

CODE ORDINANCE

Sponsored by: Borough Manager
Introduced: 05/18/21
Public Hearing: 06/01/21
Amended: 06/01/21
Defeated: 06/01/21

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 21-025**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 17.31 SUPPLEMENTAL WETLANDS MITIGATION PROVISIONS FOR PROJECTS REQUIRING UNITED STATES ARMY CORPS OF ENGINEERS INDIVIDUAL PERMITS UNDER SECTION 404 OF THE CLEAN WATER ACT THAT PERMANENTLY IMPACT 10 OR MORE ACRES OF WATERS OF THE UNITED STATES; AND AMENDING MSB 1.45.100 SCHEDULE OF FINES FOR INFRACTIONS.

WHEREAS, the rationale and intent of this ordinance are found in IM No. 21-051 which accompanies this ordinance.

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

17.31.010 Purpose and Intent

17.31.020 Applicability

17.31.030 Application Requirements

17.31.040 General Standards for approval

17.31.050 Final Action

17.31.060 Nonconforming Uses

17.31.100 Violations, Enforcement and Penalties

17.31.110 Definitions

17.31.010 PURPOSE AND INTENT

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

(B) The intent of this chapter is to

(1) Seek full compensation for impacts to aquatic resources that:

(a) minimize public and private losses due to flood conditions;

(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; and

(f) preserve and improve fish and wildlife habitat, recreational opportunities, and open

space.

17.31.020 APPLICABILITY

(A) This chapter applies to all private and public lands in the borough.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla.

(C) A Compensatory Mitigation Certificate of Compliance (CMCC) is required prior to discharge of dredged or fill material into Waters of the United States within the Matanuska-Susitna Borough authorized by a United States Army Corps of Engineers (USACE) Individual Permit.

(1) A CMCC is not required for discharges of dredged or fill material within the borough that:

(a) are authorized by a USACE Nationwide Permit or other General Permit as permitted by 33 CFR 325.5(C); or

(b) have a cumulative impact of less than 10 acres of Waters of the United States.

17.31.030 APPLICATION REQUIREMENTS

(A) Pre-Application Meeting. The applicant is encouraged to schedule an appointment with the Planning Department 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 complete copy of the USACE application materials and mitigation determination;
- (3) USACE decisional documents associated with the project;
- (4) A calculation of the aquatic function debits associated with the proposed discharge or fill, and a specific proposal to fully offset the debits through compensatory mitigation; and
- (5) Appropriate filing fee as established by the assembly, payable to the borough.

17.31.040 GENERAL STANDARDS FOR APPROVAL

(A) The amount of compensatory mitigation shall be sufficient to fully offset the aquatic resource functions lost as a result of the discharge or fill.

(1) 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.

(a) Permittee-responsible mitigation projects shall be within the boundary of the Matanuska-Susitna Borough.

(B) The total number of credits purchased shall be equal to or greater than the number of debits calculated for the discharge or fill.

(C) Credits purchased through a mitigation bank or in-lieu fee program shall be from an USACE approved provider within the Matanuska-Susitna Borough boundary.

17.31.050 FINAL ACTION

(A) The CMCC shall be issued by the director following review of the application and demonstration that the aquatic resource impacts authorized by the USACE individual permit have been fully offset in accordance with this chapter.

17.31.060 NONCONFORMING USES

(A) Individual permit applications that have been issued a permit decision document by the USACE on or before the date of adoption of this chapter, are considered to have pre-existing legal nonconforming status and are not required to obtain a CMCC under this chapter.

(1) Permit modifications resulting in expansion to

USACE individual permit applications that have pre-existing legal nonconforming status under this chapter and cumulatively result in ten or more acres of dredged or fill material into waters of the United States require a CMCC under this chapter, but the requirements of this chapter only apply to the additional acres resulting from the expansion.

17.31.100 VIOLATIONS, ENFORCEMENT AND PENALTIES

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

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

17.31.110 DEFINITIONS

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- "Aquatic resources" mean surface waters, including wetlands, and the habitat they provide for both plant and animal communities.
- "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.

- "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.
- "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:
 - (a) Replacing any portion of a water of the United States with dry land; or

(b) 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.
- "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 USACE 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.

- "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 Department of Army 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.
- "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.

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

Section 3. Amendment of Subsection: MSB 1.45.100(C) is hereby amended by adding the following to the schedule of fines:

Code Reference	Description	Fine Amount
<u>17.31.020(C)</u>	<u>Failure to Obtain Compensatory Mitigation Certificate of Compliance</u>	
	<u>1st Offense</u>	<u>\$150</u>
	<u>2nd Offense</u>	<u>\$300</u>
	<u>3rd & Subsequent Offenses</u>	<u>\$500</u>

Section 4. Effective date. This ordinance shall take effect upon adoption.

DEFEATED by the Matanuska-Susitna Borough Assembly this 1 day of June, 2021.

YES: Hale, Nowers, and Boeve

NO: McKee, Yundt, Tew, and Sumner