

# MATANUSKA-SUSITNA BOROUGH Fish & Wildlife Commission

350 E Dahlia Ave., Palmer, Alaska 99645

## CHAIRPERSON

Andy Couch

## VICE CHAIR

Peter Probasco

## MSB STAFF

Maija DiSalvo



## BOARD MEMBERS

Howard Delo

Larry Engel

Tim Hale

Gabe Kitter

Bill Gamble

Kendra Zamzow

*Ex officio:* Jim Sykes

## Regular Meeting

August 29, 2024

## Meeting Packet - Table of Contents

### Pg. = Item:

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- 3 = July 2, 2024 Minutes DRAFT
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- 13 = WSAB Ordinance DRAFT
- 36 = Public Scoping Notice - Water Reservations

**Physical Location of Meeting:** Assembly Chambers, DSJ Bldg, 350 E. Dahlia Ave., Palmer

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

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

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

**MATANUSKA-SUSITNA BOROUGH  
MSB Fish and Wildlife Commission  
AGENDA**

Edna Devries, Mayor

Andy Couch – Chair  
Peter Probasco – Vice Chair  
Gabriel Kitter  
Howard Delo  
Larry Engel  
Tim Hale  
Bill Gamble  
Kendra Zamzow  
Jim Sykes – Ex officio member

Maija DiSalvo – Staff



Michael Brown, Borough Manager

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

*Assembly Chambers  
Dorothy Swanda Jones Building  
350 E. Dahlia Avenue, Palmer*

**August 29, 2024  
REGULAR MEETING  
5:00 p.m.**

Ways to participate in MSB Fish and Wildlife Commission meetings:

IN-PERSON: Assembly Chambers, DSJ Building

REMOTE PARTICIPATION VIA MICROSOFT TEAMS:

Join on your computer:

[Click here to join the meeting](#)

Meeting ID: 296 572 612 699

Passcode: ysvvv6

Or call in (audio only):

1-907-290-7880

Phone Conference ID: 330 148 688#

- I. CALL TO ORDER
- II. ROLL CALL – DETERMINATION OF QUORUM
- III. LAND ACKNOWLEDGEMENT  
  
*"We acknowledge that we are meeting on traditional lands of the Dena'ina and Ahtna Dene people, and we are grateful for their continued stewardship of the land, fish, and wildlife throughout time immemorial."*
- IV. PLEDGE OF ALLEGIANCE
- V. APPROVAL OF AGENDA

VI. APPROVAL OF MINUTES

A. July 2, 2024 Regular Meeting

VII. AUDIENCE PARTICIPATION (*three minutes per person*)

VIII. STAFF/AGENCY REPORTS & PRESENTATIONS

A. Staff Report

B. Chair's Report

IX. UNFINISHED BUSINESS

A. MSB CAPSIS Request

B. Board of Fisheries Submissions

a. Stock of Concern

C. Endangered Species Act – Chinook 90-Day Finding

a. Public Comment – Due September 6, 2024

D. Waterbody Setback Advisory Board Update

a. Draft Ordinance

X. NEW BUSINESS

A. Revisions to Water Management Regulations

XI. MEMBER COMMENTS

XII. NEXT MEETING DATE: Thursday, September 26, 2024 @ 4:00 pm in the DSJ Assembly Chambers & on Microsoft TEAMS

XIII. ADJOURNMENT

**Disabled persons needing reasonable accommodation in order to participate at a MSB Fish and Wildlife Commission Meeting should contact the borough ADA Coordinator at 861-8432 at least one week in advance of the meeting.**

**MATANUSKA-SUSITNA BOROUGH**  
**MSB Fish and Wildlife Commission**  
Regular Meeting: July 2, 2024  
DSJ Building, Assembly Chambers/TEAMS  
**Minutes**

I. CALL TO ORDER

Chair Andy Couch called the meeting to order at 4:03 PM.

II. ROLL CALL – DETERMINATION OF QUORUM

Present:

Andy Couch

Howard Delo

Bill Gamble

Kendra Zamzow

Jim Sykes

Larry Engel – arrived at 4:27 PM

Gabriel Kitter – left at 6:15 PM

Absent:

Pete Probasco

Tim Hale

Quorum was established.

III. LAND ACKNOWLEDGEMENT

KZ read the land acknowledgement:

*"We acknowledge that we are meeting on traditional lands of the Dena'ina and Ahtna Dene people, and we are grateful for their continued stewardship of the land, fish, and wildlife throughout time immemorial."*

IV. PLEDGE OF ALLEGIANCE

V. APPROVAL OF AGENDA

**HD moved to approve the agenda; seconded by GK.**

**No objection, motion passed unanimously.**

VI. APPROVAL OF MINUTES

**HD moved to approve the May 9<sup>th</sup> minutes; seconded by GK.**

**No objection, motion passed unanimously.**

**HD moved to approve the June 6<sup>th</sup> minutes; seconded by GK.  
No objection, motion passed unanimously.**

VII. AUDIENCE PARTICIPATION

Stephanie Nowers – MSB Assembly  
Angela Stephyl – Chief of Staff to Rep. McCabe  
Chennery Fife – Trout Unlimited  
Marc Lamoreaux – Native Village of Eklutna  
Margaret Stern – Susitna River Coalition  
Rodney Fodge – MSB Planner  
Alex Strawn – Planning Director

VIII. STAFF/AGENCY REPORTS & PRESENTATIONS

Staff Report – Maija DiSalvo  
Chair’s Report – AC

IX. UNFINISHED BUSINESS

X. NEW BUSINESS

A. Waterbody Setback Advisory Board Update

Alex Strawn, MSB Planning Director provided an update on the progress of the Waterbody Setback Advisory Board and held a question and answer session with the FWC. The FWC expressed opposition to allowing a path to compliance for current violations. There was additional discussion on lakes vs streams/rivers and the way they are identified in the ORD currently, MSB staffing plans and utilizing relationships with law enforcement to help support compliance, coordination with lenders, additional MSB engineering reviews and signoffs, viewshed violations, and following state standards for consistency.

B. Legislative Budget Updates – Jim Sykes, FWC

\$2.5M request from MSB was vetoed from state capital budget.

i. Funding of MSB Salmon Studies – Larry Engel, FWC

Discussion of budget timing and implications to ADF&G project staffing; genetic study, two weirs, and Anchor Point test fishery did not receive funding and/or staffing for this season.

C. Endangered Species Act – Chinook 90-Day Finding

Discussed agenda item G (Stocks of Yield Concern) simultaneously.

**JS moved to extend the meeting to 6:15 PM; seconded by KZ.**

**No objection, motion passed unanimously.**

GK departed at 6:15 PM.

**KZ moved to extend the meeting to 6:30 PM; seconded by HD.**

**No objection, motion passed unanimously.**

**HD moved to authorize a work group to submit an agenda change request (ACR) to ADF&G for the upcoming board cycle, requesting a Stock of Concern designation for king salmon in the Susitna Drainage (justified due to the pending Golf of Alaska ESA designation); seconded by BG.**

**Amendment: (KZ) additionally, work group will draft a comment letter regarding ESA designation, explaining the Stock of Concern ACR and preference for state management, and also acknowledging that if the ACR fails, the FWC would support the ESA listing.**

**No objection, amendment passed unanimously.**

**Main Motion: No objection, motion passed unanimously as amended.**

*Work group consists of: AC, HD, LE.*

**D. Updates Re: Management of EEZ**

Discussion on number of deliveries (72) in relation to drift permits (500+).

**E. MSB CAPSIS Request**

Work group will present a draft to FWC at next meeting.

**F. House Bill 169 – Fisheries Rehabilitation Permit**

**HD moves to show opposition to HB 169; LE second.**

**Amendment: (JS) cannot support as currently written, some concepts with oversight and knowledge that could be useful and supported in the future.**

**No objection, motion passed as amended.**

*JS will communicate this message to DeLena Johnson's office.*

G. Stocks of Yield Concern

Discussed with item C above.

XI. MEMBER COMMENTS

KZ – Thank you for the feedback and direction for WBSBAB.

LE – Apologize for being late.

HD – Good discussion, appreciate KZ's devotion to WBSBAB.

AC – No comment.

BG – No comment.

JS – No comment.

XII. NEXT MEETING DATE: Regular Meeting - September 26, 2024 @ 4:00 PM

XIII. ADJOURNMENT

**HD moved to adjourn; seconded by LE.**

**No objection, motion passed unanimously.**

*Meeting adjourned at 6:37 PM.*



## MATANUSKA-SUSITNA BOROUGH

### Planning and Land Use Department

#### Planning Division

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7833

[www.matsugov.us](http://www.matsugov.us)

August 29, 2024

### **Draft MSB State CAPSIS Request for Fish & Wildlife Commission Review & Approval**

In 2015, a strategic Research, Monitoring, and Evaluation Plan for Upper Cook Inlet was conducted, resulting in improved resource management through genetic stock analysis, economic impact studies, and improved funding of Northern District weirs. In 2025, the plan will be a decade old, five years beyond its stated relevant time horizon. An update to this plan would provide an accurate list of prioritized goals and strategies that support healthy salmon populations and habitat, and would provide an opportunity for collaborative public and agency engagement in guiding strategies for the future.

Additionally, this funding would be utilized to support ongoing work on the Matanuska-Susitna Borough's nationally recognized fish passage program, secure more consistent funding and operations of Northern District weirs and genetic studies, execute pike suppression efforts, resume operation of the Upper Cook Inlet commercial test net fishery, operate a Susitna River Sockeye Salmon Mark/Recapture Abundance Estimate, provide an update to the 'Economic Contributions of Sportfishing on the Cook Inlet Region in 2017' study, and ensure additional cataloging of local streams, rivers, and habitat essential for healthy fish and wildlife populations, specifically those potentially impacted by the proposed West Susitna Access Road.

Quality fisheries management for Upper Cook Inlet should not only prioritize the procurement of funding for projects, but should also ensure adequate staffing to operate and execute the programs efficiently. In a region with such extensive and essential anadromous fish habitat surrounding a rapidly growing population center, it is necessary for our region to continue monitoring and investing in tools, data, and information that supports healthy local salmon populations and productive Northern Cook Inlet and Mat-Su fisheries.

*Providing Outstanding Borough Services to the Matanuska-Susitna Community.*



**AGENDA CHANGE REQUEST FORM**  
**ALASKA BOARD OF FISHERIES**

The Board of Fisheries (board) reviews each state managed fishery under its authority once every three years in what is referred to as the board’s “three-year cycle”. Each year the board takes up regulatory subjects from a consistent set of regions and species, repeating every three years. Regulatory subjects in the current meeting cycle are referred to as “in-cycle” subjects.

The board recognizes there are times when “out-of-cycle” subjects require more immediate attention and created the “agenda change request” (ACR) process to allow consideration of these subjects. The board solicits ACRs 60 days prior to its fall work session. Accepted ACRs are scheduled at a subsequent meeting during the current meeting cycle. More information on the board’s long-term meeting cycle is [here](#).

For the 2024/2025 meeting cycle, the following regulatory regions, species and uses are “in-cycle”:

- Prince William Sound and Upper Copper/Upper Susitna finfish and shellfish (except shrimp).
- Southeast Alaska finfish and shellfish.
- Statewide shellfish and PWS shrimp.

The deadline for ACRs is August 30, 2024. ACRs received regarding “in-cycle” subjects will not be accepted as they are effectively proposals that missed the April 2024 deadline.

The board accept requests to change its schedule under certain guidelines set forth in 5 AAC 39.999. The board will accept ACRs only:

- 1) for a fishery conservation purpose or reason; or
- 2) to correct an error in regulation; or
- 3) to correct an effect on a fishery that was unforeseen when a regulation was adopted.

The board will not accept an ACR that is predominantly allocative in nature in the absence of new compelling information, as determined by the board [5 AAC 39.999 (a) (2)].

Please answer all questions to the best of your ability.

**1) CITE THE REGULATION THAT WILL BE CHANGED IF THIS ACR IS HEARD.**  
**If possible, enter the series of letters and numbers that identify the regulation to be changed. If it will be a new section, enter “5 AAC NEW”.**

**Alaska Administrative Code Number 5 AAC: NEW**

**2) WHAT IS THE PROBLEM YOU WOULD LIKE THE BOARD TO ADDRESS? STATE IN DETAIL THE NATURE OF THE CURRENT PROBLEM. Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues.**

Designate Susitna River drainage Chinook Salmon as a Stock of Yield Concern and adopt a regulatory Action Plan to rebuild the yield from this salmon stock.

According to a fact sheet published by the Alaska Department of Fish and Game (ADF&G) in 2008: *“The Susitna River king salmon run is the fourth largest in the state, behind the Yukon, Kuskokwim,*

*and Nushagak Rivers. Between 100,000 - 200,000 king salmon return every year to the Susitna River drainage . . . about twice the number bound for the Kenai River.”*

According to ADF&G sport fishery harvest estimates for the 5-year period from 2000 - 2004: an average of 25,448 king salmon were harvested from the Susitna River sport fishery on an annual basis. But according to ADF&G sport fishery harvest estimates for the most recent 5-year period from 2018 - 2023: Susitna River drainage sport fishery Chinook salmon harvest has fallen to an average of 171 fish per year — this demonstrates a more than 99% decline in yield from this fishery — and should easily fit the 5AAC 39.222 Policy for the Management of Sustainable Salmon Fisheries (SSFP) definition of a Stock of Yield Concern. ***“A stock of yield concern is a concern arising from the chronic inability, despite the use of specific management measures, to maintain specific yields, or harvestable surpluses, above a stock's escapement needs; a yield concern is less severe than a management concern.”*** Note: in 5 out of the past 7 years (2018 - 2024) there has been NO opportunity to harvest Chinook salmon from the Susitna River sport fishery.

It appeared, perhaps by oversight, ADF&G failed to bring forward this Stock of Yield Concern designation for Susitna River drainage Chinook salmon during the 2023 - 2024 Upper Cook Inlet meeting cycle. The Mat-Su Borough Fish and Wildlife Commission attempted to bring this issue forward at the Upper Cook Inlet Board of Fisheries Meeting on pages 19 and 20 of its 2024 publication, It Takes Fish To Make Fish. However, without ADF&G bringing this 99% reduction in sport harvest forward as an issue that could/should warrant a Stock of Yield Concern designation in the department’s Stock Status Report, there was no proposal submitted to serve as a vehicle to address this issue — and for those reasons this ACR has been submitted for board consideration/action now.

**3) WHAT SOLUTION DO YOU PREFER? Or, if the board adopted your solution, what would the new or amended regulation say?**

Susitna River drainage Chinook salmon— Stock of Yield Concern. An Action Plan should then be developed, through the public process, providing reasonable opportunity to consider various management options, and following SSFP guidelines to rebuild the depleted Susitna River drainage Chinook salmon stocks.

**4) STATE IN DETAIL HOW THIS ACR MEETS THE CRITERIA STATED BELOW. If one or more of the three criteria set forth below is not applicable, state that it is not.**

**a) for a fishery conservation purpose or reason:**

The Susitna River Chinook salmon stock is the largest king salmon stock in Upper Cook Inlet and is clearly dealing with sustainability issues. If there was a drainage-wide Chinook salmon escapement goal the entire Susitna River drainage chinook salmon stock would likely already be listed as a Stock of Concern — similar to the larger Yukon River and Nushagak River Chinook salmon stocks.

Another aspect of this issue that could and should be addressed within a regulatory action plan for Susitna River Chinook salmon on a drainage-wide basis is the declining age/size/length fecundity of the Susitna River drainage chinook salmon spawning escapement. As the age, length, and size of the spawning escapement population has declined since 2007, it is not logical to expect a spawning

population made up of smaller less fecund fish to provide the same level of smolt production as had been previously provided by significantly older and larger king salmon escapement with a higher percentage of females in the spawning population.

Bottomline, even with no sport harvest allowed in 2023 and 2024, not a single Chinook salmon spawning escapement goal was attained anywhere in the Susitna River drainage. Unsustainability of Susitna River drainage Chinook salmon is a rapidly accelerating problem that may fit a drainage-wide Stock of Management Concern designation by the next Upper Cook Inlet Board of Fisheries meeting, and therefore should be dealt with — sooner rather than later.

The National Marine Fisheries Service is reviewing the stock status of Gulf of Alaska Chinook salmon to determine if all or some of those Chinook salmon stocks should be listed as threatened or endangered under the Endangered Species Act (ESA).

ADF&G currently has the authority to deal with salmon sustainability issues in Alaska — including the codified SSFP to guide management of Stocks of Concern. Since specific portions of the Susitna River drainage Chinook salmon stock have already been designated as Stocks of Management Concern, but the yield issue is drainage-wide and clearly fitting the SSFP criteria, it would be beneficial to show the State of Alaska is dealing with both issues of sustainability for Susitna River Chinook salmon — rather than giving any appearance of needing federal management or oversight for sustainability.

As stated in the ADF&G website publication, Gulf of Alaska Chinook Salmon: Endangered Species Act Status Review Key Points — federal management/oversight of Chinook Salmon under the Endangered Species Act could have much more severe consequences for multiple Alaska user groups:

*“A threatened or endangered ESA-listing transfers the management of the listed units and their critical habitats from the State to the federal government. An ESA-listing, in essence, means that NMFS believes state management is insufficient to protect the stocks from going extinct.*

*ESA listing of Chinook salmon will significantly harm subsistence, commercial, and recreational fisheries, causing cultural and economic harm. The listing of an Environmentally Significant Unit (ESU) will move management of that ESU from state control to federal control with restrictions that could span from fishery reductions to no-harvest at all. Any fishery with incidental catch of that Chinook ESU would also be impacted.*

*Listing means that ‘critical habitat’ for Chinook salmon will be designated, which could encompass a broad swath of freshwater and marine areas. Along with ESA-required consultations and permits, this will add regulatory hurdles for any activities that may affect salmon. Development in watersheds designated as critical habitat would be greatly restricted and require considerable regulatory review.”*

**b) to correct an error in regulation: N/A**

**c) to correct an effect on a fishery that was unforeseen when a regulation was adopted: N/A**

**5) WHAT WILL HAPPEN IF THIS PROBLEM IS NOT SOLVED PRIOR TO THE REGULAR CYCLE?**

Susitna River Chinook salmon declines in spawning fecundity and spawning escapement numbers may likely accelerate — requiring more severe future harvest and mortality restrictions before the stock can be rebuilt.

Federal decision makers may decide the State of Alaska is inadequately addressing Gulf of Alaska Chinook salmon sustainability issues and step in with federal oversight or management by declaring stock(s) threatened or endangered.

**6) STATE WHY YOUR ACR IS NOT PREDOMINANTLY ALLOCATIVE.**

This ACR seeks to follow SSFP guidelines and provide a reasonable and open public process for addressing the Susitna River drainage chinook salmon lack of yield issue. Developing local solutions to an instate issue would likely have more agreeable outcomes, on a quicker timeline, than the federal process.

**7) IF THIS REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE.**

N/A

**8) STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF THIS ACR (e.g., commercial fisherman, subsistence user, sport angler, etc.)**

The Mat-Su Borough Fish and Wildlife Commission is an advisory group to state and federal agencies and the borough assembly concerning issues affecting fish and wildlife populations, habitat, and resource users in the best interests of the Borough and its residents.

**9) STATE WHETHER THIS ACR HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AS AN ACR, AND IF SO, DURING WHICH BOARD OF FISHERIES MEETING.**

To our recollection, the issue of Stock of Yield Concern for Susitna River Chinook salmon has been considered before — perhaps two, three, or more cycles ago, when drainage-wide yield had not fallen off to such a dramatic level.

Submitted by:

NAME Matanuska-Susitna Borough Fish & Wildlife Commission

**Individual or Group**

350 E Dahlia Ave

**Address**

Palmer, AK

**City, State**

99645

**Zip**

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<b>Phone</b>	907-861-7865	maiya.disalvo@matsugov.us
	<b>Work Phone</b>	<b>Email</b>

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Note: Addresses and telephone numbers will not be published.

Mail, fax, or upload this completed form to:  
Alaska Board of Fisheries  
P.O. Box 115526  
Juneau, AK 99811-5526  
Fax: 907-465-6094

Upload file online: <https://arcg.is/1Ty0mv2>

DRAFT

CODE ORDINANCE

DRAFT 8/13/2024

Sponsored by:  
Introduced:  
Public Hearing:  
Action:

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

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

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BE IT ENACTED:

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

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

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

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]

Section

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

**17.55.004 DEFINITIONS.**

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly

indicates or requires a different meaning.

- "Aircraft hangar" means a roofed structure which is used to completely or partially enclose and store aircraft and aircraft accessories.
- "Boathouse" means a roofed structure which is used to completely or partially enclose and store boats and boating accessories.

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

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

- "Building" means any structure intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature.
- "Building line" means the line of that part of the building nearest the property line.

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

• “Dedication” means the reservation of land to a public use by the owner manifesting the intention that it shall be accepted and used presently or in the future for such public purpose. A dedication by the owner under the terms of this section is a conveyance of an interest in property which shall be deemed to include the warranties of title listed in A.S. 34.15.030. The dedication of streets, alleys, sidewalks, or public open space shall convey a fee interest in the area dedicated. The dedication of all other public rights-of-way shall be deemed to create an easement in gross to perform the indicated function in the area depicted.

• “Engineer” means a registered professional civil engineer authorized to practice engineering in the state of Alaska.

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



to the primary use.

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

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

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

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

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

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

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

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

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

- "Parcel" means an unsubdivided plot of land.

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

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

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

- "Right-of-way" means a strip of land reserved, used, or to be used for a street, alley, walkway, airport, or other public or private purpose.

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

- "Structure" means anything that is constructed or created and located on or above the ground, or attached to something fixed to the ground. For purposes of minimum setbacks and building separation requirements, the following are not considered structures unless specifically addressed by code: signs; fences; retaining walls; parking areas; roads, driveways, or walkways; window awnings; a temporary building when used for 30 days or less; utility boxes and other incidental structures related to utility services; utility poles and lines; guy wires; clotheslines;

flagpoles; planters; incidental yard furnishings; water wells; monitoring wells; and/or tubes, patios, decks, or steps less than 18 inches above average grade.

- "Subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or lease for more than ten years, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.

- "Surveyor" means a professional land surveyor who is registered in the state of Alaska.

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

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

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

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

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

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

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

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

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

**runoff and subsurface leaching.**

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

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

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

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

(B) Except where specifically provided otherwise by ordinance, no furthest protruding portion of any structure or building line shall be located nearer than ten feet from any side or rear lot line.

(C) Except as otherwise specified by code, eaves may project a maximum of three feet into required setback areas.

(D) The setback requirements of this section do not apply to property within the cities of Palmer and Wasilla.

(E) If a condemnation by a governmental agency reduces the building line setback of a structure below 25 feet, but there remains at least ten feet setback, and the setback reduced by the condemnation met the requirements of this section prior to the condemnation, the resulting setback shall be the setback requirements for the lot.

(F) For purposes of this chapter, commercial or industrial buildings on separate but adjacent parcels, which otherwise meet the setback requirements, may have connecting pedestrian walkways, enclosed or not. Pedestrian walkways:

(1) shall not contribute to the building area or the number of stories or height of connected buildings; and

(2) must comply with the current adopted edition of the International Building Code, except that the outside width of the walkway shall not exceed 30 feet in width, exclusive of eaves.

(G) No furthestmost protruding portion of any structure or building line shall be located nearer than ten feet from railroad rights-of-way, except that utilities and rail dependent structures may extend up to railroad rights-of-way.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

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

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

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

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

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

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



drip collection.



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

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

17.55.020 WATERBODY SETBACKS FOR [SHORELANDS] STRUCTURES.

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

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

federal statutes and regulations.

**(1) A permit in accordance with MSB 17.02 is required prior to construction or placement of any building within 75 feet of any waterbody.**

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

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

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

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

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

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

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

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

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

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

**(C) Variances.**

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

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

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

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

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

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

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

17.55.030 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF A WATERBODY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

pollutants to stormwater runoff;

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

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

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

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

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

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

17.55.035 WATER BODY HABITAT PROTECTION TAX CREDIT

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

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

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

17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

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

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

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

17.80.020 LEGAL NONCONFORMING STRUCTURES

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

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





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

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

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

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

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

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

legal nonconforming status;

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

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

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

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

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

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

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

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

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

structures[.]

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

(x) any areas of proposed ground disturbance.

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

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

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

ATTEST:

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

(SEAL)



## NOTICE OF PUBLIC SCOPING FOR POSSIBLE UPDATES AND REVISIONS TO WATER MANAGEMENT REGULATIONS

**Alaska Department of Natural Resources**

**August 1, 2024**

The Alaska Department of Natural Resources (DNR, Department) is considering updating the regulations implementing AS 46.15.145 Reservations of water: 11 AAC 93.141, 11 AAC 93.142 (Content of application), 11 AAC 93.143, 11 AAC 93.144, 11 AAC 93.145, Adjudication of applications 11 AAC 93.146 (Issuance of a certificate of reservation of water), and 11 AAC 93.147 (Review of a reservation of water).

The Department is undertaking this scoping process to ask the public for their ideas and suggestions before the Department undertakes the task of drafting any specific proposed regulations for public review. Written input must be received no later than 5:00 p.m. on Friday, August 30, 2024. At such time DNR undertakes revisions to these regulations, there will be an additional timeframe to provide comments on the proposed regulations.

### Background Information

In January 2021, the Department publicly noticed proposed changes to a variety of water management regulations in 11 AAC 93. The Department received numerous comments on regulations concerning reservation of water and decided to advance only the administrative changes (adopted in June 2024). The public can view these newly adopted regulations at: <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=215679>.

This scoping notice picks up where we left off and looks specifically at reservations of water. The current reservation of water regulations are available here: <https://www.akleg.gov/basis/aac.asp#11.93>

### What information is DNR requesting?

The purpose of this notice is to ask the public for their input before the Department undertakes the task of revising the reservation of water regulations. Specifically, the Department is interested in ideas that will provide an efficient, consistent, and cost-effective

water reservation process to encourage the development of state water for its highest and best use consistent with the public interest.

The public is encouraged to provide specific wording to be changed, added, or removed from the current reservation of water regulations. When providing information, please be as specific as possible. For example, if the information is from a published study, please provide a copy of the study or a complete reference citation so DNR staff can obtain a copy for consideration.

Specifically, we invite the public to respond to the following prompts:

11 AAC 93.142 (Content of application)

- Should additional information be required to justify the need for a reservation of water?
- What types of data and methodology?

11 AAC 93.146 (Issuance of a certificate of reservation of water)

- Should only State resource agencies, such as DNR or Alaska Department of Fish and Game, hold the certificate of a reservation of water?
- Who should hold a certificate of a reservation of water?

11 AAC 93.147 (Review of a reservation of water)

- Are the review requirements clear and adequate?

### How will DNR use the information I provide?

The Department will carefully review all input, including responses to the above prompts, received during this scoping period. Information provided to the Department will be subject to inspection, copying, and distribution as public records under Alaska Statute 40.25.110 – 40.25.220. Do not include information that is not appropriate for public consumption.

At such time DNR undertakes revisions to these regulations, there will be an additional timeframe during which the public may provide comments on the proposed regulations.

### How do I submit information or feedback to DNR?

Send information to:

By mail: Alaska Department of Natural Resources  
Division of Mining, Land & Water  
Program Support Section  
550 W. 7th Avenue, Suite 1070  
Anchorage, AK 99501-3579

By DMLW Comment Portal: [Public Comment Topics – Division of Mining, Land, and Water \(alaska.gov\)](#)

By email: [dnr.water.regulation@alaska.gov](mailto:dnr.water.regulation@alaska.gov)

Please note that information provided will be subject to inspection, copying, and distribution as public records under Alaska Statute 40.25.110 – 40.25.220.

Submit written comments by 5:00 pm on Friday, August 30, 2024.

The State of Alaska, Department of Natural Resources, complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who needs special accommodation to participate in this process, please contact the Division of Mining, Land and Water at 907-334-2683 no later than August 15, 2024, to ensure that any necessary accommodations can be provided.

### How can I find out more information?

#### Website

Visit the DNR website for background information and links to current statutes and regulations:

<https://dnr.alaska.gov/mlw/water/regrevision/>

#### Public Meeting

DNR will host a public meeting on August 12, 2024, from 4:30-6:30 pm at the Atwood Conference Center Room 102/104 in Anchorage (Robert B. Atwood Building, 550 West 7th Avenue, Anchorage, AK 99501).

The meeting will include a brief presentation by DNR followed by a question-and-response session with the public. After, there will be an opportunity for participants to submit feedback as time allows. The public is invited to observe, learn, and ask questions.

You do not have to attend in person. A virtual option will be available for participation or observation. For a virtual forum link and for location and parking information, visit the DNR website at:

<https://dnr.alaska.gov/mlw/water/regrevision/>