

CODE ORDINANCE

Sponsored by:
Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 20-___**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING
MSB 17.31 SUPPLEMENTAL WETLANDS MITIGATION.

WHEREAS, the rationale and intent of this ordinance are found
in IM No. _____ which accompanies this ordinance; and

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. Adoption of chapter. MSB 17.31 is hereby adopted
as follows:

CHAPTER 17.31 SUPPLEMENTAL WETLANDS MITIGATION

17.31.XXX Purpose and Intent

17.31.XXX Compensatory Mitigation Certificate of Compliance
(CMCC) Required

17.31.XXX Application Requirements

17.31.XXX General Standards for approval

17.31.XXX Final action

17.31.XXX Severability

17.31.XXX Abrogation And Greater Restrictions

17.31.XXX Administration

17.31.XXX Interpretation

17.31.XXX Violations, Enforcement and Penalties

17.31.XXX Definitions

17.31.XXX PURPOSE AND INTENT

(A) The purpose of this chapter is to protect health and safety, property and infrastructure and promote economic stability of wetlands and aquatic resources.

(B) This intent of this chapter is to:

(1) Implement the goals, objectives, and policies, of the Matanuska-Susitna Borough's Comprehensive Plan and the Matanuska-Susitna Borough's Wetlands Management Plan;

(2) Coordinate the enforcement of other applicable borough ordinances and regulations;

(3) Avoid, minimize, and compensate for impacts to aquatic resources that:

(a) Reduce flooding, and flood hazards, damages, and expenditures.

(b) Prevent and control water pollution.

(c) Prevent soil loss and erosion of stream beds and banks.

(d) Preserve natural drainage features and minimize the need to construct, repair, maintain, or replace structural water management systems.

(e) Maintain and support stream base flow and

temperature, lake levels, and shallow groundwater supplies.

(f) Preserve and improve fish and wildlife habitat, recreational opportunities, and open space.

**17.31.XXX COMPENSATORY MITIGATION CERTIFICATE OF COMPLIANCE
REQUIRED**

(A) A Compensatory Mitigation Certificate of Compliance (CMCC) is required for all discharges of dredged or fill material into waters of the United States within the Matanuska-Susitna Borough authorized by the U.S. Army Corps of Engineers (USACE) via Individual Permit (see definitions).

(B) A CMCC is not required for discharges of dredged or fill material within the borough authorized by a USACE Nationwide Permit or other general permit (see definitions).

(C) The CMCC must be issued by the borough prior to commencement of work on the project.

17.31.XXX APPLICATION REQUIREMENTS

(A) Pre-Application Meeting. The applicant is encouraged to contact or schedule an appointment with the Planning Department Staff to discuss the proposed development and explain what information must be submitted.

(B) Application for a CMCC shall include, at a minimum, the following:

1. CMCC application form.

2. A copy of the USACE application materials, including site plan, and the USACE mitigation determination.
3. A calculation of the aquatic function debits associated with the proposed discharge and a specific proposal to fully offset the debits through permittee-responsible mitigation or the use of third-party credits. Applicants shall use the Alaska District Credit Debit Methodology (CDM) to calculate debits and any credits proposed to be generated by permittee-responsible compensation projects. The use of other credit/debit methodologies may be approved by the planning department if they provide equal or greater precision.
4. Appropriate application fee.

17.31.XXX GENERAL STANDARDS FOR APPROVAL

(A) The amount of compensatory mitigation shall be sufficient to replace the aquatic resource functions lost as a result of the authorized displacement.

(B) The total number of credits generated by permittee-responsible mitigation or acquired from third-party mitigation providers shall equal the number of debits calculated for the

displacement plus any mitigation ratio necessary to address applicable issues identified in subsection D.

(C) Appropriate functional or condition assessment methods or other suitable metrics should be used where practicable to inform the CDM calculation of debits and determine how much compensatory mitigation is necessary to offset the functional loss. If a functional or condition assessment or other suitable metric is not used, a minimum one-to-one acreage or linear foot compensation ratio must be used.

(D) A mitigation ratio greater than one-to-one will be required to account for:

1. the method of compensatory mitigation (e.g., preservation),
2. the likelihood of success,
3. differences between the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project,
4. temporal losses of aquatic resource functions (including temporal loss associated with the use of in-lieu fee advance credits and temporal loss associated with permittee-responsible mitigation that will occur during the period before the ecological

performance measures of the compensation project have been attained),

5. the difficulty of restoring or establishing the desired aquatic resource type and functions; and,
6. the distance between the affected aquatic resource and the compensation site. The Time Lag Table from the District's CDM will be used to address temporal loss and ratios from the CDM will be used to address other issues (e.g., preservation) when possible. The rationale for the required replacement ratio shall be documented in the administrative record for the CMCC.

(E) When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

(F) Where permitted impacts are located within the service area of an approved in-lieu fee program, and the sponsor has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

(G) For the use of third-party credits, authorized impacts shall be considered offset when the permittee submits

documentation that the appropriate number and type of credits have been secured from the mitigation bank or in-lieu fee program sponsor.

(H) Where permitted impacts are not in the service area of an approved mitigation bank or in-lieu fee program that has the appropriate number and resource type of credits available, permittee-responsible mitigation is the only option.

(I) For the use of credits generated by permittee-responsible mitigation, authorized impacts shall be considered offset when the permittee submits documentation that the USACE has approved the final mitigation plan.

17.31.XXX FINAL ACTION

(A) The CMCC shall be issued following review of the application and demonstration that the aquatic resource impacts authorized by the USACE individual permit have been fully offset within the Matanuska-Susitna Borough in compliance with 33 CFR Part 332/40 CFR 230 Subpart J.

(B) The final action taken by the borough shall be recorded with the action taken on the CMCC or approval under MSB 17.XX.XXX. Approvals and conditional approvals shall include the statutory language about the need to comply with state and federal laws concerning construction on or near wetlands.

17.31.XXX ADMINISTRATION

(A) The chapter shall be administered by the Matanuska-Susitna Borough Planning Department. The director or their designee shall have the ultimate decision on the grant or denial of a wetlands development permit.

17.31.XXX SEVERABILITY

(A) Should any word, phrase, paragraph, subsection, section or provision of this chapter be found by a court of competent jurisdiction to be invalid, such findings shall not affect the validity of this chapter as a whole or any part thereof other than the part so found to be invalid.

17.31.XXX ABROGATION AND GREATER RESTRICTIONS

(A) This chapter is not intended to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to laws. Whenever the chapter calls for supplemental requirements, the provisions of this chapter shall also apply.

17.31.XXX INTERPRETATION

(A) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements and shall be liberally construed in favor of the Matanuska-Susitna Borough and shall not be deemed a limitation or repeal of any other

powers granted by Alaska statutes or other applicable laws.

17.31.XXX VIOLATIONS, ENFORCEMENT AND PENALTIES

(A) Violations, enforcement and penalties shall be conducted in accordance with Chapter 1.45, Violations, enforcement and penalties.

17.31.XXX DEFINITIONS

- "Aquatic resources" mean surface waters, including wetlands, and the habitat they provide for both plant and animal communities.
- "Advance credits" mean any credits of an approved in-lieu fee program that are available for sale prior to being fulfilled in accordance with an approved mitigation project plan.
- "Alaska District: Credit Debit Methodology" means the document developed by the U.S. Army Corps of Engineers, Alaska District in consultation with the Alaska Statewide Interagency Review Team, Version 1.0, and any subsequent versions developed by the Alaska District and made available to the public.
- "Compensatory mitigation" means the restoration (re-establishment or rehabilitation), establishment, creation, enhancement, or in certain circumstances preservation of aquatic resources for the purposes of

offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

- "Condition" means the relative ability of an aquatic resource to support and maintain a community of organisms having a species composition, diversity, and functional organization comparable to reference aquatic resources in the region.
- "Credit" means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.
- "Debit" means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic functions at an impact or project site. The measure of aquatic functions is based on the resources impacted by the authorized activity.
- "Director" means the Matanuska-Susitna Borough Director of Planning and Land Use or their designee.
- "Dredged material" means material that is excavated or dredged from waters of the United States.

- "Fill material" means material placed in waters of the United States where the material has the effect of:
 - i. Replacing any portion of a water of the United States with dry land; or
 - ii. Changing the bottom elevation of any portion of a water of the United States. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. The term fill material does not include trash or garbage.
- "Functions" means the physical, chemical, and biological processes that occur in ecosystems.
- "General permit" means a Department of the Army authorization that is issued on a nationwide or regional basis for a category or categories of activities when:
 - i. Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or
 - ii. The general permit would result in avoiding unnecessary duplication of the regulatory control

exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR part 330.)

- "Individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this part and 33 CFR part 325, and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR 320.
- "In-lieu fee program" means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from

the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

- "Jurisdictional waters" mean those areas meeting the definition of Waters of the United States and therefore subject to the jurisdictional authority of the Corps of Engineers under the Clean Water Act.
- "Mitigation bank" means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.
- "Performance standards" mean observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.
- "Permittee-responsible mitigation" means an aquatic resource restoration, establishment, enhancement, and/or

preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

- “Practicable” means available and capable of being done after taking into consideration cost, available technology, and logistics in light of overall project purposes.
- “Service Area” means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.
- “Temporal loss” means the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site. Higher compensation ratios may be required to compensate for temporal loss. Additional compensation for temporal loss may not be necessary when the compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, unless the resource has a long development time.
- “Third-party mitigation provider” means a mitigation bank or in-lieu fee program operating under an approved instrument and which has credits available for use by a

permittee.

- "Waters of the United States" means those areas subject to the jurisdictional authority of the Corps of Engineers under the Clean Water Act as defined in 33 CFR Part 328.

Section 3. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2020.

VERN HALTER, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)