conditions on the shore or bank of a body of water which action has been so common and usual

that it has created a difference between the character of the vegetation or soil on one side of the mark and character of the vegetation and soil on the other side of the mark.

[The definition above is consistent with, but not identical to the definitions in state regulations or statute.]

“Ordinary high water mark” means

- (A) in the nontidal portion of a river, lake, or stream: the portion of the bed(s) and banks up to which the presence and action of the non-tidal water is so common and usual, and so long continued in all ordinary years, as to leave a natural line or “mark” impressed on the bank or shore as indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics;
- (B) in a braided river, lake, or stream: the area delimited by the natural line or “mark,” as defined in Part A above, impressed on the bank or shore of the outside margin of the most distant channels; or
- (C) in the tidally influenced portion of a river, lake, or stream: the portion of the bed(s) and banks below the
  - (1) OHW as described in A or B above, or
  - (2) mean high water elevation; whichever is higher at the project site.

From AS 29.45.046, in this paragraph, “ordinary high water line” means that line on the shore of the nontidal portion of a river or stream that reflects the highest level of water during an ordinary year and is established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

- “Parcel” means an unsubdivided plot of land.
- “Right-of-way” means a strip of land reserved, used, or to be used for a street, alley, walkway, airport, or other public or private purpose.

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

“Runoff pollution mitigation measure” means any combination of bioswales, rain gardens, riparian buffers, filter strips, or other features adequate to treat and retain all stormwater ~~or snowmelt~~ runoff associated with a development. [Moved to DEFINITIONS from Alex’s text]

“Qualified professional” means a professional ~~civil~~ engineer or other professional registered with the state of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter. [AS 08.48 is not limited to civil engineers]

“Stormwater runoff” means any surface flow consisting entirely of water from natural 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. Runoff can transport harmful pollutants to water bodies and groundwater.



“Strahler Stream Order” means a stream’s classification based on stream and tributary relationships. Headwater channels with no upstream tributaries are designated as first-order streams down to their first confluence. A second-order stream is formed below the confluence of two first-order channels. Third-order streams are created when two second-order channels join, and so on. The intersection of a channel with another channel of lower order does not raise the order of the stream below the intersection (e.g., a fourth-order stream intersecting with a second-order stream is still a fourth-order stream below the intersection)

“Stream” [currently defined in 17.125.010 as] “a body of flowing water, where the water flows in a natural channel as opposed to a canal.” [We don’t have canals and exempting them from the setback would be counterproductive. Suggest changing the current definition to ADF&G’s] “means a natural or artificial channel containing flowing water at least part of the year, including a river, creek, or tributary.

- “Structure” means anything that is constructed or created and located on or above the ground, or attached to something fixed to the ground. For purposes of minimum setbacks and building separation requirements, the following are not considered structures unless specifically addressed by code: signs; fences; retaining walls; parking areas; roads, driveways, or walkways; window awnings; a temporary building when used for 30 days or less; utility boxes and other incidental structures related to utility services; utility poles and lines; guy wires; clotheslines; flagpoles; planters; incidental yard furnishings; water wells; monitoring wells; and/or tubes, patios, decks, or steps less than 18 inches above average grade.
- “Subdivision” means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or lease for more than ten years, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.
- “Surveyor” means a professional land surveyor who is registered in the state of Alaska.

“Treat and retain” means to manage stormwater on the parcel through any combination of detention, retention, infiltration, and evapotranspiration to prevent a discharge of stormwater runoff to a water body. [The focus of the suggested provisions is on managing stormwater volume. Other approaches (e.g., to managing construction stormwater) focus on sediment retention.]

- “Utility box” means electric transformers, switch boxes, telephone pedestals and telephone boxes, cable television boxes, traffic control boxes, and similar devices.
- “Utility services” means the generation, transmission, or distribution of electricity, gas, communications, and municipal water and sewer systems.  
(Ord. 21-019, § 2, 2021; Ord. 17-088(SUB), § 2, 2017; Ord. 13-164, §§ 2, 3, 2013; Ord. 93-042, § 2 (part), 1993; Ord. 89-072, § 2 (part), 1989; Ord. 88-221, § 2 (part), 1988)

“Water bodies” [currently defined in 17.125.010] means ~~permanent or temporary areas of~~ **natural or artificial landscape features containing** standing or flowing water. Water depth is such that water, and not air, is the principal medium in which organisms live. Water bodies include, but are not limited to lakes, ponds, **ponded and emergent wetlands**, streams, rivers, sloughs, and **tidal waters** ~~all saltwater bodies~~. [The septic and structural setbacks reasonably apply to wetlands.]

“Wetlands” means those areas that are inundated and saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

#### **17.55.05 GENERAL PURPOSE AND INTENT**

(A) This chapter establishes minimum structural setbacks from lot lines, ~~water courses and~~ water bodies, rights-of-way, and specific screening easements for certain lands within subdivisions. **It also establishes standards for riparian buffers for lands adjacent to water bodies, and requirements related to the development and management of lands within riparian buffers. The standards contained herein apply to all lands** in the Matanuska-Susitna Borough except where otherwise specified in special land use district regulations within this title.

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

(B) **The primary purpose of parts 17.55.015 through 17.55.040 of this chapter is to protect the ecologic functioning of surface waters within the borough by avoiding and minimizing the discharge of pollutants to water bodies via surface runoff and subsurface leaching. The requirements of these parts are intended to protect human health, aquatic and riparian habitat, the local economy and property values, recreation, and quality of life. In the case of setbacks from flowing waters, an additional purpose is to minimize risk to structures from lateral channel migration and flooding.**

(C) **Setbacks applicable to a given parcel, lot, or tract shall be clearly identified on all preliminary and final plats submitted pursuant to MSB 43.15.016 and 43.15.051. Plats should also show wetlands and non-usable septic area.**

#### **17.55.010 SETBACKS FROM RIGHTS OF WAY AND LOT LINES**

(A) No structure or building line shall be placed within twenty-five feet (25') from the right-of-way line of any public right-of-way.

(B) Notwithstanding subsection (A), no furthest protruding portion of any structure shall be placed within ten feet from the right-of-way line of any public right-of-way when the pre-existing lot:

(1) Measures sixty feet (60') 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.

- (C) Except where specifically provided otherwise by ordinance, no furthest protruding portion of any structure or building line, shall be located nearer than ten feet from any side or rear lot line.
  - (D) Except as otherwise specified by code, eaves may project a maximum of three feet into required setback areas.
  - (E) The setback requirements of this section do not apply to property within the cities of Palmer and Wasilla.
  - (F) If a condemnation by a governmental agency reduces the building line setback of a structure below twenty-five feet (25'), 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.
- (Ord. 93-042, § 2 (part), 1993; Ord. 88-190, § 3 (part), 1988)

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

**17.55.016 WATER BODY SETBACKS FOR POLLUTION SOURCES** [New section to address specific 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. [Moved from 17.55.020(E)]
  - (1) The planning commission shall require this distance be increased if data on soils and topography indicate that 100 feet would be insufficient where necessary to protect surface waters quality within the borough. The planning commission may consult with staff from the Alaska Department of Environmental Conservation to determine what distance would be protective of water quality. [It seems like the planning commission would implement this provision as part of an area planning effort (e.g., area plan, comprehensive plan, perhaps a lake plan) rather than in a plat review, which is done by the platting board.]
- (B) Kennels, stables, animal yards and animal waste facilities shall not be located closer than 150 feet from the ordinary high water mark of any water body. Drainage from kennels, stables, animal yards and animal waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body.
- (C) Liquid hazardous substances (including petroleum fuels, oils, and lubricants) shall not be located or stored closer than 75 feet from the ordinary high water mark of any water body.
  - (1) Secondary containment equal to 110 percent of the storage volume shall be required for all liquid hazardous substance storage closer than 100 feet from the ordinary high water mark of any water body or watercourse. [Consistent with traditional state requirements]

- (2) The owners of pre-existing fixed storage facilities for petroleum fuels and other liquid hazardous substances (such as home heating oil tanks) shall be allowed three years from the effective date of this section to fully comply with the secondary containment requirement.
  - (3) The owners of commercial bulk fuel storage facilities located closer than 200 feet from the ordinary high water mark of any water body shall submit to the Borough Department of Emergency Services an engineer's report showing the layout and construction of the facility and containment systems. [To facilitate emergency response]
- (D) Vehicle parking areas shall not be located closer than 75 feet from the ordinary high water mark of any water body. Parking areas for five or more vehicles shall not be located closer than 100 feet from the ordinary high water mark of any water body. All parking areas for five or more vehicles shall:
- (1) Include provisions for infiltration or other treatment of stormwater; and
  - (2) Be graded away from the water body.
- (E) Stormwater discharge points, including from pipes, ditches, swales, and snow storage sites, shall not be located closer than 75 feet from the ordinary high water mark of any body of water. Unless authorized by the Alaska Department of Environmental Conservation, stormwater conveyances that collect and transport stormwater from more than a single lot or are associated with roads and similar linear developments (e.g., trails, railroad) shall terminate a minimum of 100 feet from the ordinary high water mark of any body of water.

#### **17.55.020 SETBACKS FOR SHORELANDS. WATER BODIES**

- (A) Except as provided in subsection (B) of this section, and 17.55.030, no structure or footing shall be located closer than the applicable water body setback identified below. ~~75 feet from the ordinary high water mark of a body of water. Except as provided otherwise,~~ Eaves may project three feet into the required setback area.
- (1) Unless a greater setback distance is specified below, a minimum 75-foot setback from the ordinary high water mark shall apply to all water bodies and Strahler first-order streams.
    - (a) The planning commission may increase the minimum setback distance to protect water bodies that possess a unique ecological attribute such as high recreational value, sensitive wildlife habitat, or natural beauty. [As with the septic setback, it seems like the planning commission would implement this provision as part of an area planning effort (e.g., area plan, comprehensive plan, perhaps a lake plan).]
    - (b) The planning commission may consult with staff from the Alaska Department of Fish & Game to determine what distance would be protective of the specific ecological attribute.
  - (2) A 100-foot setback from the ordinary high water mark shall apply to water bodies that are 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. [The Susitna-Matanuska Area Plan identifies a 150-200' setback from anadromous and high-value resident fish waters.]

- (3) A 150-foot setback from the ordinary high water mark shall apply to Strahler second-order and higher streams. [to provide greater protection from channel migration and flooding]
- (4) Consistent with the 2011 Susitna Matanuska Area Plan and the Susitna Basin Recreation Rivers Plan [currently being revised], a 300-foot setback from the ordinary high water mark shall apply to [Borough land adjacent to] the following rivers: Alexander Creek, Chulitna River (including the East and West Forks), Deshka River (including Kroto and Moose creeks), Kahiltna River, Lake Creek, Peters Creek, Skwentna River, Talachulitna River, Talkeetna River, Trapper Creek, and Yentna River.

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

(1) Pursuant to MSB 17.02(A)(6), the construction or placement of any building within 75 feet of any water body requires authorization via a mandatory land use permit.

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

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

~~(C) In the city of Wasilla, this section does not apply to structures where construction was completed prior to November 16, 1982. [As discussed, Wasilla has its own standards] 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. [This provision allowed for unequal application of the setback requirement. Property owners have had 37 years to seek an exception from the setback based on ignorance of the requirement when the structure was built. This provision is unnecessary because by the terms of 17.80(A)(2), some of these structures are legal nonconforming. See proposed 17.55.030(C).] 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 **commercial building** or habitable building or garage. [The current provision is counterproductive because it exempts commercial and industrial buildings (which likely pose greater threat to water quality than residences). It is unnecessary because 17.55.020(B) already identifies the structures and footings to which the~~

setback does not apply. Deleting the entire provision is the cleanest way to eliminate the exemption.]

~~(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. [Moved to 17.55.016]~~

~~(F) Structures are allowed to be located within 75 feet of the ordinary high water mark of a lake, but no less than 45 feet, if runoff pollution mitigation measures are designed and installed under the supervision of a qualified professional. [Alternate text proposed in new section 17.55.030 for existing structures only. Ordinance 23-079 tasked the Advisory Board with addressing existing structures. As reflected in the proposed new sections, standards for new construction should be increased, not reduced, to better protect water quality, habitat, recreation and property values.]~~

~~(1) 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. Natural riparian buffers are preferred over man-made measures such as bioswales or rain gardens. [Moved to DEFINITIONS]~~

~~(a) Mitigation measures shall include measures to mitigate the potential for petroleum contamination, such as installation of secondary containment systems equal to 110 percent of the storage volume or pump-fed top-outlet fuel tanks. [Addressed under new section 17.55.016]~~

~~(2) Engineered plans and specifications shall be submitted for an engineering review as part of a mandatory land use permit, in accordance with MSB 17.02.~~

~~(3) The development shall be designed and constructed in accordance with local, state, and federal laws.~~

~~(4) The 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.~~

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

**17.55.025 SETBACK CERTIFICATION REQUIRED** [New Section to avoid setback encroachments and document that developer knew about setback requirement. Far simpler to administer than a land use permit.]

(A) A water body setback certification shall be obtained from the planning and land use director before construction or development begins within any parcel bordering a water body. The certification documents that the applicable water body setback distance has been measured and physically marked on the subject parcel. The following three options exist for certifying water body setbacks:

(1) Property owners may hire a licensed surveyor at their own expense to measure and physically mark the water body setback. The property owner shall electronically submit

the setback affidavit cosigned by the surveyor to the planning and land use director on a form provided by the planning and land use department. The planning and land use director shall acknowledge receipt of the certification request and transmit the certification within ten working days from the date the affidavit is received.

(2) Property owners of parcels with road access may request the water body setback be measured, marked, and certified by borough planning and land use department staff. Requests for setback certification shall be submitted electronically to the planning and land use department. The planning and land use director shall acknowledge receipt of the certification request and schedule a site visit within thirty calendar days from the date the request is received. The property owner and borough staff member will cosign the certification affidavit, which the staff member will submit.

(3) Licensed and bonded contractors and home builders may self-certify that the water body setback has been measured and physically marked prior to construction by electronically submitting the setback affidavit to the planning and land use director on a form provided by the planning and land use department. The planning and land use director shall acknowledge receipt of the certification affidavit.

**17.55.030 EXISTING STRUCTURES WITHIN 75 FEET OF A WATER BODY** [New section to provide clarity on status of existing structures and create new process for nonconforming structures to be retained.]

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

(B) Non-residential structures that were completed between September 6, 1988, and the effective date of this section are legal nonconforming pursuant to MSB 17.80.020(A)(1). [The setback applied to all structures prior to 1988 but currently only applies to residential structures and garages.]

(C) Structures that were completed between July 3, 1973, and January 1, 1987, [and have not subsequently been expanded,] 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). [Structures between 45 and 75 feet from the OHW mark were in violation when built, made legal by the sort-term reduction of the setback to 45', and became nonconforming when the 75' setback was restored.]

(D) Structures that were completed between January 1, 1987, and the effective date of this ordinance may be granted an exemption from the setback requirement in accordance with MSB 17.80.020(B)(2). After making an administrative determination to grant the exemption, the planning and land use director may authorize via land use permit the retention of existing structures as close as 45 feet from of the ordinary high water mark of a lake, pond, or ponded or emergent wetland. The land use permit shall require the establishment and retention of minimum 25-foot wide buffer of native vegetation and runoff pollution mitigation measures as necessary to prevent stormwater runoff from entering the water body. The planning and land use director may not authorize a reduced setback distance from a river, stream, or other flowing water. [This

provision allows existing structures between 45 and 75 feet from the OHW mark to be exempted from the setback if stormwater prevention measures are taken. Structures closer than 45 feet are excluded. Since adoption of the setback requirements in 1973, there has been no reasonable expectation that structures could be closer than 45 feet from the OHW mark. The requirement for a minimum 25-foot vegetated buffer is consistent with the 2021 DEC Construction Stormwater General Permit applicable to disturbance of one acre or more.]

(1) In addition to the land use permit application requirements identified in MSB 17.02.030(B)(2)(a), applications for reduced lake setback distances shall include:

(a) information about 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 the proposed runoff pollution mitigation measures, including for necessary maintenance, with sufficient detail to support an engineering review;

(i) infiltrative methods require 2-4 feet from the bottom of any basin or swale to the seasonal high groundwater level. Plans and specifications for infiltrative methods shall identify the seasonal high groundwater level.

(c) 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.

(i) A qualified professional shall design the proposed runoff pollution mitigation measures and conduct the site-specific analyses.

(2) An issued land use permit shall identify the new parcel-specific water body setback and the required combination of vegetated buffer and runoff pollution mitigation measures.

(3) An exempted structure may not be enlarged or altered in any way that results in encroachment on a parcel-specific shoreline setback identified in a land use permit.

(4) The landowners are responsible for retaining the required vegetated buffer and maintaining the required runoff pollution mitigation measures specified in their permit while the exempted structure remains within 75 feet of a water body.

**17.55.035 RIPARIAN BUFFER REQUIRED** [New Section to increase water body protection for future developments. Intended to protect the water body from site development, including clearing, grubbing, contouring and soil compaction from heavy equipment operation on the site.]

(A) Natural vegetation on the edge of water bodies protects scenic beauty, controls erosion, provides fish and wildlife habitat, moderates temperature, stabilizes the banks, and reduces the flow of effluents and nutrients from the parcel into the water. As of the effective date of this section, the natural vegetation within the following specified distances of the ordinary high water mark of any water body shall be retained as a riparian buffer.

(1) A minimum 25-foot riparian buffer from the ordinary high water mark shall apply to all water bodies and Strahler first-order streams. [The 2021 DEC Construction General Permit requires a minimum 25-foot natural buffer adjacent to water bodies.]



(2) A 50-foot riparian buffer from the ordinary high water mark shall apply to water bodies that are 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.

(3) A 50-foot riparian buffer from the ordinary high water mark shall apply to Strahler second-order and higher streams.

(4) Consistent with the 2011 Susitna Matanuska Area Plan and the Susitna Basin Recreation Rivers Plan, a 100-foot riparian buffer from the ordinary high water mark shall apply to [Borough land adjacent to] the following rivers: Alexander Creek, Chulitna River (including the East and West Forks), Deshka River (including Kroto and Moose creeks), Kahiltna River, Lake Creek, Peters Creek, Skwentna River, Talachulitna River, Talkeetna River, Trapper Creek, and Yentna River.

(B) The area within riparian buffers may be ‘minimally disturbed,’ and developed in accordance with the relevant provisions of MSB code, state, federal, or other authorities.

(1) ‘Minimal disturbance’ allows for limited vegetation removal (e.g., to eliminate hazards or open a view), pruning for vegetation health, the removal of dead, diseased, or fallen trees, and a provision for water access.

(2) ‘Minimal disturbance’ does not allow the conversion of the buffer to another use (e.g., removal of vegetation and re-contouring to establish a lawn or garden).

(3) Vegetation within a riparian buffer considered by the MSB to pose a ‘Very High’ or ‘Extreme Fire Risk Hazard’ Rating (i.e., black spruce), may be removed in accordance with MSB Community Wildfire Protection Plan recommendations to reduce fire risk.

(C) Unless specifically authorized under other sections of this or other MSB Titles, the following activities are prohibited within the riparian buffer:

(1) Removal of native vegetation from more than 20 percent of the surface area.

(2) Removal of tree root masses when removing trees from the buffer.

(3) Alteration of original land contours via grading and filling, including the discharge of fill to wetlands, of more than 20 percent of the surface area.

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

(5) Stockpiling and storing snow.

(6) The application of fertilizers or herbicides.

**17.55.036 RIVER HABITAT PROTECTION TAX CREDIT** [New section to incentivize voluntary efforts to protect and restore anadromous streams, including by establishing a riparian buffer. The tax credit would be available to property owners of conforming and legal nonconforming structures.]

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

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

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

(B) Administration of the River Habitat Protection Tax Credit shall be as codified in MSB 3.15.038. [This would be a new section in the MSB tax code. It could be patterned after the Kenai Peninsula Borough's 5.14 Habitat Protection Tax Credit, though I have not yet developed suggested text. The draft ordinance must be approved by the Department of Fish & Game Commissioner.]

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

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

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

(C) Compliance with setbacks for structures adjacent to rivers, streams, and other flowing waters shall be based upon the location of the structure when it was constructed. Subsequent movement of a stream channel that reduces the setback distance does not create a nonconforming situation.

The black text reflects the current ordinance language. Red text reflects suggested changes to the current text. Suggested deletions occur in ~~strike through~~. Explanatory notes occur in [bracketed] green text.

## **CHAPTER 17.02 MANDATORY LAND USE PERMIT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) land clearing, contouring, or placing fill within 50 feet of any watercourse or water body, including to treat or retain stormwater runoff. [This could authorize stormwater infrastructure and regulate fill discharges.]

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

(C) A permit is not required under this chapter when the proposed use is subject to another permit within this title.  
(Ord. 22-104, § 2, 2022; Ord. 13-025, § 2, 2013; Ord. 11-073, § 2, 2011; Ord. 06-192(AM), § 3 (part), 2007)

#### **17.02.030 PROCEDURE.**

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

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

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

(2) site plan;

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

(i) north arrow;

(ii) boundaries of parcel;

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

(iv) names and location of adjacent roadways;

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

(vi) location and name of adjacent water bodies;

(vii) location of subsurface sewage disposal systems; and

(viii) intended use of proposed structures.

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

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

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

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

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

(F) A copy of the application shall be retained in the planning and land use department files.  
(Ord. 22-104, § 3, 2022; Ord. 11-073, § 3 (part), 2011; Ord. 06-192(AM), § 3 (part), 2007)

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

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

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

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

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

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

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

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

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

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

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

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

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

### **17.29.100 DEVELOPMENT PERMIT REQUIRED.**

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in MSB [17.29.060](#). The permit shall be for all structures, including manufactured homes, as set forth in the definitions, and for all development including fill and other activities, also as set forth in the definitions.

### **17.65.020 REQUIREMENTS FOR GRANTING A VARIANCE**

(A) In order to grant a variance to the regulations of MSB Title 17, the planning commission must find that each of the following requirements have been met: [The construction of new structures within the setback could be authorized by granting a variance from the setback requirement. Proposed text change would be consistent with that in 43.15.075 Variance; standards for approval and make it that the standard is reasonable use of the parcel for which the variance is sought. The variance should not allow what is prohibited to everyone else.]

- (1) There are unusual conditions or circumstances that apply to the property for which the variance is sought.
- (2) The strict application of the provisions of this title would **preclude reasonable use of the property. “Reasonable use” shall be construed in the context of the physical surroundings, shape, or topographical conditions of the property for which the variance is sought.** ~~deprive the applicant of rights commonly enjoyed by other properties under the terms of this title.~~ [I am not sure what “rights” the current text could be referencing. E.g., there is no “right” to construct a home or install a septic system within the setback. The setbacks are applicable to everyone. The variance should not allow what is prohibited to everyone else. It is not the borough’s fault if your property doesn’t support the specific use you want.]
- (3) The granting of the variance will not be injurious to nearby property, nor harmful to the public welfare.
- (4) The granting of the variance will be in harmony with the objectives of this title and any applicable comprehensive plans.
- (5) The deviation from the requirement of this title that is permitted by the variance will be no more than is necessary to permit a reasonable use of the property.

#### **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; [This is the case for structures completed before 1973.]
  - (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; [This is the case for structures completed between 1973 and 1987 that are between 45 and 75 feet from the OHW mark.]
  - (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\(C\)](#)~~ [17.55.030\(D\)](#); [As identified in [17.55.030\(D\)](#), “After making an administrative determination to grant the exemption, the planning and land use director may authorize via land use permit the retention of existing structures ...”]
  - (3) permanent structures built in violation of ordinances existing at the time of construction, and subsequently granted legal nonconforming status in accordance with MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

#### **43.15.075 VARIANCE; STANDARDS FOR APPROVAL**

- (A) A variance from the requirements of MSB 43.20 may be granted only if the platting board finds all of the following:
- (1) the granting of the variance shall not be detrimental to the public health, safety, or welfare, or injurious to adjacent property;
  - (2) the variance request is based upon conditions of the property that are atypical to other properties;
  - (3) Because of unusual physical surroundings, shape, or topographical conditions of the property for which the variance is sought, or because of the taking of a part of the property through condemnation or because of surrounding development or conditions, the strict application of MSB 43.20 shall result in undue substantial hardship to the owner of the property; and
  - (4) Only one variance fee shall be charged per platting action when multiple variances are requested.

#### **43.15.016 PRELIMINARY PLAT SUBMITTAL AND APPROVAL**

(B)(14) the location of water bodies **and required setbacks from the same**, drainage courses, **wetlands and non-usable septic area**, and, when required by MSB 17.29.160, flood hazard information, within the proposed subdivision;

(B)(15) proposed lot lines, tract lines, utility and other easements, rights-of-way, **applicable required setbacks**, including approximate dimensions and area of all lots and tracts, approximate curve radii, tangent lengths, and similar information;





# Waterbody Setback questions

1. Should structures or footings be prohibited within 75 feet of a body of water's ordinary high-water mark?
  - a. Should exceptions be made for docks, piers, marinas, aircraft hangars, and boathouses to be located closer than 75 feet to the water, under specific conditions?
  - b. Should boathouses or aircraft hangars be permitted closer than 75 feet to the water if they are solely used for storing boats and boating accessories?
2. Should 17.55 apply to commercial?
3. Should runoff pollution mitigation measures (Secondary containment or gravity-fed fuel tank) be implemented for structures located within 75 feet of a lake, with a minimum setback of 45 feet?
  - a. Should engineered plans and specifications for runoff pollution mitigation measures be mandatory for land use permits in accordance with local regulations?
  - b. Should landowners be responsible for maintaining approved runoff pollution mitigation measures as long as the structure remains within 75 feet of a lake?
  - c. Should natural riparian buffers be preferred over man-made measures for runoff pollution mitigation?
4. Should the landowner have to get a land use permit to clear, contour, or place fill within 50 feet of any watercourse or waterbody including to treat or retain stormwater runoff?
5. Do you agree with Matt's edits on definitions?
6. Do you agree with Matt's edits to section titles?

### **Section 17.55.05 PURPOSE AND INTENT**

1. Do you agree with Matt's edits?

### **Section 17.55.016 WATER BODY SETBACKS FOR POLLUTION SOURCES**

1. Do you agree with section 17.55.016 (A) (1)?
2. Should kennels, stables, animal yards, and animal waste facilities NOT be located closer than 150 feet from the ordinary high-water mark of any water body?
3. Should liquid hazardous substances (including petroleum fuels, oils, and lubricants) not be located or stored closer than 75 feet from the ordinary high-water mark of any water body?
4. Should the ordinance include measures to mitigate the potential for petroleum contamination, such as secondary containment systems or pump-fed top-outlet fuel tanks?
5. If yes, should a secondary containment equal to 110 percent of the storage volume be required for all liquid hazardous substance storage closer than 100 feet from the ordinary high-water mark of any water body or watercourse?
6. Should the owners of pre-existing fixed storage facilities for petroleum fuels and other liquid hazardous substances (such as home heating oil tanks) be grandfathered in?
7. If no, should the owners of pre-existing fixed storage facilities for petroleum fuels and other liquid hazardous substances (such as home heating oil tanks) be allowed three years from the effective date of this section to fully comply with the secondary containment requirement?
8. Should the owners of commercial bulk fuel storage facilities (located closer than 200 feet from the ordinary high-water mark of any water body) submit an engineer's report showing the layout and construction of the facility and containment systems to the Borough Department of Emergency Services?

9. Should vehicle parking areas not be allowed closer than 75 feet from the ordinary high-water mark of any water body?
  
10. Should parking areas for five or more vehicles not be located closer than 100 feet from the ordinary high-water mark of any water body?
  
11. Do you agree that all parking areas for five or more vehicles shall:
  - (1) Include provisions for infiltration or other treatment of stormwater; and
  - (2) Be graded away from the water body?
  
12. Do you agree that stormwater discharge points, including from pipes, ditches, swales, and snow storage sites, shall not be located closer than 75 feet from the ordinary high-water mark of any body of water?
  
13. Do you agree that unless authorized by the Alaska Department of Environmental Conservation, stormwater conveyances that collect and transport stormwater from more than a single lot or are associated with roads and similar linear developments (e.g., trails, railroad) shall terminate a minimum of 100 feet from the ordinary high-water mark of any body of water?

#### **Section 17.55.020 SETBACKS FOR WATER BODIES**

1. Should a minimum 75-foot setback for all structures or footings from the ordinary high-water mark be applied to all water bodies and Strahler first-order streams unless a greater setback distance is specified below?
  
2. Should the planning commission increase the minimum setback distance to protect water bodies that possess a unique ecological attribute such as high recreational value, sensitive wildlife habitat, or natural beauty?
  
3. Do you agree that the planning commission may consult with staff from the Alaska Department of Fish & Game to determine what distance would be protective of the specific ecological attribute?

4. Should a 100-foot setback from the ordinary high-water mark be applied to water bodies 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?
5. Should Strahler's second-order and higher streams be subject to a 150-foot setback from the ordinary high-water mark?
6. Do you agree that consistent with the 2011 Susitna Matanuska Area Plan and the Susitna Basin Recreation Rivers Plan [currently being revised], a 300-foot setback from the ordinary high-water mark shall apply to [Borough land adjacent to] the following rivers: Alexander Creek, Chulitna River (including the East and West Forks), Deshka River (including Kroto and Moose creeks), Kahiltna River, Lake Creek, Peters Creek, Skwentna River, Talachulitna River, Talkeetna River, Trapper Creek, and Yentna River?
7. Do you agree that Pursuant to MSB 17.02(A)(6), the construction or placement of any building within 75 feet of any water body requires authorization via a mandatory land use permit?
8. Do you agree with eliminating sections 17.55.020 (C) (D) (E) and (F)?

#### **Section 17.55.025 SETBACK CERTIFICATION REQUIRED**

1. Should a builder have to obtain a water body setback certification from the planning and land use director before construction or development begins within any parcel bordering a water body?
2. Should property owners have to hire a licensed surveyor at their own expense to measure and physically mark the water body setback?
  - a) Should the property owner then electronically submit the setback affidavit cosigned by the surveyor to the planning and land use director on a form provided by the planning and land use department?
  - b) Should the planning and land use director acknowledge receipt of the certification request and transmit the certification within ten working days from the date the affidavit being received?
3. Do you agree with section 17.55.025 (A) (2) that states property owners of parcels with road access may request the water body setback be measured, marked, and certified by borough planning and land use department staff?

- a) Should requests for setback certification be submitted electronically to the planning and land use department?
  - b) Should the planning and land use director acknowledge receipt of the certification request and schedule a site visit within thirty calendar days from the date the request is received?
  - c) Should the property owner and borough staff member cosign the certification affidavit, which the staff member will submit?
4. Do you agree that Licensed and bonded contractors and home builders may self-certify that the water body setback has been measured and physically marked prior to construction by electronically submitting the setback affidavit to the planning and land use director on a form provided by the planning and land use department?
  5. Should the planning and land use director acknowledge receipt of the certification affidavit?

#### **Section 17.55.030 EXISTING STRUCTURES WITHIN 75 FEET OF A WATER BODY**

**(If they agree to add section 17.55.030)** Do you agree with Matt's edits in section 17.55.020 (A)

1. Should all structures that were completed prior to the adoption of the setback requirement on July 3, 1973, [and have not subsequently been expanded] be legally nonconforming pursuant to MSB 17.80.020(A)(1)?
2. Should Non-residential structures that were completed between September 6, 1988, and the effective date of this section be legally nonconforming pursuant to MSB 17.80.020(A)(1)?
3. Should structures that were completed between July 3, 1973, and January 1, 1987, [and have not subsequently been expanded,] that are located between 45 and 75 feet from the ordinary high-water mark of a water body be legal nonconforming status pursuant to MSB 17.80.020(A)(2)?
4. Should structures that were completed between January 1, 1987, and the effective date of this ordinance be granted an exemption from the setback requirement in accordance with MSB 17.80.020(B)(2)?

5. Should the planning and land use director be able to authorize the retention of existing structures as close as 45 feet from the ordinary high-water mark of a lake, pond, or ponded or emergent wetland via land use permit, after making an administrative determination to grant the exemption?
6. Should the land use permit require the establishment and retention of a minimum 25-foot-wide buffer of native vegetation and runoff pollution mitigation measures as necessary to prevent stormwater runoff from entering the water body?
7. Do you agree that the planning and land use director may NOT authorize a reduced setback distance from a river, stream, or other flowing water?
8. Do you agree that in addition to the land use permit application requirements identified in MSB 17.02.030(B)(2)(a), applications for reduced lake setback distances shall include:  
(a) information about 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?
9. Should applications for a reduced lake setback include plans and specifications for the proposed runoff pollution mitigation measures, including for necessary maintenance, with sufficient detail to support an engineering review?
10. Should the plans and specifications for infiltrative methods identify the seasonal high groundwater level?
11. Should applications for a reduced lake setback include a site-specific analysis indicating that the required vegetated buffer and proposed runoff pollution mitigation measures will effectively treat and retain all stormwater runoff from the parcel?
12. Should a qualified professional design the proposed runoff pollution mitigation measures and conduct the site-specific analyses?

13. Should an issued land use permit identify the new parcel-specific water body setback and the required combination of vegetated buffer and runoff pollution mitigation measures?
14. Do you agree that an exempted structure may not be enlarged or altered in any way that results in encroachment on a parcel-specific shoreline setback identified in a land use permit?
15. Should the landowners be responsible for retaining the required vegetated buffer and maintaining the required runoff pollution mitigation measures specified in their permit while the exempted structure remains within 75 feet of a water body?

#### **Section 17.55.035 RIPARIAN BUFFER REQUIRED**

1. Should a minimum 25-foot riparian buffer from the ordinary high-water mark be applied to all water bodies and Strahler first-order streams as of the effective date of this section?
2. Should a 50-foot riparian buffer from the ordinary high-water mark be applied to water bodies 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?
3. Should a 50-foot riparian buffer from the ordinary high-water mark be applied to Strahler second-order and higher streams?
4. Do you agree that a 100-foot riparian buffer from the ordinary high-water mark shall apply to [Borough land adjacent to] the following rivers: Alexander Creek, Chulitna River (including the East and West Forks), Deshka River (including Kroto and Moose creeks), Kahiltna River, Lake Creek, Peters Creek, Skwentna River, Talachulitna River, Talkeetna River, Trapper Creek, and Yentna River?
5. Should the area within riparian buffers be 'minimally disturbed,' and developed in accordance with the relevant provisions of the MSB code, state, federal, or other authorities?

6. Should 'Minimal disturbance' be allowed for limited vegetation removal (e.g., to eliminate hazards or open a view), pruning for vegetation health, the removal of dead, diseased, or fallen trees, and a provision for water access?
7. Should 'Minimal disturbance' not allow the buffer to be converted to another use (e.g., removal of vegetation and re-contouring to establish a lawn or garden)?
8. Should vegetation within a riparian buffer that is considered by the MSB to pose a 'Very High' or 'Extreme Fire Risk Hazard' Rating (i.e., black spruce), be removed in accordance with MSB Community Wildfire Protection Plan recommendations to reduce fire risk?
9. Do you agree that unless specifically authorized under other sections of this or other MSB Titles, the following activities are prohibited within the riparian buffer:
  - a) Removal of native vegetation from more than 20 percent of the surface area.
  - b) Removal of tree root masses when removing trees from the buffer.
  - c) Alteration of original land contours via grading and filling, including the discharge of fill to wetlands, of more than 20 percent of the surface area.
  - d) Storing or discharging solid or liquid waste, including debris, and animal and yard wastes.
  - e) Stockpiling and storing snow.
  - f) The application of fertilizers or herbicides?

#### **Section 17.55.036 RIVER HABITAT PROTECTION TAX CREDIT**

1. Should the borough grant a credit to offset a portion of the property taxes due on land upon which an improvement has been constructed that aids in
  - a) protecting a specified anadromous river from degradation of fish habitat due to public or private use; or
  - b) restoring riparian fish habitat along or in a specified anadromous river that has been damaged by land use practices?
2. Do you agree that the administration of the River Habitat Protection Tax Credit shall be as codified in MSB 3.15.038?



3. Should compliance with setbacks for structures adjacent to rivers, streams, and other flowing waters be based on the location of the structure when it was constructed?
  - a) Should subsequent movement of a stream channel that reduces the setback distance NOT create a nonconforming situation?



## Questions about the Matanuska-Susitna Borough's Waterbody Setback

The MSB Assembly has given the Waterbody Setback Advisory Board the responsibility of reviewing and recommending changes to Borough code relating to waterbody setbacks and related issues, including variances and non-conformities.

The Assembly specifically asked the WBSAB to make recommendations on approaches to deal with structures built in violation of the 1973 and 1987 ordinances. The Assembly has asked the WBSAB to identify possible remedies for structures in violation, methods to implement and enforce those solutions, and to identify resources needed to implement and enforce those solutions.

MSB code has included a structural setback from water bodies since 1973. The setback distance was originally set at 75' in 1973. It was reduced to 45' effective November 1986, but restored to 75' effective May 1987. Between 1973 and 1988, the setback requirement applied to all structures, but currently applies only to habitable buildings and garages. While the setback applies only to residential structures, the construction or placement of any building within 75' of a water body requires authorization via a mandatory land use permit.

- Should the borough have a structural setback requirement? Eliminating the setback requirement would be the easiest way to resolve the issue of nonconforming structures.
- Should the borough increase or decrease the 75' setback distance? Decreasing the required setback distance would bring some existing structures into compliance.
- Should the borough require a setback for other building types, including commercial and industrial buildings? Non-residential buildings constructed between 1988 and the effective date of any new requirement would be grandfathered.
- Should the setback distance be consistent for all building types (or perhaps be based on potential impact from a given land use)?
- Should the setback distance be consistent for all water body types (e.g., streams, rivers, and lakes, anadromous and not, important for recreation and not)?

The current definition of "water bodies" in MSB code does not list wetlands that otherwise meet the definition of areas of standing or flowing water where water is the principal medium in which organisms live.

- Should the setback apply to wetlands that meet the definition of "water bodies?"
- Should the definition of "water bodies" list ponded and emergent wetlands?

Where a nonconforming structure cannot be readily moved, MSB code allows it to be retained but not expanded or rebuilt. However, MSB code currently allows a property owner to apply for an exception from the setback if they had no personal knowledge of a violation.

- Should the borough retain this exception provision?

The purpose of the setback requirement has always been to protect water quality, fish habitat, recreation, and property values. The current code, however, does not include any text about purpose.

- Should text be added to the ordinance to identify the purpose and intent of the waterbody setback?

As referenced above, constructing or placing a building within the setback requires a land use permit. The borough also requires a permit for development within areas of special flood hazard but does not otherwise regulate activities within the 75' setback. In 2005, the borough identified voluntary measures that property owners can use to protect water quality as the setback by itself doesn't protect the water body. Local governments including the City of Wasilla, Municipality of Anchorage, and Kenai Peninsula Borough regulate activities within their setbacks.

- Should the borough regulate certain activities (e.g., vegetation clearing, grading, area of impervious surfaces) within the setback area to protect water quality, fish habitat, recreation, or property values?
- Should the borough regulate certain pollution sources (e.g., fuel tanks, parking lots, dog kennels) within the setback area to minimize pollution of water bodies?

From 1979 until 2011, Alaska had a coastal management program that required impacts to natural vegetation within riparian management areas be avoided. The width of RMAs varied from 100' for lakes and single channel streams to 500' for braided streams. The borough's voluntary BMPs identify multiple water quality and habitat benefits of maintaining riparian vegetation. The BMPs recommend that property owners "Preserve a minimum 75-foot-wide buffer of continuous, undisturbed native vegetation along at least 50% of the parcel's shoreline or stream bank. Along remaining 50% of shoreline, limit vegetation removal to what is necessary to accommodate paths, docks, or other limited development."

- Should the borough do more to provide outreach and education materials to waterfront property owners (e.g., consider updating the voluntary BMPs and the 2003 Property Owner's Guide to Shoreline Landscaping, providing more information on stormwater management and waterfront access)?
- Should the borough require retention of a vegetated riparian buffer for future development of waterfront parcels?
- If the borough were to require a vegetated riparian buffer, should the buffer width be consistent for all water body and land use types? For example, the borough's 2007 Coastal Management Plan identifies that "...natural or vegetative buffers shall be required for commercial and industrial developments within the 75-foot setback from OHW to protect the recreational character of the waterbody. Requirements for the size and extent of buffers shall be determined on a case-by-case basis and shall be commensurate with the reasonably foreseeable impacts of the development on recreational uses and activities..."

The borough's 2007 Coastal Management Plan has a goal to "ensure the long-term viability of the valuable watersheds, wetlands, uplands, rivers, streams, and lakes that contribute to the quality-of-life experience and economic prosperity found in the MSB." The plan identifies features, uses and activities for specific lakes and streams that were intended to be protected.

- Since the coastal program was allowed to sunset in 2011, should the borough identify new ways to protect the features, uses and activities of specific lakes and streams?

Currently, the borough only requires a land use permit for construction or placement of a building within 75' of a water body. The other land use permit requirements were repealed in 2011. The borough also no longer requires developers to acknowledge existing land use regulations. The borough has no formal regulatory process to help prevent developers from violating the existing setback requirement. Enforcement of the setback after a structure has been constructed is challenging because most residences cannot be readily moved.

- Should the borough establish a regulatory process to help avoid new violations of the setback requirement? For example, the existing land use permit requirement for buildings within 75' of a water body could be increased to 100' of a water body. A more streamlined approach, such as the proposed setback certification could also be used.

A draft ordinance was proposed that would allow structures to be closer than 75' from the water if stormwater runoff was addressed in the site development plan.

- Should the borough consider this approach to bring existing structures into compliance?
- Should the borough consider this approach for new developments?

Many waterfront parcels that were platted prior to the adoption of the setback requirement and minimum useable septic area standards are too small to allow development to meet the current standards.

- Should the borough consider developing an expedited platting process for combining adjacent lots into a single lot so it can be developed under the current standards?
- Should the borough require a land use permit and/or stormwater management measures as a condition of granting a setback variance?

State statute allows local governments to offer property tax credits for work conducted by landowners to restore the channel or riparian habitat of an anadromous stream.

- Should the borough develop an ordinance to create a property tax credit program for this purpose?

Data about the condition of lakes in the borough is limited. The borough coordinated a volunteer lake monitoring program for many years.

- Should the borough consider reinstating the volunteer lake monitoring program to facilitate collecting water quality data?

Please add additional notes, thoughts, or suggestions below.



## WSAB Scope of Duties

Section 5. Scope of Duties. The Waterbody Setback Advisory Board is empowered to review and recommend any changes to 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 shall identify possible solutions, identify ways to enforce and implement those solutions, and identify resources needed to implement and enforce those solutions.

## Big questions

### Setback questions

- Should the borough have a structural setback requirement?
- Should the borough increase or decrease the 75' setback distance?
- Should the borough require a setback for other building types, including commercial and industrial buildings?
- Should the setback distance be consistent for all building types (or perhaps be based on potential impact from a given land use)?
- Should the setback distance be consistent for all water body types (e.g., streams, rivers, and lakes, anadromous and not, important for recreation and not)?

### Setback violations

- Should the borough retain this exception ('no knowledge of the violation') provision (that prevents owner from expanding footprint)?
- Should the borough consider this approach (construction allowed closer than 75' if stormwater is addressed) to bring existing structures into compliance?
- Should the borough consider this approach (construction allowed closer than 75' if stormwater is addressed) for new developments?

### Definition questions

- Should the setback apply to wetlands that meet the definition of "water bodies?"
- Should the definition of "water bodies" list ponded and emergent wetlands?

### Purpose and need questions

- Should text be added to the ordinance to identify the purpose and intent of the waterbody setback?



#### Borough authority questions

- Should the borough regulate certain activities (e.g., vegetation clearing, grading, area of impervious surfaces) within the setback area to protect water quality, fish habitat, recreation, or property values?
- Should the borough regulate certain pollution sources (e.g., fuel tanks, parking lots, dog kennels) within the setback area to minimize pollution of water bodies?
- Since the coastal program was allowed to sunset in 2011, should the borough identify new ways to protect the features, uses and activities of specific lakes and streams?
- Should the borough establish a regulatory process to help avoid new violations of the setback requirement? For example, the existing land use permit requirement for buildings within 75' of a water body could be increased to 100' of a water body. A more streamlined approach, such as the proposed setback certification could also be used.
- Should the borough develop an ordinance to create a property tax credit program for this (restoration of channels and riparian habitat on streams) purpose?
- Should the borough consider reinstating the volunteer lake monitoring program to facilitate collecting water quality data?

#### Riparian buffer questions

- Should the borough do more to provide outreach and education materials to waterfront property owners (e.g., consider updating the voluntary BMPs and the 2003 Property Owner's Guide to Shoreline Landscaping, providing more information on stormwater management and waterfront access)?
- Should the borough require retention of a vegetated riparian buffer for future development of waterfront parcels?
- If the borough were to require a vegetated riparian buffer, should the buffer width be consistent for all water body and land use types? For example, the borough's 2007 Coastal Management Plan identifies that "...natural or vegetative buffers shall be required for commercial and industrial developments within the 75-foot setback from OHW to protect the recreational character of the waterbody. Requirements for the size and extent of buffers shall be determined on a case-by-case basis and shall be commensurate with the reasonably foreseeable impacts of the development on recreational uses and activities..."



**Alaska Statute Sec. 29.45.046. River habitat protection tax credit.**

(a) Unless prohibited by municipal charter, a municipality may by ordinance provide for a river habitat protection credit to be applied to offset a portion of the property taxes due on land, or an interest in land taxable under this chapter, 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.

(b) The amount of a river habitat protection credit shall be based upon a percentage of the verifiable costs of the improvement and may not exceed 50 percent of the total amount of taxes levied upon the land or upon the taxable interest in the land during a single tax year, but the credit may be granted for more than one year. If the credit is granted for more than one year and the land or taxable interest in the land is conveyed, the portion of the credit remaining is extinguished. The ordinance may limit the availability of a credit to some, but not all types of improvements for which a credit may be granted under this section and to some, but not all areas of the municipality. A credit may only be granted for an improvement that has been constructed in compliance with state and federal laws. A credit may not be granted for an improvement

- (1) required under state or federal law; or
- (2) located more than 150 feet from the mean high tide line or ordinary high water line; in this paragraph, "ordinary high water line" means that line on the shore of the nontidal portion of a river or stream that reflects the highest level of water during an ordinary year and is established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

(c) [Repealed, § 3 ch 41 SLA 1995]

(d) Before an ordinance is adopted under (a) of this section, it must be approved by the commissioner of fish and game. The commissioner of fish and game shall approve a proposed ordinance if the improvements for which a credit is authorized aid in protecting or restoring habitat as required under this section without regard to the percentage of the total protection or restoration that could be achieved by ideal improvement measures. Within 60 days after receipt of a proposed ordinance, the commissioner of fish and game shall notify the municipality in writing as to whether the proposed ordinance is approved or disapproved and, if the proposed ordinance is disapproved, shall state the basis for that determination. (§ 1 ch 40 SLA 1994; am §§ 1-3 ch 41 SLA 1995; am § 1 ch 34 SLA 2000)

**Effect of amendments.** The 2000 amendment, effective August 9, 2000, substituted "a river" for "the Kenai River or a tributary of the Kenai River" in (a)(1) and (a)(2). The 1995 amendment, effective August 23, 1995, deleted "and certified by the Department of Fish and Game under (c) of this section" from the end of the next-to-last sentence in subsection (b); repealed former subsection (c), relating to criteria by the department in determining whether an improvement is effective in accomplishing the purposes listed in (a)(1) or (a)(2); and added subsection (d).

## CHAPTER 5.14. - HABITAT PROTECTION TAX CREDIT<sup>[1]</sup>

### **Footnotes:**

--- (1) ---**Editor's note**— It should be noted that Ord. No. 98-61, § 1, adopted Nov. 17, 1998, provided "That the provision in ordinance 95-32 sunsetting KPB Chapter 5.14 is hereby extended to December 31, 2001, unless extended by the assembly." Subsequently, Ord. No. 2000-24, § 1, adopted Aug. 1, 2000, amended the title of Ch. 5.14 to read as herein set out and § 5 of said ordinance provides, "that the expiration date of December 31, 2000, in Ord. No. 98-61 is hereby repealed."

### **5.14.010. - Purpose.**

The purpose of this chapter is to promote the health of the anadromous streams identified in KPB [21.18.025](#) by providing tax credits as partial reimbursement for habitat protection and restoration project expenses on and adjacent to these streams.

(Ord. No. 2011-37, § 1, 1-1-12; Ord. No. 2000-24, § 2, 8-1-00; Ord. No. 95-32, § 1(part), 1995)

### **5.14.020. - Administration.**

- A. This chapter shall be administered by the director of planning and the director of assessing under the direction of the mayor.
- B. Prior to beginning construction of a project for which one wishes to receive a tax credit, the property owner must submit an application for prequalification of the project to the planning department on a form provided by the director of planning. This application must be accompanied by all necessary federal, state, and local permits or approvals for the project. Within 30 business days of application, the director of planning shall mail notice to the applicant as to whether the proposed project has pre-qualified. If this notice is not mailed as provided herein, prequalification is deemed denied.
- C. Upon completion, the applicant must schedule an inspection of the project with the planning department. If the applicant does not schedule an inspection the borough may enter the property to conduct the inspection. Inspections must be scheduled no later than January 15 of the year for which the tax credit is sought. Within 30 business days of this inspection, the planning department shall mail notice to the applicant whether the project as completed qualifies for the tax credit. The notice shall contain a determination of the costs being allowed. A copy shall be sent to the assessor. If this notice is not mailed as provided herein, the tax credit is deemed denied.
- D. For the first tax year following completion of the project, the assessor shall provide a credit to the owner of the land upon which the project was constructed of up to 50% of the taxes levied upon that land, or the taxable interest in that land, for that year or the costs incurred on the project, whichever is less. In the second year, the assessor will provide a further tax credit of up to 50% of the taxes levied upon that land, or the taxable interest in that land, for that year of the remainder of the costs incurred on that project not previously credited, whichever is less. In the third year, the assessor will provide further tax credit of up to 50% of the taxes levied upon that land, or the taxable interest in that land, for that year or the remainder of the costs expended on that project not previously credited,

whichever is less. The credit must be taken in 3 consecutive years and is limited to those 3 years regardless of the costs incurred by the applicant. Only the land value, which is defined as that value attributed to the land in the assessor's notice of assessment, is included in calculating the amount of the tax credit.

- E. If prequalification of the tax credit is denied, or less costs for the project are allowed than the applicant thinks appropriate, the applicant may appeal that decision to the mayor on a form provided by the mayor. Appeals shall be made within ten days of the date of notice of any decision under this section. In reviewing a denial, the mayor shall grant prequalification if the proposal conforms to the requirements of the ordinance. The mayor shall grant the credit if the project, as completed, substantially conforms to the plans submitted for prequalification or if the mayor determines the project conforms to the requirements of the ordinance. Appeals from the mayor's determination shall be taken to superior court in Kenai Alaska pursuant to the Alaska Rules of Appellate Procedure Part 6.

(Ord. No. 2012-37, § 2, 10-9-12; Ord. No. 2011-37, § 1, 1-1-12; Ord. No. 97-27, § 1, 1997; Ord. No. 96-29, § 1, 1996; Ord. No. 95-32, § 1(part), 1995)

**5.14.030. - Limitations on tax credit.**

- A. The tax credit for the protection/restoration project will only be granted for preapproved and verified out of pocket costs. In the calculation of the out of pocket expenses, federal, state and private non-repayable grants cannot be considered. Out of pocket costs not pre-approved may be granted if shown to be necessary and they are verified in writing. Invoices or other written verification must identify the owner of the property as the ultimate purchaser.
- B. The tax credit is not transferable, including but not limited to, a purchaser of the land upon which the project was constructed.
- C. Projects which are required by state, federal, or local authorities do not qualify for the tax credit.
- D. All projects must be located within 150 horizontal feet from the mean high tide line or ordinary high water line of the rivers and streams listed in KP [21.18](#).
- E. The tax credit only applies to that portion of the taxes levied by the borough and any applicable service area and the credit would be apportioned pro rata between them based on their respective mill rates. However, if a city within the borough adopts a tax credit ordinance identical to this ordinance and the city further requests that the borough administer the city's tax credit ordinance, then the borough will do so.
- F. The total tax credit available in any year is 50% of the taxes due on the land value for that year regardless of the number of projects on that property.
- G. Any exemption applicable to property for which the tax credit is sought shall first be deducted from the improvement value of the property and then from the land value

remaining before determining the amount of the tax credit. No tax credit may be granted during a year on property for which no taxes are due for that year.

H. Property that has been subdivided or transferred after construction of an eligible project will not be eligible for any portion of the tax credit in any year following the subdivision or transfer.

I. Neither an owner's labor, or that of volunteers, qualifies as an allowable cost for calculating a tax credit under this ordinance.

J. If an enforcement proceeding has been initiated on the property under KPB [21.25](#) the project will not be eligible for a tax credit until the enforcement notice has been resolved. (Ord. No. 2011-37, § 1, 1-1-12; Ord. No. 2000-24, § 3, 8-1-00; Ord. No. 95-32, § 1(part), 1995)

**5.14.040. - Allowed fish habitat protection and restoration projects.**

Only the following projects may be considered for the tax credit:

A. Gratewalks, boardwalks, and bridges and spans meeting specifications established in KPB [21.18.071](#).

B. Spruce trees cabled parallel to the river bank as a buffer between the water and the bank established in KPB [21.18.071](#).

C. Stairways, steps, ladders and fish cleaning stations meeting specifications established in KPB [21.18.071](#).

D. Floating docks issued the necessary permit or permits to build so long as the completed dock conforms to the standards applicable to the issuance of permits by permitting agencies.

E. Projects which prevent or reduce the likelihood that petroleum products, including petroleum products in water runoff from roads, will enter the rivers. Where applicable, such projects must conform to any federal or state standards to be eligible for this tax credit.

F. Bank restoration, bank protection or habitat restoration projects that protect the river's habitat or restore habitat provided the project complies with all conditions, regulations and approvals imposed by local, state or federal agencies. Projects required as mitigation for onsite or offsite habitat degradation, bank hardening, or other bank stabilization strategies not designed to improve habitat are exempted from the tax credit.

G. Removal of structures from within the habitat protection district established in KPB [21.18.040](#).

(Ord. No. 2011-37, § 1, 1-1-12; Ord. No. 2000-24, § 4, 8-1-00; Ord. No. 97-27, § 2, 1997; Ord. No. 96-29, § 2, 1996; Ord. No. 95-32, § 1(part), 1995)

**5.14.050. - Planning department review.**

The director of planning shall prepare an annual report on the number of applications received under this chapter and the action taken on them. This report shall be submitted by April 1 of each year. The report shall also contain any recommendations the planning department may have for changes in the activities eligible for the credit consistent with the purposes of this chapter.

Reports or recommendations for changes may be submitted more frequently at the discretion of the mayor.

(Ord. No. 2012-37, § 3, 10-9-12; Ord. No. 2011-37, § 1, 1-1-12; Ord. No. 95-32, § 1(part), 1995)